

**Code of**  
**Criminal Procedure**  
**of the**  
**Azerbaijan Republic**

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**Directorate General I - Legal Affairs**

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## **General Part**

### **FIRST SECTION**

#### **Main Provisions**

##### **CHAPTER I**

###### **LEGISLATION ON CRIMINAL PROCEDURE**

## **Article 1. Purpose of the legislation on criminal procedure of the Azerbaijan Republic**

1.1. The legislation on criminal procedure of the Azerbaijan Republic determines whether acts which appear to be offences are criminal or not and whether a suspect is guilty or not, and determines legal procedures governing criminal prosecution and defence of suspects or accused persons as provided for by criminal law.

1.2. The legislation on criminal procedure of the Azerbaijan Republic is intended:

1.2.1. to ensure that a person committing an act which is considered an offence in law is detected and held criminally responsible;

1.2.2. to make it impossible for officials of the prosecuting authority or judges acting on their own initiative, to unlawfully suspect, accuse or convict a person who is not guilty of an offence;

1.2.3 to ensure that nobody can be illegally or needlessly subjected to coercive procedural measures or to other restrictions on human and civil rights and liberties.

1.3. The legislation on criminal procedure of the Azerbaijan Republic creates the opportunity to establish the rule of law and respect for human and civil rights and liberties.

## **Article 2. Sources of the legislation on criminal procedure of the Azerbaijan Republic**

2.1. The legislation on criminal procedure of the Azerbaijan Republic consists of the following:

2.1.1. the Constitution of the Azerbaijan Republic;

2.1.2. this Code;

2.1.3. the other laws of the Azerbaijan Republic;

2.1.4. the international instruments to which Azerbaijan is a signatory;

2.2. The norms of the Constitution of the Azerbaijan Republic have supreme legal authority throughout the territory of the Azerbaijan Republic and shall apply directly. In case of conflict between the norms of the Constitution of the Azerbaijan Republic and this Code, the norms of the Constitution of the Azerbaijan Republic shall be applied.

2.3. If there are rules in the international agreements to which Azerbaijan is signatory that are different from those in this Code, the rules of the international agreements shall be applied.

2.4. Under criminal procedure, normative legal acts that abolish or restrict human and civil rights and liberties, violate the independence of the judge and the principle of a fair trial or give definitive legal force to prior evidence shall not be applied. Procedural rules of other laws shall be adjusted to the provisions of this Code.

### **Article 3. Territorial scope of legislation on criminal procedure**

3.1. The legislation on criminal procedure of the Azerbaijan Republic shall be in force throughout the territory of the Azerbaijan Republic without limitation, apart from the exceptions provided for in Articles 3.3 and 3.4 of this Code.

3.2. The provisions of legislation on criminal procedure shall be applied outside the territory of the Azerbaijan Republic at sea, on waterways and in the air, on vessels flying the flag or national emblems or registered in its ports.

3.3. The application of the other rules governing the territorial scope of the legislation on criminal procedure of the Azerbaijan Republic may be determined by the international agreements to which Azerbaijan is a signatory.

3.4. Application of the rules of criminal procedure of foreign countries in the territory of the Azerbaijan Republic shall be possible only if provided for in the international agreements to which the Azerbaijan Republic is a signatory and in cases where there is no conflict with the requirements and principles of criminal procedure in the Azerbaijan Republic.

### **Article 4. Temporal scope of legislation on criminal procedure**

- 4.1. Criminal procedures and the adoption and execution of criminal procedure decisions in the Azerbaijan Republic shall be carried out in accordance with the provisions of the legislation on criminal procedure in force in the Azerbaijan Republic at the time.
- 4.2. There shall be no retroactive effect of the provisions of the legislation on criminal procedure of the Azerbaijan Republic which limit the rights of parties to criminal proceedings.
- 4.3. During the trial, evidence shall be ruled admissible in accordance with the provisions of the legislation on criminal procedure of the Azerbaijan Republic which is in force at the time. If newly adopted provisions of the legislation on criminal procedure of the Azerbaijan Republic substantially change the conditions under which evidence is ruled admissible, evidence which is not in accordance with the new provisions may not be used in support of the charge.

#### **Article 5. Legislation on criminal procedure as it relates to foreign citizens and stateless persons**

5.1. Criminal procedure relating to foreign citizens or stateless persons who are suspected or accused of committing an offence shall be carried out in accordance with the provisions of the legislation on criminal procedure of the Azerbaijan Republic.

5.2. The special features of criminal procedure involving persons whose diplomatic and other privileges and immunities are determined by the agreements to which Azerbaijan is a signatory are provided for in Articles 436-441 of the Code.

#### **Article 6. Compliance with the requirements of legislation on criminal procedure**

6.1. The provisions of the legislation on criminal procedure of the Azerbaijan Republic shall be binding on all individuals and legal entities in the territory of the Azerbaijan Republic.

6.2. Failure to comply with the requirements of the legislation on criminal procedure of the Azerbaijan Republic shall entail liability in the cases determined by the legislation of the Azerbaijan Republic.

## **Article 7. Principal concepts of legislation on criminal procedure**

7.0. The legislation on criminal procedure of the Azerbaijan Republic uses the following main concepts:

7.0.1. □Criminal act□ means an act exhibiting criminal characteristics;

7.0.2. □Applicant□ means the person addressing the prosecuting authorities or the courts in order to defend his/her real or potential rights;

7.0.3. □Criminal procedure□ means the totality of procedures conducted and procedural decisions taken on criminal prosecution;

7.0.4. □Criminal prosecution□ is criminal procedure designed to establish the criminal act, incriminate the person who committed the offence covered by criminal law, charge that person, pursue that charge in court, sentence the offender and carry out coercive procedural measures where necessary;

7.0.5. The □prosecuting authority□ are preliminary investigation, investigation and prosecution authorities and courts dealing with criminal cases and other prosecution material;

7.0.6. □Criminal case□ means all the material collected in connection with the offence committed or supposed offence during the prosecution period;

7.0.7. □Other prosecution material□ means the material collected in connection with simplified pre-trial proceedings, a complaint lodged as part of a private prosecution or separate proceedings;

7.0.8. □Criminal proceedings□ means the proceedings conducted in accordance with this Code prior to the trial and in the court of first instance, court of appeal and Supreme Court;

7.0.9. □Court□ means a court set up to conduct judicial proceedings in accordance with the legislation of the Azerbaijan Republic and to deal with criminal cases and other prosecution material at first instance, on appeal and before the Supreme Court as provided for in this Code;

7.0.10. A court of first instance is a court empowered to examine the charge against any person and give the judgment or other concluding decision relating to that charge, in accordance with this Code;

7.0.11. A court of appeal is a court empowered to examine complaints and appeals against judgments or other decision of the court of first instance which have not become final, in accordance with this Code;

7.0.12. The Supreme Court is a court empowered to examine complaints, appeals and submissions against judgments or other decisions given by the court of first instance with the participation of a jury and against judgments or other decisions of the appeal court which have become final;

7.0.13. A judge is a person appointed to this position in accordance with the legislation of the Azerbaijan Republic (the president of the court, his deputy, the chair of the bar association, a judge of a court of first instance or court of appeal, a judge of the Supreme Court);

7.0.14. The president of the court is the judge who presides over the court in dealing with the criminal case or other prosecution material, either alone or together with other judges or with the participation of a jury;

7.0.15. A juror is a person included in the list of jurors in accordance with the law of the Azerbaijan Republic, selected in accordance with this Code and called to court to take part in a trial;

7.0.16. The jury means the jurors assembled to hear criminal cases in accordance with this Code;

7.0.17. The chairperson of the jurors is the person chosen from among the jurors before going to the courtroom to bring in a verdict;

7.0.18. The participants in criminal proceedings are the preliminary investigator, the investigator, the prosecutor, the victim, the party claiming damages or civil party, the victim bringing a private prosecution, their legal representatives and representatives, the suspect or the accused, their legal

representatives, the defence counsel, the defendant to the claim by the civil party and his legal representative or representative;

7.0.19. □parties to criminal proceedings□ are participants in the proceedings who pursue charges and carry out the defence during the trial, on the basis of the adversarial principle and equal legal rights;

7.0.20. The □charge□ is the fact of maintaining in accordance with this Code that a person has committed a real offence provided for by criminal law;

7.0.21. □The prosecution□ comprises the preliminary investigator, investigator, prosecutor, victim, victim bringing a private prosecution and civil party;

7.0.22. The □investigation□ is the preliminary investigation and investigation of the criminal case before the court hearing;

7.0.23. The □prosecutor□ is the person who, in accordance with his powers and with this Code, leads the investigation into the criminal case or acts as a public prosecutor upholding public or semi-public charges in court;

7.0.24. The □investigator□ is the person who, in accordance with his powers and with this Code, carries out the investigation into the criminal case;

7.0.25. The □preliminary investigator□ is the person who, in accordance with his powers and with this Code, carries out the preliminary investigation in relation to the criminal prosecution;

7.0.26. The □victim bringing a private prosecution□ is a victim who brings a charge and defends it in court in accordance with this Code;

7.0.27. □Defence□ is a procedural activity designed to refute or reduce the charges against the person accused of committing an offence under criminal law, defend his rights and liberties, and restore the rights and liberties of a person wrongly subjected to criminal prosecution;

7.0.28 □The defence□ comprises the suspect or the accused, his defence counsel and the defendant to the claim by the civil party;

7.0.29. □Other participants in the criminal proceedings□ are circumstantial witnesses, witnesses, specialists, experts, court clerks and interpreters;

7.0.30. The □legal representatives□ of the victim, the civil party, the suspect or the accused and the defendant to the claim by the civil party are parents, adoptive parents, guardians and guardianship institutions which represent the legal interests of the victim, the civil party, the suspect or the accused and the defendant to the claim by the civil party during the criminal proceedings in the circumstances provided for in this Code;

7.0.31. The □representative□ of the victim, the civil party or the defendant to the claim by the civil party is the person who has a power of attorney certified by a notary to represent the legal rights of the victim, civil party or defendant to the claim by the civil party.

7.0.32. □Close relatives□ are grandfathers, grandmothers, parents, adoptive parents, brothers and sisters or stepbrothers and stepsisters, spouses, children, adopted children and grandchildren;

7.0.33. □Relatives□ are people who have common ancestors up to grandfather and grandmother, the spouses□ close relatives, and the spouses and close relatives of grandparents, parents, adoptive parents, brothers and sisters, stepbrothers and sisters, children, adopted children and grandchildren;

7.0.34. The □dwelling□ is the domicile of one or more persons, temporarily or permanently, which is either in their possession or leased. This includes a house, flat, country house, hotel or hostel room, attached veranda, terrace, gallery, balcony, places for general use (for rest, for storing property or for other requirements) besides cellar and garret as well as the cabin of a ship or the compartment of a train during a long journey. (For the purposes of this Code, the concept includes an individual□s office, areas of fenced land, car or boat);

7.0.35. □Night time□ is the period from 22.00h to 07.00h local time;

7.0.36. □Damage□ is non-material, physical or material harm to the victim due to a criminal offence;

7.0.37. □Procedures□ are the acts provided for in this Code and carried out in accordance with its provisions by participants in the criminal proceedings;

7.0.38. A □restriction□ is a coercive procedural measure relating to the suspect or the accused and temporarily limiting his rights, imposed by a preliminary investigator, investigator, prosecutor or court in accordance with this Code;

7.0.39 □Detention□ means limiting someone's freedom for a short period of time in a place of temporary detention in accordance with this Code;

7.0.40. □Detention on remand□ in the form of a restriction temporarily limits the freedom of the accused by keeping him in a place of detention (remand facility) in accordance with this Code;

7.0.41. An □application□ is a request by a participant in criminal proceedings to the prosecuting authority;

7.0.42. □Submissions□ are verbal or written evidence given by the participants in criminal proceedings or applicants in support of their claims or those of the person whom they represent;

7.0.43. A □procedural decision□ is a procedural act relating to the criminal case or other prosecution material and made by the judge or judges (excluding judgments) or the preliminary investigator, investigator or prosecutor in accordance with this Code;

7.0.44. The □verdict□ is the decision adopted at the end of the trial by the jurors stating whether the accused is guilty or not;

7.0.45. The court □judgment□ is the decision passed by the judge (judges) at the end of the hearing at courts of first instance or courts of appeal as to whether the accused is guilty as charged or not and, if he is found guilty, as to whether a penalty shall be imposed or not;

7.0.46. An □appeal□ is a complaint by the prosecutor to a higher court against the judgment or other court decision concerning the criminal case or other prosecution material involving the public prosecutor.

7.0.47. A □complaint□ is a written application alleging illegality or groundlessness of procedures or procedural decisions, addressed to the judicial authority;

## **CHAPTER II**

### **PURPOSES AND BASIC PRINCIPALS OF CRIMINAL PROCEDURE**

#### **Article 8. Purposes of criminal proceedings**

8.0. The purposes of criminal proceedings are the following:

8.0.1. to defend individuals, society and the state against criminal attempts;

8.0.2. to defend individuals against abuse of power in connection with the commission of a real or possible offence;

8.0.3. to detect offences as early as possible, to investigate all the circumstances thoroughly, completely and objectively;

8.0.4. to prosecute and to incriminate those who have committed offences;

8.0.5. to conduct judicial proceedings in order to punish persons found guilty of committing offences and to acquit those who are not guilty.

#### **Article 9. Basic principles and conditions governing criminal proceedings**

9.1. Basic principles and conditions governing the criminal proceedings provided for in Articles 10-36 of this Code:

9.1.1. to establish rules as a basis for criminal prosecution;

9.1.2. to ensure a defence against restrictions on human and civil rights and liberties;

9.1.3. to determine the legality and grounds of every criminal prosecution.

9.2. Under the circumstances provided for in this Code, violation of the principles or conditions governing criminal proceedings may render the completed criminal

proceedings invalid, cause the decisions taken during them to be annulled and deprive the evidence collected of its value.

#### **Article 10. Legislation**

10.1. Courts and participants in criminal proceedings shall conform to the Constitution of the Azerbaijan Republic, this Code, other laws of the Azerbaijan Republic as well as provisions of the international agreements to which Azerbaijan is a signatory.

10.2. No one may be incriminated or charged with a view to prosecution as a suspect or accused person, detained, arrested, searched, taken by force or subjected to other coercive procedural measures, nor convicted, punished or subjected to other limitations of rights and liberties other than on the basis of the rules and principles established by the laws of the Azerbaijan Republic which are in force and published.

10.3. The interpretation of the Constitution of the Azerbaijan Republic and other laws shall be binding on participants in criminal proceedings if that interpretation is made by decision of the Constitutional Court of the Azerbaijan Republic.

10.4. Observations on court practice by the Plenum of the Supreme Court of the Azerbaijan Republic shall constitute recommendations to the judicial authorities.

10.5. Procedures and decisions shall not be valid in the event of a breach of the rules laid down in this article .

#### **Article 11. Equality before the law and the courts**

11.1. Criminal proceedings in the Azerbaijan Republic shall be carried out on the basis of the equality of all persons before the law and the courts.

11.2. The judicial authorities may accord no advantage to any participant in the criminal proceedings regardless of citizenship, social status, gender, race, ethnicity, political and religious affiliation, language, origin, property situation, work situation, beliefs, dwelling place, place of origin or of any other reasons which are not based on law.

11.3. The characteristics of criminal prosecution of the President of the Azerbaijan Republic, the Prime Minister of the Azerbaijan Republic and the judges of the Azerbaijan Republic are determined by the constitution of the Azerbaijan Republic, this Code and other laws of the Azerbaijan Republic.

**Article 12. Guarantee of the human and civil rights and liberties established by the Constitution**

12.1. The judicial authorities shall observe the human and civil rights and liberties afforded by the Constitution to all participants in criminal proceedings.

12.2. The victim of a criminal act shall have the right to demand criminal prosecution, to take part in it as a victim or as a victim bringing a private prosecution and to obtain compensation for non-material, physical and material damage as required by this Code.

12.3. During criminal proceedings everyone shall have the right to defend their rights and liberties as set down by the Constitution in any manner not prohibited by law.

12.4. Decisions on the temporary limitation of the rights and liberties provided for in the Constitution in connection with the application of coercive procedural measures may be taken only in case of necessity, in accordance with this Code.

12.5. It shall be prohibited to use methods and means that may threaten life and health or the environment during criminal prosecution.

12.6. The judicial authorities shall not conceal facts that threaten life, health or the environment.

**Article 13. Respect for the honour and dignity of the person**

13.1. It shall be prohibited to take decisions or allow acts during the criminal prosecution which debase the honour and dignity of the person or may threaten the life and health of the participants in the proceedings.

13.2. During a criminal prosecution nobody shall:

13.2.1. be subjected to treatment or punishment that debases human dignity;

13.2.2. be held in conditions that debase human dignity;

13.2.3. be forced to participate in carrying out procedures that debase human dignity.

#### **Article 14. Guarantee of the right to liberty**

14.1. The right to liberty may be limited only in cases of detention, detention on remand or imprisonment in accordance with the law.

14.2. Nobody may be detained or arrested other than on the grounds provided for in the Code and other laws of the Azerbaijan Republic.

14.3. Only a court decision shall permit the detention on remand of a person or placement in a medical or care institution by force.

14.4. The person detained or arrested shall be immediately informed of the reasons for detention or arrest, the nature of the suspicion or charge and his right not to give a statement and to seek legal aid from defence counsel.

14.5. The preliminary investigator, investigator, prosecutor or judge shall immediately release any person illegally taken into custody or arrested.

#### **Article 15. Guarantee of the right to inviolability of the person**

15.1. Search and personal examination and other procedures which breach the right to inviolability of the person may not be carried out against the will of the person concerned or his legal representative without a court decision except in cases of detention and arrest.

15.2. During the criminal prosecution the following shall be prohibited:

15.2.1. the use of torture and physical and psychological force, including the use of medication, withdrawal of food, hypnosis, deprivation of medical aid and the use of other cruel, inhuman or degrading treatment and punishment;

- 15.2.2. the imposition of long-term or severe physical pain or acts which are detrimental to health, or any similar ill-treatment;
- 15.2.3. taking evidence from victims, suspects or accused persons or from other participants in the criminal proceedings using violence, threats, deceit or by other unlawful acts which violate their rights.

#### **Article 16. Guarantee of the right to inviolability of private life**

- 16.1. During the criminal prosecution the right to privacy (one's own and one's family's) and the confidentiality of information sent via correspondence, telephone conversations and other means of communication, and of other information, may be limited only by this Code.
- 16.2. Interception and checking of mail delivered by post, telegraph and other communications, and interception of conversations via telephone or other means of communication, information sent via other communication and technical channels and other information shall be permitted only by court order and in accordance with this Code.

#### **Article 17. Guarantee of the right to inviolability of domicile**

- 17.1. Except in the circumstances provided for in this Code, nobody may enter a dwelling without the consent of those living there.
- 17.2. The examination and searching of residential, service or industrial buildings, and other investigative and procedural acts which limit the right to property may be carried out only in accordance with this Code on the basis of a court decision.

#### **Article 18. Guarantee of the right to property**

- 18.1. During the criminal prosecution the right to property, including the right to private property, may not be limited except in the circumstances provided for in this Code.
- 18.2. Property taken during the proceedings shall be noted in an appropriate manner in the records and included in a comprehensive list and a receipt shall be given to the owner of the property stating that the property will be kept safely.

18.3. During the criminal prosecution, the imposition of a fine and the seizure of property may be carried out only in accordance with a court decision.

**Article 19. Guarantee of the right to legal aid and the right to conduct one's defence**

19.1. During the criminal prosecution the preliminary investigator, investigator, prosecutor and court shall take measures to guarantee the right of the victim, the suspect and the accused to proper legal aid.

19.2. During the criminal proceedings the prosecuting authority shall secure the right of the victim (victim bringing a private prosecution), the civil party or his legal representative, the legal representative of the suspect or accused and the defendant to the civil claim to use the legal aid of the representatives invited by them.

19.3. During the questioning of the victim or witnesses, the prosecuting authority may not prevent the lawyer invited by them as their representative from accompanying them.

19.4. The prosecuting authority shall secure the following rights of the suspect or accused:

19.4.1. to have the assistance of the counsel for the defence from the moment of detention or arrest, as the suspect before the first interrogation or as the accused as soon as charges have been laid;

19.4.2. to explain his rights;

19.4.3. to give him adequate time and opportunity to prepare his defence;

19.4.4. to be able to defend himself in person or with the aid of counsel for the defence chosen by him or, if unable to pay for defence counsel, to receive free legal aid;

19.4.5. to interrogate any witness against him.

19.5. The prosecuting authority shall involve the legal representative of the suspect or the accused in the manner provided for in this Code.

19.6. The presence of counsel for the defence or the legal representative of the suspect or the accused at the criminal proceedings may not limit the rights of the suspect or the accused.

19.7. The suspect or the accused may not be forced to give evidence, to give the prosecuting authority any documents or to assist them in any way.

#### **Article 20. Incrimination of the suspect and his relatives**

20.1. Nobody may be forced to testify against himself or his close relatives, or be prosecuted on this basis.

20.2.. During the investigation or court hearing, a person asked to give information which may incriminate him and his close relatives in respect of an offence shall have the right to refuse to incriminate them without fear of negative legal consequences for himself.

#### **Article 21. Presumption of innocence**

21.1. Any person suspected of committing an offence shall be found innocent if his guilt is not proven in accordance with this Code and if the court has not delivered a final judgment to that effect.

21.2. Even if there are reasonable suspicions as to the guilt of the person, this shall not cause the latter to be found guilty. The accused (the suspect) shall receive the benefit of any doubts which cannot be removed in the process of proving the charge in accordance with the provisions of this Code, within the appropriate legal proceedings. He shall likewise receive the benefit of any doubts which are not removed in the application of criminal law and criminal procedure legislation;

21.3 The accused shall not be obliged to prove his innocence. It shall be for the prosecution to prove the charge or to refute the evidence given in defence of the suspect or the accused.

#### **Article 22. Guarantee of the right to a court hearing**

The judicial authorities shall secure the right of everyone to a fair and open court hearing in connection with the charges against them or the coercive procedural measures applied. The right to a court hearing may not be refused for any reason.

#### **Article 23. Criminal trial only by a court**

23.1. The criminal trial shall be carried out only by the competent court as part of the court system of the Azerbaijan Republic. No one may be held guilty of an offence or be convicted in the absence of a court judgment.

23.2. The creation of special courts and the appropriation of court powers shall be prohibited and shall entail liability under the legislation of the Azerbaijan Republic.

23.3. Judgments and other decisions by special or other illegally created courts shall not be valid and shall not be implemented.

#### **Article 24. Criminal trial with the participation of representatives of the people**

24.1. The accused shall have the right to demand that justice be administered by a jury trial as provided for in Article 359 of this Code.

24.2. To secure the right provided for in Article 24.1 of this Code, the court of first instance shall summon citizens of the Azerbaijan Republic to serve as jurors to administer justice in criminal cases.

#### **Article 25. Independence of judges and jurors**

25.1. Judges and jurors shall be independent and shall obey only the legislation of the Azerbaijan Republic.

25.2. Judges and jurors shall not be bound by the conclusions reached the prosecuting authorities during the investigation.

25.3. Judges and jurors shall decide criminal cases and other prosecution matters in accordance with their conscience and legal opinions, on the basis of their examination of the evidence adduced by the parties to the criminal proceedings.

25.4. The courts of the Azerbaijan Republic shall administer justice under conditions that exclude unlawful influence on the independence and will of judges and jurors.

25.5. Nobody shall have the right to interfere in administering justice or to ask judges or jurors to give explanations of the criminal cases or other prosecution material before them.

25.6. No one may, for any reason, place restrictions on court proceedings in a direct or indirect way, illegally influence, threaten or interfere with them, or show disrespect or act carelessly towards the court. Persons behaving in such manner shall be liable under the legislation of the Azerbaijan Republic.

#### **Article 26. The language used in criminal proceedings**

26.1. Criminal proceedings in the courts of the Azerbaijan Republic shall be conducted in the official language of the Azerbaijan Republic or in the language of the majority of the population in the relevant area.

26.2. In the event that the parties do not know the language used in court, the judicial authority shall guarantee the following rights to them:

26.2.1. their right to use their mother tongue;

26.2.2. the right to use the services of an interpreter free of charge during the investigation and court hearings, to be fully familiar with all documents relating to the case and criminal prosecution and to use their mother tongue in court.

26.3. The rights of parties who do not know the language used in criminal proceedings, as provided for under Article 26.2.2 of this Code, shall be secured at the expense of the budget of the Azerbaijan Republic.

26.4. The judicial authority shall provide the relevant persons with the necessary documents in the language used during the trial.

#### **Article 27. Public nature of criminal proceedings**

27.1. While safeguarding state, professional, commercial, personal and family secrets in accordance with this Code, court hearings in criminal cases and on other prosecution material shall be held publicly in all courts of the Azerbaijan Republic.

27.2. Court hearings in criminal cases and on other prosecution material may not be held in absentia, except in the circumstances provided for by this Code.

27.3. In all cases court decisions given during the proceedings shall be made public.

#### **Article 28. The objectivity, impartiality and justice of criminal proceedings**

28.1. Courts shall hear criminal cases and other prosecution matters in accordance with the legal procedures established by this Code, on the basis of the facts and of impartiality and justice.

28.2. In the course of the proceedings, judges may not express interests other than those of the law.

28.3. If a judge or juror is personally interested in the results of the criminal proceedings in a direct or indirect way, he shall not be permitted to take part in the hearing of a criminal case or examination of other prosecution material.

28.4. During the criminal proceedings, courts shall perform the following functions:

28.4.1. ensure that the parties to the proceedings are able to examine thoroughly, fully and objectively all the circumstances relating to the prosecution;

28.4.2. take into consideration circumstances which incriminate or exonerate the suspect or accused as well as circumstances which mitigate or aggravate his criminal responsibility;

28.4.3. examine applications presented by the suspect or the accused or by their counsel for the defence concerning their innocence or minimal guilt and the availability of evidence which exonerates them or mitigates their responsibility;

28.4.4. examine complaints alleging breach of law during the criminal proceedings;

28.4.5. guarantee the right of the parties to criminal proceedings to participate.

28.5. The court decision regarding the guilt of the person charged may not be based on opinion but shall be supported by all the reliable evidence concerning the case.

28.6. The rules concerning the administration of justice may not be unilaterally altered for different cases and persons or in particular circumstances or at given times.

#### **Article 29. Examination by the appropriate court**

29.1. Nobody may be deprived of the right to have his case examined by the court with statutory jurisdiction in the matter. The case may not be heard in another court without the permission of the person concerned.

29.2. It shall be prohibited to change the jurisdiction of the court as provided for in this Code or to groundlessly withdraw the case from the judge designated by law.

#### **Article 30. Restriction on the judge's participation in the criminal proceedings**

30.1. A judge who has taken part in the criminal proceedings in a court of first instance or appeal or in the Supreme Court may not take part in a further court hearing.

30.2. In cases provided for in Article 109 of this Code, the judge shall withdraw, or be debarred from, examining criminal cases and other prosecution material.

#### **Article 31. Inadmissibility of non-procedural ties in criminal proceedings**

Non-procedural ties other than those provided for by this Code shall not be allowed between members of the court and participants in criminal proceedings or between courts of first instance, appeal courts or the Supreme Court in connection with the examination of criminal cases and other prosecution material.

#### **Article 32. Participation of both sides in criminal proceedings**

32.1. In the Azerbaijan Republic the conduct of criminal proceedings shall be based on the adversarial principle.

32.2. In order to guarantee participation of both sides in criminal proceedings in accordance with this Code:

32.2.1. Each party shall be represented in court;

32.2.2. Each party shall have equal rights and opportunities to defend its position;

32.2.3. The prosecution shall seek to prove the criminal act, the ingredients of the statutory offence, the involvement of the accused in committing this offence and the possible criminal responsibility of the accused, and shall offer suggestions as to the legal classification of the accused person's act and the final decision of the court;

32.2.4. The defence shall refute the prosecution's arguments concerning the criminal charge, draw the attention of the judicial authority to the circumstances which preclude or mitigate criminal responsibility and offer suggestions as to the legal classification of the accused person's act and the final decision of court;

32.2.5. Each party shall independently choose its own position and determine its means and methods;

32.2.6. The court shall assist in obtaining any additional documents required at the request of each party in the criminal proceedings;

32.2.7. The court judgment shall be based only on the evidence secured and examined with the equal participation of the parties;

32.2.8. The public prosecutor and the victim bringing a private prosecution shall conduct or withdraw the prosecution;

32.2.9. The accused shall be free to deny his guilt or to plead guilty;

32.2.10. The civil party may withdraw his claim or sign a reconciliation agreement with the defendant to his claim;

32.2.11. The defendant to the civil claim may admit the claim or sign a reconciliation agreement with the civil party.

### **Article 33. Assessment of evidence in criminal proceedings**

33.1. During the proceedings the judges and jurors shall assess the evidence collected on the criminal case in accordance with the requirements of this Code.

33.2. In the course of the proceedings the provisions of Articles 125, 144 and 145 of this Code may not be violated.

33.3. No advance decision shall be taken on any evidence or other material in the criminal proceedings.

33.4. Judges and jurors may not regard evidence or other materials unfavourably, or attach more importance to one piece of evidence or other item than to another, until they are examined under the statutory procedure.

### **Article 34. Nobody may be convicted for the same offence twice**

34.1. Nobody may be convicted for the same offence twice.

34.2. If the public prosecutor or the victim bringing a private prosecution, as the case may be, voluntarily drops the criminal charges in court in the circumstances envisaged by Article 41 of this Code, the same person may not be charged again with the same offence (except where new facts are discovered).

34.3. If a final judgment has been given on the commission of an offence, it shall be prohibited to bring the same criminal prosecution twice for the same offence, to change the charge to a more serious one or to increase the penalty.

### **Article 35. Guarantee of the right to re-apply to a court**

35.1. A party to criminal proceedings shall have the right to complain to a higher court, in accordance with this Code, against the procedural decisions and acts of the court dealing with the criminal case or other prosecution material.

35.2. Any person convicted shall enjoy the following rights when complaining to a higher court:

35.2.1. to request a retrial, alleging that the judgment was unlawful or groundless;

35.2.2. to request a reduction of the penalty to which he was sentenced.

35.3. The rights of the person convicted as provided for in Articles 35.1 and 35.2 of this Code may not be restricted.

#### **Article 36. Guarantee of the restoration of the violated rights of an acquitted person**

36.1. During criminal proceedings, the prosecuting authority shall guarantee the right of persons covered by Articles 55 and 56 of this Code to have their violated rights and liberties restored and to claim damages.

36.2. The rights of persons who have suffered injury as a result of misuse of official powers or a criminal offence and persons convicted without grounds, unlawfully arrested or whose rights were otherwise limited during criminal proceedings shall be restored in accordance with this Code and other laws of the Azerbaijan Republic.

### **Chapter III**

#### **CRIMINAL PROSECUTION**

##### **Article 37. Types of criminal prosecution**

37.1. Depending on the nature and severity of the offence, the criminal prosecution shall be carried out in the form of private, semi-public or public charges in accordance with the provisions of this Code.

37.2. A private criminal prosecution shall take place only on a complaint by the victim concerning offences under Articles 147, 148, 165.1 and 166.1 of this Code and shall be discontinued in the event of a reconciliation between the victim and the accused before the court deliberates.

37.3. A semi-public criminal prosecution shall take place on a complaint by the victim or, in the circumstances provided for in Article 37.5 of this Code, on the initiative of the prosecutor for offences under Articles 127, 128, 129.2, 130.2, 131.1, 132-134, 142.1, 149.1, 150.1, 151, 156-158, 163, 175-177.1, 178.1, 179.1, 184.1, 186.1, 187.1, 190.1, 197 and 201.1 of the Criminal Code of the Azerbaijan Republic.

37.4. A semi-public criminal prosecution may not be discontinued by reason of reconciliation of the victim with the accused.

37.5. Where no complaint is made by the victim, a semi-public criminal prosecution may be begun by the prosecutor only in the following cases:

37.5.1. if the offence committed affects the interests of the state or society;

37.5.2. if the offence was committed by or against a representative of the government or other officials of state institutions;

37.5.3. if the offence was committed against a pregnant woman or an elderly or helpless person;

37.5.4. if the offence was committed by threats and by force or against a person dependent on the person who committed it;

37.5.5. if the offence was committed by or against a person without legal capacity or a person below the age of criminal responsibility.

37.6. A public criminal prosecution shall be brought on offences not covered by Articles 37.2 and 37.3 of this Code.

### **Article 38. Duties involved in criminal prosecution**

38.1. When the preliminary investigator, investigator or prosecutor receives information concerning the preparation or commission of an offence or directly discovers such an offence, he shall act to protect and store the evidence and shall immediately open the preliminary investigation or investigation within his powers, in accordance with this Code.

38.2. If the offence is confirmed, the public prosecutor shall arraign the accused in court and request suitable punishment for him or, where necessary, application of coercive medical or educational measures.

38.3. The prosecuting authority shall take measures to compensate for damage as a result of acts provided for in criminal law.

38.4. The criminal prosecution shall continue until the circumstances which exclude criminal responsibility are elucidated or until the public prosecutor or the victim bringing a private prosecution withdraws the prosecution in accordance with this Code.

#### **Article 39. Circumstances which preclude criminal prosecution**

39.1. A criminal prosecution may not start or shall be discontinued (and the criminal case may not be begun or proceedings in the criminal case shall be discontinued) in the following circumstances:

39.1.1. if no criminal act has been committed;

39.1.2. if the act does not have a criminal content;

39.1.3. if the time-limit for prosecution has expired (excluding the circumstances in which the time-limit for prosecution is suspended);

39.1.4. if at the time of the act provided for in criminal law the perpetrator is below the age of criminal responsibility (excluding the circumstances in which coercive educational measures must be applied);

39.1.5. if the person dies after committing the act provided for in criminal law (excluding the circumstances in which it is necessary to acquit the person);

39.1.6. if there is a final court judgment on the same charge or another court decision which has not been annulled and makes it impossible to implement the criminal prosecution;

39.1.7. if there is an extant decision of the preliminary investigator, investigator or prosecutor not to initiate the criminal case on the same charge or to discontinue it;

39.1.8. if the victim has not lodged a complaint (in the case of a private prosecution or if the prosecutor does not act to launch the criminal prosecution in the case of semi-public charges);

39.1.9. if there is a reconciliation between the victim and the accused (only in the case of a private prosecution);

39.1.10. if the person committed the offence unconsciously (excluding circumstances requiring the application of coercive measures of a medical nature to such persons);

39.1.11. if there are grounds under the provisions of criminal law to absolve the suspect of criminal responsibility;

39.1.12. if the person has to be released under an amnesty act.

39.2. The criminal prosecution shall also be discontinued if there is no link between the person and the offence or if guilt is not proven.

39.3. In the circumstances provided for in Articles 39.1.1, 39.1.2. and 39.2 of this Code, the criminal prosecution shall be considered as discontinued on grounds of acquittal.

#### **Article 40. Circumstances permitting the criminal prosecution not to take place**

40.1. The existence of circumstances under which the suspect is absolved of criminal responsibility and punishment as provided for in criminal law shall be grounds for desisting from criminal prosecution.

40.2. A criminal case may not be commenced or may be discontinued if the person is absolved of criminal responsibility by decision of the preliminary investigator and investigator, with the agreement of the prosecutor, in the following circumstances covered by Articles 72-75 of the Criminal Code of the Azerbaijan Republic:

40.2.1. where the person evinces sincere remorse;

40.2.2. where the person is reconciled with the victim;

40.2.3. in the event of change in the situation;

40.2.3. if time runs out.

#### **Article 41. Discontinuation of criminal prosecution**

41.1. The preliminary investigator, investigator or prosecutor may decide to discontinue the criminal prosecution at any stage of the pre-trial proceedings if they ascertain any circumstance provided for in Article 39 of this Code (including discontinuation of work on the criminal case).

41.2. If there are no grounds for acquittal the preliminary investigator, investigator or prosecutor may not decide to discontinue the criminal prosecution without the consent of the accused (or suspect). In this case the criminal prosecution shall be continued in the manner provided for in this Code and shall end with a judgment or another court decision.

41.3. If the public prosecutor finds circumstances which preclude criminal prosecution in court, he shall withdraw the criminal prosecution of the accused. If the victim bringing a private prosecution continues to uphold the charge, the position of the public prosecutor on exempting the accused from criminal prosecution shall not prevent the criminal case or other prosecution material from being examined in court.

41.4. If the court finds circumstances which preclude criminal prosecution before the beginning of the court hearing, it shall suggest that the public prosecutor decide on the question of withdrawing the prosecution of the accused .

41.5. If the court finds circumstances which preclude criminal prosecution after the beginning of the court hearing, it shall stop the hearing and order an acquittal. In the case of a jury trial, if such circumstances are found, the question of the accused's guilt shall be decided by the jury.

41.6. If the public prosecutor ascertains in court circumstances provided for in Article 40 of this Code which allow the criminal prosecution not to take place, he shall have the right to withdraw the criminal prosecution of the accused. The public prosecutor's withdrawal of the prosecution shall not prevent the victim bringing a private prosecution from continuing criminal proceedings against the accused.

41.7. The question whether a private prosecution is to proceed or not shall depend only on the wishes of the victim. In this case the court shall discontinue the proceedings concerning private charges.

## **Article 42. Grounds for acquittal**

42.1. An accused person may be declared innocent of the offence and acquitted by the court in the following circumstances:

42.1.1. if no criminal act has been committed;

42.1.2. if the act has no criminal content;

42.1.3. if there is no link with the offence committed;

42.1.4. if guilt is not proven;

42.1.5. if the jury delivers a verdict of not guilty.

42.2. Acquittal shall be ordered in the following circumstances:

42.2.1. on the grounds of Article 42.1.1. of this Code if it is proven that the act did not take place or the act was not shown to be a criminal act;

42.2.2. on the grounds of Article 42.1.2. of this Code if there is no criminal content in the act of the accused or if there are circumstances which show that the act was not an offence;

42.2.3. on the grounds of Article 42.1.3. of this Code if the person is proven not to have any link with the offence of which he is accused or if that link is not proven;

42.2.4. on the grounds of Article 42.1.4. of this Code if there is not sufficient evidence to prove guilt or if the evidence collected proves the accused's innocence.

## **Article 43. Grounds for discontinuing criminal prosecution during the trial**

43.1. During the trial a court decision to discontinue the criminal prosecution shall be made in the following circumstances:

43.1.1. if the public prosecutor or the victim bringing a private prosecution withdraws the criminal prosecution;

43.1.2. in the circumstances provided for in Articles 39.1.4., 39.1.6.-39.1.11. of this Code.

43.2. If the victim bringing a private prosecution repeatedly fails to attend the court hearing without good reason or fails to inform the court of the reasons for his absence, he shall be regarded as having dropped the prosecution.

43.3. During the trial, the court may decide to discontinue the criminal prosecution with the consent of the defence in the circumstances envisaged by Articles 39.1.3, 39.1.5, 39.1.12 and 40.2 of this Code.

#### **Article 44. Grounds for conviction**

44.1. During the trial the court shall convict if the totality of the investigated evidence establishes that the accused is guilty.

44.2. If there are no grounds for acquittal or for a decision to discontinue the criminal prosecution in accordance with Articles 42 or 43 of this Code, the court shall convict in the following manner:

44.2.1. in the circumstances provided for in Article 39.1.3. of this Code, it shall not sentence the accused;

44.2.2. in the circumstances provided for in Article 39.1.11. of this Code, it shall absolve the accused of the penalty imposed;

44.2.3. if a decision is taken not to apply the time-limit for criminal charges in accordance with the provisions of the Criminal Code of the Azerbaijan Republic, it shall sentence the accused;

44.2.4. in all other circumstances provided by this Code and criminal law, it shall sentence the accused.

### **CHAPTER IV**

#### **CONDUCT OF THE CRIMINAL PROSECUTION**

##### **Article 45. The obligation to prosecute**

- 45.1. The conduct of the criminal prosecution shall reflect its progress and outcome.
- 45.2. The conduct of the criminal prosecution shall be reflected in the documents of the case file, the documents concerning simplified pre-trial proceedings or the documents on the private prosecution.
- 45.3. A public or semi-public criminal prosecution shall be initiated by the preliminary investigator, investigator or prosecutor, as the case may be, as from the opening of the criminal case.
- 45.4. In the case of a private prosecution the conduct of the criminal prosecution shall start when the court that received the complaint takes the appropriate decision.
- 45.5. The conduct of the criminal prosecution may be discontinued by a decision of the prosecuting authority in view of circumstances which preclude criminal prosecution, circumstances which permit non-completion of the criminal prosecution and circumstances which impede completion of the criminal prosecution.
- Article 46. Characteristics of the commencement of the criminal prosecution in connection with the start of the criminal case**
- 46.1. There shall be proper reason and grounds for the start of the criminal proceedings relating to a public or semi-public prosecution.
- 46.2. The reason for starting criminal proceedings may be an application from an individual, information from a legal entity (or official) or the media, or information directly obtained by the preliminary investigator, investigator or prosecutor, concerning an offence committed or in preparation.
- 46.3. The grounds for starting criminal proceedings shall be sufficient evidence to indicate the ingredients of the offence. If there are grounds to suppose that there are no circumstances indicating the absence of a criminal act or precluding criminal prosecution, the preliminary investigator, investigator or prosecutor shall immediately start the criminal proceedings in accordance with his powers.

46.4. Except in circumstances which preclude criminal prosecution, the court president shall draw the attention of the prosecutor to the fact that the ingredients of a criminal offence have been established during the hearing and the prosecutor shall immediately open the criminal case connected with it. In this case, if the prosecutor decides against initiating criminal proceedings and the president comes to the conclusion that the decision is illegal and groundless, he may require the prosecutor to take the necessary measures.

46.5. The existence of circumstances as provided for in Article 209.2. of this Code shall be enough for the immediate start of the criminal proceedings. In this case a thorough, full and objective investigation shall be carried out until the following circumstances which impede criminal prosecution are established:

46.5.1. lack of evidence to confirm the existence of the criminal act;

46.5.2. existence of the circumstances referred to in Articles 39.1.4.-39.1.7. and 39.1.10 of this Code which preclude prosecution of the only person who can be charged with commission of the act provided for criminal law;

46.5.3. existence of the circumstances referred to in Articles 39.1.3., 39.1.11. and 39.1.12. of this Code which preclude the prosecution of anyone for the act provided for in criminal law.

#### **Article 47. The prosecuting authorities**

47.1. The criminal prosecution shall be conducted by the prosecuting authority. Responsibility for this shall lie with the preliminary investigator, investigator, prosecutor or court in charge of the criminal case file, the file on the simplified pre-trial proceedings or the file on the private prosecution, as the case may be.

47.2. Contacts concerning the criminal prosecution with the appropriate institutions in foreign countries, and the execution of instructions from the judicial and investigating authorities of those countries, shall be the responsibility of the appropriate court, prosecutor or investigator as determined by the legislation of the Azerbaijan Republic and the international agreements to which Azerbaijan is a signatory.

## **Article 48. Guarantee of speedy conduct of the criminal prosecution**

48.1. The criminal prosecution shall be started and finished by the preliminary investigator, investigator, prosecutor or court within the time-limits laid down in this Code in such a way as to:

48.1.1 guarantee the collection and examination of evidence in good time;

48.1.2 ensure that people do not wait too long before being charged, or having their cases heard or their rights restored.

48.2. The prosecuting authority shall guarantee the following in all cases:

48.2.1. if a restrictive measure of detention on remand, house arrest or bail is applied, the accused shall, after that measure has been ordered, be able to appear in court for the change to be substantiated, and be able to undergo trial, within the time-limits laid down in Articles 158 and 159 of this Code;

48.2.2. as from the commencement of any criminal case, the accused shall be committed for trial on the basis of the indictment or the prosecution shall be discontinued, within the time-limits laid down by Article 218 of this Code;

48.2.3. the hearing of any criminal case brought before the court, the examination of the file on simplified pre-trial proceedings and the hearing of complaints and appeals against judgments and other court decisions shall start within the time-limits laid down by Articles 298.2, 301.4, 391.1, 419.3, 426.2 and 427.1 of this Code.

48.3. Periods when the accused is not available to the prosecuting authority, periods when there are other reasons for suspending the proceedings and periods for taking cognisance of the facts of the case are not included in the periods provided for in Article 48.2 of this Code.

48.4. Taking into consideration the provisions of Article 48.3 of this Code, if a person is detained on remand during the pre-trial proceedings for longer than is provided for in Article 48.2.1. of this Code, that person shall have the right to financial compensation for the non-material prejudice suffered. Compensation shall

be settled in the course of the civil proceedings, independently of the decision on the criminal case.

#### **Article 49. Combined sets of criminal proceedings**

49.1. Only the criminal prosecution of several persons committing an offence together or the criminal prosecution of one person committing several offences may be combined in one set of proceedings.

49.2 In the case of persons who have committed different offences, except where an offence was committed jointly or in an organised group, the charges against these persons may not be combined in one criminal case.

49.3. Charges which delay a court hearing of the case because of the large volume of collected material, or because of the number of accused, or because of other complications, may not be combined in one set of proceedings.

49.4. The following may not be combined in one set of proceedings:

49.4.1. charges against persons who have committed offences against each other, except in the case of a private prosecution;

49.4.2. charges concerning the commission of an offence and its concealment or failure to report it;

49.4.3. charges in the form of a private prosecution for one act and a public or semi-public prosecution for another;

49.4.4. all other charges whose combined examination may impede an objective investigation.

49.5. Sets of proceedings may be joined by a decision of the investigator or prosecutor, or by a court decision in the case of a private prosecution.

#### **Article 50. Separation of criminal proceedings**

50.1. Criminal proceedings may be separated in all circumstances which do not impede the thorough, full, objective and timely examination of all the circumstances

connected with the criminal case, and in all circumstances in which the nature of the matter makes it possible to examine it separately.

50.2. If a person below the age of criminal responsibility has taken part in the commission of an offence under criminal law and is prosecuted together with other persons, the proceedings against that person shall be separated, as far as possible, at the investigation stage.

50.3. Separation of the criminal proceedings shall be decided by the investigator, prosecutor or court.

#### **Article 51. Obligation to record the course and outcome of procedural acts in criminal proceedings**

51.1. The course and the outcome of procedural acts in criminal proceedings shall be set down in a record and other documents, as well as in photographic negatives, photographs, slides, audio recordings, phonograms, videos and films, drawings, sketches, copies and prints, pictures, and electronic and other information media.

51.2. The recording of the course and outcome of procedural acts shall normally be carried out by the prosecuting authority. The record of a procedure shall be drawn up by the preliminary investigator, investigator, prosecutor or other authorised person concerned during the procedure or immediately afterwards.

51.3. The procedural record of the criminal prosecution may be handwritten, typed or recorded by other means, including electronically. Blank lines and pages in the record shall be erased and additions, deletions and amendments shall be specially noted.

51.4. The record of the course and the outcome of procedural acts shall be drawn up in such a way that its contents can be clearly understood directly or with the help of technical means.

51.5. Except in the case of court proceedings, the record of a procedure shall be signed by the person drawing it up. After that the record shall be read out to all those taking part in the procedure concerned and they shall be informed of their right to make observations for inclusion in the record and their duty to sign the

record as it stands or with annotations. If anyone is unable because of some physical defect or other reason to sign the record personally, it shall be signed by his defence counsel, legal representative or representative. If a participant in the procedure concerned refuses to sign the record, a note to this effect shall be made on the record.

51.6. During the procedure, if audio and other recordings and photos, videos, films and other visual recordings are made, the person carrying out the procedure shall first inform all participants of the fact. The use of technical means shall be noted in the record of the procedure concerned, and the recording or film shall be sealed and kept as an appendix to the record together with other prosecution material. If the audio or other recording and photo, video, film or other recording of a procedure is listened to or viewed during another procedure, an appropriate note shall be made in the record about the previous procedure.

51.7. The record of a court hearing shall be signed by the president and the clerk within 3 (three) days of the end of the hearing. After that the court shall give those persons who have the right to acquaint themselves with the record 3 (three) days in which to do so. In the case of annotations to the record, the president of the court shall examine these and sign them if he agrees with them or, if not, adopt an appropriate decision with regard to them. Whether or not he is in agreement with the annotations to the record, these annotations and the decision relating to them shall be appended to the record of the court hearing.

## **Article 52. The prosecution file**

52.1. Documents constituting evidence, documents provided for in Article 51.1. of this Code, decisions taken by the prosecuting authorities and written applications by the parties shall be kept in the case file, the simplified pre-trial proceedings file or the private prosecution file, as the case may be.

52.2. Every document added to the case file, the simplified pre-trial proceedings file or the private prosecution file shall immediately be placed on a separate sheet of paper and numbered. The prosecuting authority shall ensure that these pages are numbered consecutively in chronological order and assembled in the case file, simplified pre-trial proceedings file or private prosecution file, as the case may be.

52.3. Records of all investigative acts shall be registered immediately or in any case not later than one working day after the day on which the act was completed, in accordance with the rules issued by the appropriate executive bodies of the Azerbaijan Republic together with the Principal Public Prosecutor's Office of the Azerbaijan Republic. All procedural decisions are important documents and shall be drawn up on specially designed numbered forms. The layout of these forms shall be determined by the appropriate executive bodies of the Azerbaijan Republic together with the Principal Public Prosecutor's Office of the Azerbaijan Republic.

52.4. The case file documents shall be put together in one or more bound folders, each appropriately labelled with a list of the documents inside.

52.5. Other documents and items which cannot be kept with the case file because of their size and nature shall be kept separately. The list of items and documents kept separately from the case file shall be added to it.

52.6. Copies of the case file documents may be made by the prosecuting authority either in certified paper form or electronically.

### **Article 53. Grounds for suspending the conduct of the criminal prosecution**

53.1. The criminal prosecution may be suspended in the following circumstances:

53.1.1. if the person to be charged is unknown;

53.1.2. if the whereabouts of the person to be charged are unknown;

53.1.3. if the person to be charged is not available to the investigating authority or the court;

53.1.4. if the accused is unable to attend the proceedings because of serious illness or not being within the borders of the Azerbaijan Republic;

53.1.5. if the question of depriving the person charged with an offence of his right to immunity or the question of his extradition by a foreign country is raised in accordance with the law;

53.1.6. if the court submits to the Plenum of the Supreme Court of the Azerbaijan Republic a request for the constitutionality of the legislation applied or to be applied in respect of the prosecution to be examined by the Constitutional Court of the Azerbaijan Republic.

53.2. If the criminal prosecution is suspended, the conduct of the criminal case, the simplified pre-trial proceedings or the private prosecution shall also be suspended.

53.3. The criminal prosecution may be suspended in the following ways:

53.3.1. Two months after the start of the criminal case in the circumstances provided for in Article 53.1.1. of this Code;

53.3.2. after the search for the accused has been announced in the circumstances provided for in Article 53.1.2. of this Code;

53.3.3. simultaneously with the announcement of the search for the accused in the circumstances provided for in Article 53.1.3. of this Code;

53.3.4. in the circumstances provided for in Articles 53.1.4. - 53.1.6. of this Code, if a medical opinion from an in-patient medical establishment confirming the serious illness of the person concerned, a statement from the investigating authority confirming that the person is outside the borders of the Azerbaijan Republic, a statement from the Chief Public Prosecutor of the Azerbaijan Republic concerning the waiving of the person's immunity or an application by one of the parties to the criminal proceedings which meets the requirements of Article 456 of this Code provides grounds for halting the prosecution.

53.4. If there are two or more accused and the grounds for suspending the prosecution do not apply to all of them, and if the case cannot be examined objectively without the participation of all the accused, the investigator, prosecutor or court shall have the right to divide the proceedings into parts and to suspend all or part thereof.

53.5. Until the prosecution is suspended, the judicial authority shall carry out all the procedures which are possible without the accused, and the investigator shall take

all possible measures to identify and discover the person who committed the offence.

53.6. The prosecution shall remain suspended until the grounds for suspending the proceedings are removed. Once these grounds cease to exist, the proceedings shall be resumed by a decision of the prosecutor, investigator or court.

53.7. Proceedings which have been suspended because the time-limit for prosecution has expired shall be discontinued, except in cases where the person to be charged is unavailable to the investigating authority or the court, in the case of crimes punishable by life imprisonment and in the case of crimes against humanity and war crimes.

#### **Article 54. Termination of criminal proceedings**

54.0. The criminal proceedings shall be terminated in the following circumstances:

54.0.1. when the decision to discontinue the criminal prosecution comes into force;

54.0.2. if special execution measures are not required, when a judgment or another concluding court decision comes into force concerning simplified pre-trial proceedings or a private prosecution;

54.0.3. if special execution measures are required, when the judgment or other concluding court decision concerning simplified pre-trial proceedings or a private prosecution is upheld.

### **Chapter V**

#### **ACQUITTAL OF THE ACCUSED**

#### **AWARD OF DAMAGES**

#### **Article 55. Acquittal of the accused**

55.1. A person whose guilt is not proven during the trial shall be acquitted by the court in the name of the Azerbaijan Republic, publicly and immediately and at the same court hearing.

55.2. A person shall be considered innocent if his acquittal is ordered by the court or if the criminal prosecution is discontinued on grounds of acquittal during the pre-trial proceedings.

55.3. A person's rights to his home, property, work, etc may not be restricted if he is acquitted or the criminal prosecution is discontinued for any reason.

#### **Article 56. Persons entitled to damages**

56.0. The following persons shall have a right to compensation for the prejudice caused by error or abuse by the prosecuting authority:

56.0.1. an accused who is acquitted;

56.0.2. a person against whom the criminal prosecution is discontinued on the grounds of Articles 39.1.1., 39.1.2., 39.1.6.-39.1.8. and 39.2. of this Code;

56.0.3. a person against whom the criminal prosecution should have been discontinued on the grounds of Articles 39.1.3., 39.1.4., 39.1.10. and 39.1.11. of this Code, but was not discontinued in time and was pursued.

56.0.4. a person against whom the criminal prosecution should have been discontinued on the grounds of Article 39.1.12. of this Code, but continued although that decision was upheld;

56.0.5. a person unlawfully arrested or placed in a medical or educational institution by force or a person kept in detention on remand without legal grounds for longer than the prescribed period of time;

56.0.6. a person unlawfully subjected to coercive procedural measures during the criminal proceedings in the circumstances provided for in Articles 176 and 177 of this Code.

#### **Article 57. Characteristics of compensation**

57.1. The persons provided for in Article 56 of this Code shall be paid compensation for non-material, physical and material damage resulting from error or abuse by the prosecuting authority. These persons' residence and labour rights shall also be

restored; if that is not possible, they shall be guaranteed financial compensation for breach of these rights.

57.2. The prejudice caused shall be calculated from the following time:

57.2.1. for the persons provided for in Article 56.0.1., 56.0.2., 56.0.5. and 56.0.6. of this Code, 7 (seven) days after the date when the prosecuting authority knows or should have known the circumstances which preclude prosecution;

57.2.2. for the persons provided for in Article 56.0.3. and 56.0.4. of this Code, from the moment when the criminal law or the amnesty act comes into force.

57.3. Persons provided for in Article 56 of this Code who either came forward voluntarily or made a statement of guilt in court which was later disproved, and who thereby created an opportunity for the start of criminal proceedings against them and for the application of coercive procedural measures, shall not receive compensation.

#### **Article 58. Compensation for prejudice suffered**

58.1. Material prejudice as a result of error or abuse by the prosecuting authority shall be substantiated, then calculated and compensated for in full.

58.2. Physical and non-material damages shall be paid on the basis of fair assessment by the court if no other statutory arrangement is laid down.

58.3. Compensation shall be paid as follows to the persons provided for in Article 56 of this Code:

58.3.1. loss of salary, pension, allowances and other income;

58.3.2. loss of property caused by forfeiture, transfer to the state, removal by the investigating authorities or distraint;

58.3.3. legal costs;

58.3.4. fees paid to defence counsel;

58.3.5. fines paid or taken during the execution of the sentence.

58.4. Sums spent on detention on remand, court expenses or remuneration of compulsory work during detention on remand may not be deducted from the sum to be paid to the person by way of damages for error or abuse by the prosecuting authority.

58.5. If the compensation is paid on the grounds of acquittal or a decision to discontinue the criminal prosecution, and if that decision is later rescinded in respect of that person and he is convicted in the same criminal case, the return of the sum paid as compensation may be ordered by the court.

#### **Article 59. Restoration of other rights in relation to compensation for damages**

59.1. The persons provided for in Article 56 of this Code shall have the following rights regarding compensation for prejudice suffered:

59.1.1. to be reinstated in their previous position; if that is not possible, to be appointed to an equivalent position or to receive financial compensation for loss of the previous position;

59.1.2. to include the periods of deprivation of liberty and restricted liberty in their periods of employment;

59.1.3. to return to their previous residence; if that is not possible, to move to equivalent accommodation with regard also to district and situation;

59.1.4. to restoration of any special or military rank;

59.1.5. to the return of any honorary title or state award.

59.2. At the request of the person acquitted or the person against whom the criminal prosecution was discontinued:

59.2.1. the court or investigating authority shall inform within 2 weeks the previous or present employer, the place of study and place of residence;

59.2.2. Any media publishing information about the criminal prosecution which besmirches the name of the suspect or the accused shall announce within one month the final judgment on the case, without casting doubt on the innocence of the individual.

59.3. The prosecuting authority shall apologise in writing to a person who was detained on remand or charged as a result of error or abuse on the part of that authority.

#### **Article 60. Persons entitled to claim damages**

60.1. Persons provided for in Article 56 of this Code, their legal representatives and their heirs in order of kinship shall be entitled to claim and to receive compensation as a result of error or abuse by the prosecuting authority. In the case of decease of the person entitled to receive compensation, the members of the family who are entitled to a pension in respect of that person as head of the household shall also have the right to this compensation.

60.2. The action provided for in Article 59.2. of this Code may be demanded by any relative in the case of decease or loss of legal capacity of the person provided for in Article 56 of this Code. In such circumstances, a territorial prosecutor or specialised prosecutor shall also have the right to make the appropriate request, with which the media concerned shall be obliged to comply.

#### **Article 61. Recognition of the right to claim damages**

61.1. The right to claim damages for prejudice caused in the course of the criminal proceedings shall be recognised in the final judgment acquitting the accused or in the decision to discontinue the criminal prosecution.

61.2. If compensation for the prejudice caused by error or abuse on the part of the prosecuting authority is not covered by the acquittal or the decision to discontinue the criminal prosecution, this matter shall be resolved after the end of the criminal proceedings.

#### **Article 62. Explanation of the right to claim damages**

62.1. If the payment of compensation for the prejudice caused by error or abuse on the part of the prosecuting authority is not possible in the course of the criminal prosecution, the court which ordered the acquittal and the preliminary investigator, investigator or prosecutor who decided to discontinue the prosecution shall explain the rules governing payment of compensation to the person to whom it is due or, if there is no such person, to the other person provided for in Article 60.2. of this Code, after the end of the criminal prosecution.

62.2. A separate record shall be drawn up concerning the explanation given to the person as regards the right to damages for prejudice caused by error or abuse on the part of the prosecuting authority.

### **Article 63. Rules governing compensation for prejudice caused after the end of the criminal prosecution**

The rules governing payment of compensation for prejudice caused by error or abuse on the part of the prosecuting authority after the end of the criminal prosecution shall be implemented in civil proceedings in accordance with the law of the Azerbaijan Republic on "the right to compensation for individuals who have suffered prejudice through unlawful acts of the investigating and preliminary investigating authorities, the public prosecutor's office and court authorities".

## **Chapter VI**

### **OBLIGATIONS IN RESPECT OF PROCEDURAL DECISIONS**

#### **Article 64. Obligation to execute procedural decisions**

64.1. Decisions, instructions, summons and other legal requests by the prosecuting authority which become final shall be binding on all state institutions, individuals and legal entities and shall be executed unconditionally on the territory of the Azerbaijan Republic.

64.2. Failure to execute decisions of the prosecuting authority shall incur liability under the legislation of the Azerbaijan Republic.

64.3. The obligation to execute decisions of foreign courts and investigating authorities on the territory of the Azerbaijan Republic shall be determined by the international agreements to which Azerbaijan is a signatory.

#### **Article 65. Interlocutory significance of procedural decisions**

65.1. No new decision may be taken on a matter on which a decision of the prosecuting authority is effective. The decisions of the prosecuting authority except for decisions not to prosecute, shall not be binding in respect of the judgment or other concluding decisions handed down by the court.

65.2. The following decisions shall not be binding on the prosecuting authority, and if new facts are ascertained or earlier facts are disproved, may be examined again without being annulled:

65.2.1. decisions accepting persons as parties to the criminal proceedings and terminating their participation in the proceedings;

65.2.2. decisions on the choice of restrictive measures and the application of other coercive procedural measures;

65.2.3. decisions on the application of state measures for the defence of parties to the criminal proceedings and termination thereof;

65.2.4. decisions relating to the finding, collecting, adducing and investigating of evidence and other prosecution material;

65.2.5. decisions on the order and timing of procedures.

65.3. The binding nature of final court judgments and other final decisions on the prosecution on all state institutions, individuals and legal entities shall not prevent the examination, setting aside or alteration of the court judgment or other decision in the event of an appeal to the Supreme Court or of newly established facts.

65.4. The final court judgment and any other final decision on the prosecution shall be binding during the examination of the civil case only on the question of whether it relates to the criminal act and the accused. A final judgment of the court which

confirms the right to pursue the claim shall be binding on the court on this point during the civil proceedings.

65.5. In the exercise of its supervisory functions, the court may rescind the decision of the preliminary investigator, investigator or prosecutor to discontinue the criminal prosecution, and may take a special decision as a result of the court hearing.

65.6. A previous final court judgment on conviction or acquittal shall be binding unconditionally on courts of first instance and appeal.

65.7. A final court decision on the civil case shall be binding on the prosecuting authority only as regards the matter of whether the criminal act took place.

## **SECOND SECTION**

### **THE COURTS AND THE PARTIES TO CRIMINAL PROCEEDINGS**

#### **Chapter VII**

##### **THE COURTS**

###### **Article 66. Courts conducting criminal proceedings**

66.0. The following courts carry out criminal proceedings:

66.0.1. district (city) courts;

66.0.2. military courts;

66.0.3. the Assize Court of the Azerbaijan Republic;

66.0.4. the Military Assize Court of the Azerbaijan Republic;

66.0.5. the Supreme Court of the Nakhchivan Autonomous Republic;

66.0.6. the Court of Appeal of the Azerbaijan Republic;

66.0.7. the Supreme Court of the Azerbaijan Republic.

### **Article 67. Jurisdiction of district (city) courts**

- 67.1. The district (city) courts shall function as courts of first instance;
- 67.2. The district (city) courts shall hear cases which do not pose a major public threat and concern minor offences;
- 67.3. The district (city) courts shall also hear matters relating to simplified pre-trial proceedings, private prosecutions, matters concerning the courts□ supervisory functions and other matters;
- 67.4. Only cases and other matters connected with offences falling within the court□s jurisdiction shall be the responsibility of the district (city) court.

### **Article 68. Jurisdiction of the military courts**

- 68.1. The military courts shall function as courts of first instance;
- 68.2. The military courts shall hear cases concerning war and military service which do not pose a major public threat and concern minor offences, and cases concerning such offences committed by military personnel (if the offence is committed with the participation of a person who is not military personnel, his case shall also be heard by the military court);
- 68.3. The military courts shall also deal with matters concerning the courts□ supervisory functions, and other, matters in connection with cases covered by Article 68.2. of this Code.
- 68.4. Only cases and other matters connected with offences falling within the court□s jurisdiction shall be the responsibility of the military court.

### **Article 69. Jurisdiction of the Assize Court of the Azerbaijan Republic**

- 69.1. The Assize Court of the Azerbaijan Republic shall function as a court of first instance;
- 69.2. The Assize Court of the Azerbaijan Republic shall hear cases and other matters relating to serious and very serious offences;

69.3. Only cases which fall within the court's jurisdiction shall be the responsibility of the assize court.

#### **Article 70. Jurisdiction of the Military Assize Court of the Azerbaijan Republic**

70.1. The Military Assize Court of the Azerbaijan Republic shall function as a court of first instance;

70.2. The Military Assize Court of the Azerbaijan Republic shall hear serious and very serious cases relating to war and military service as well as cases and matters concerning serious and very serious offences committed by military personnel (if the offence was committed with the participation of a person who is not military personnel, the case relating to him shall also be heard by the Military Assize Court of the Azerbaijan Republic).

#### **Article 71. Jurisdiction of the Supreme Court of the Nakhchivan Autonomous Republic**

71.1. The Court of the Nakhchivan Autonomous Republic shall function as a court of first instance or appeal in various criminal cases and on other prosecution material.

71.2. The criminal division of the Supreme Court of the Nakhchivan Autonomous Republic, as a court of first instance, shall hear cases and other matters involving serious and very serious offences.

71.3. Cases involving offences within the court's jurisdiction shall be referred to the criminal division of the Supreme Court of the Nakhchivan Autonomous Republic.

71.4. The criminal and administrative division of the Supreme Court of the Nakhchivan Autonomous Republic, as a court of appeal, shall hear criminal cases and examine other prosecution material on the basis of complaints and appeals against judgments which have not become final and other decisions of the district (city) courts of the Nakhchivan Autonomous Republic.

71.5. Complaints and appeals against judgments or decisions made at first instance by the criminal division of the Supreme Court of the Nakhchivan Autonomous

Republic may not be heard by the criminal and administrative division of the Supreme Court of the Nakhchivan Autonomous Republic as an appeal court.

#### **Article 72. Jurisdiction of the Court of Appeal of the Azerbaijan Republic**

72.1. The Court of Appeal of the Azerbaijan Republic shall function as a court of appeal in criminal cases and other prosecution matters;

72.2. The Court of Appeal of the Azerbaijan Republic shall hear criminal cases and examine other prosecution material on the basis of complaints and appeals against judgments which have not become final and other decisions of the following courts of first instance:

72.2.1. district (city) courts of the Azerbaijan Republic excluding the district (city) courts of the Nakhchivan Autonomous Republic;

72.2.2. the military courts;

72.2.3. the criminal division of the Supreme Court of the Azerbaijan Republic;

72.2.4. the Assize Court of the Azerbaijan Republic;

72.2.5. the Military Assize Court of the Azerbaijan Republic.

#### **Article 73. Jurisdiction of the Supreme Court of the Azerbaijan Republic**

73.1. The Supreme Court of the Azerbaijan Republic shall function as the highest court of appeal in criminal cases and other prosecution matters.

73.2. The criminal and administrative division of the Azerbaijan Republic shall hear complaints and appeals against judgments or other decisions by the courts of appeal and the jury courts.

73.3. The Plenum of the Supreme Court of the Azerbaijan Republic shall hear cases, on additional appeal, on the basis of submissions by the President of the Supreme Court of the Azerbaijan Republic, appeals by the Principal Public Prosecutor of the Azerbaijan Republic and complaints of the defence against decisions of the Supreme Court, and on the basis of newly established facts.

#### **Article 74. Territorial jurisdiction**

74.1. Criminal cases and other matters shall be heard by the court of first instance within whose area the offence took place.

74.2. Jurisdiction in criminal cases which are linked with continuing offences or serial offences shall be determined on the following grounds:

74.2.1. the place where a continuing offence ends shall be regarded as the place where it took place;

74.2.2. the place of the final act covered by criminal law shall be regarded as the place where a series of offences ends.

74.3. Cases involving offences assumed to have been committed abroad shall belong to the court with jurisdiction in the area of the last dwelling place of the accused in the Azerbaijan Republic.

74.4. If it is not possible to determine the place where the offence was committed, the case shall be heard by the court with jurisdiction in the area where the pre-trial proceedings in this case ended.

74.5. If one of two joined criminal cases falls within the jurisdiction of the Assize Court of the Azerbaijan Republic, and the other within that of the district (city) court, they shall be heard by the Assize Court of the Azerbaijan Republic.

74.6. If one of two joined criminal cases falls within the jurisdiction of the Military Assize Court of the Azerbaijan Republic and the other within that of the military courts, the district (city) courts or the Assize Court of the Azerbaijan Republic, they shall be heard by the Military Assize Court of the Azerbaijan Republic.

74.7. In the case of two or more offences within the jurisdiction of equal courts (the district (city) courts or the military courts), they shall be heard by the court with jurisdiction in the area where the pre-trial proceedings in that criminal case ended.

#### **Article 75. Assigning the criminal case or other matter to the competent court**

75.1. Before deciding on the assignment of the criminal case, simplified pre-trial proceedings file, private prosecution or other matter to the court, jurisdiction in the matter shall be systematically verified. If it is established that the criminal case or other matter referred to the court is not within its jurisdiction, the court shall transfer it to the appropriate court.

75.2. If the court determines during the hearing that the criminal case it has taken under its jurisdiction must be heard by another court in accordance with Article 74.5 and 74.6 of this Code, it shall transfer the case to the appropriate one.

#### **Article 76. Change of jurisdiction in the criminal case or other matter**

76.1. Territorial jurisdiction in the criminal case or other matter may be changed under the following circumstances:

76.1.1. if there is an objection to the judge, in an area where the court consists of only one judge and in the circumstances provided for in Articles 107 and 109 of this Code;

76.1.2. if the court cannot hear the case because all the judges have taken part in an earlier trial, jurisdiction may be changed on the basis of an application by one party to the criminal proceedings or of submissions by the judge or the appropriate court president.

76.2. The decision on the change of jurisdiction in the circumstances provided for in Article 76.1.2. of this Code shall be taken by the president of the appropriate court of appeal.

#### **Article 77. Resolution of disputes concerning jurisdiction**

77.1. There shall be no disputes between courts concerning jurisdiction. If a criminal case or other matter is transferred from one court to another in accordance with the rules on jurisdiction, it shall be taken under that court's jurisdiction unconditionally. If there is a difference of opinion between courts on the subject, the criminal case or other matter shall be transferred from one court to the other by the president of the appropriate appeal court.

77.2. Complaints by parties to the criminal proceedings concerning the court's lack of jurisdiction in the criminal case or other matter shall be examined by the same court.

#### **Article 78. The court**

78.1. Criminal cases shall be heard in the courts of the Azerbaijan Republic by a single judge or a bench of several judges.

78.2. Criminal cases and other prosecution matters which do not pose a major public threat or concern minor offences shall be heard by a single judge in the court of first instance.

78.3. Criminal cases before the criminal division of the Supreme Court of the Nakhchivan Autonomous Republic, the Assize Court of the Azerbaijan Republic and the Military Assize Court of the Azerbaijan Republic shall be heard with the participation of a jury or a bench of three judges.

78.4. Appeals and complaints concerning criminal cases and other prosecution matters shall be heard in the court of appeal by a bench of three judges.

78.5. In the criminal and administrative division of the Supreme Court of the Azerbaijan Republic, appeals and complaints concerning criminal cases and other prosecution matters shall be heard by a bench of three judges; on additional appeal or on newly ascertained facts, these cases and matters shall be heard by the Plenum of the Supreme Court of the Azerbaijan Republic.

78.6. It shall be prohibited to summon any judge or juror to hear criminal cases and other prosecution matters in a manner contrary to the provisions of this article.

#### **Article 79. The jury**

79.1. A jury shall be constituted as provided for in Article 359 of this Code to hear criminal cases in the criminal division of the Supreme Court of the Nakhchivan Autonomous Republic, the Assize Court of the Azerbaijan Republic and the Military Assize Court of the Azerbaijan Republic.

79.2. The jury shall be constituted in accordance with Articles 360-366 of this Code and shall consist of twelve main and two reserve jurors.

79.3. Following the court hearing, the jury shall only give a verdict of guilty or innocent in respect of the accused.

79.4. Depending on the circumstances of the commission of the offence and the criminal prosecution, the jury may ask the president of the court to be merciful to an accused person found guilty.

#### **Article 80. The judge**

80.1. The powers of the judge in the criminal proceedings are determined by this Code and other laws of the Azerbaijan Republic.

80.2. Judges who hear criminal cases and other prosecution matters alone in the court of first instance, who prepare court hearings or who ensure the execution of the final judgment or other court decision shall enjoy the judicial powers set out in the articles of this Code.

80.3. Judges who hear criminal cases as part of a bench of judges shall have equal rights with the other judges in resolving all matters relating to the case.

80.4. The president in court hearings involving a jury or a bench of judges, and the judge who hears criminal cases or other prosecution matters alone shall enjoy the powers provided for in Article 81 of this Code.

#### **Article 81. The president**

81.1. A jury trial shall be presided over by a judge. The hearing of a criminal case or related matter by a bench of judges shall be presided over by the president of the court, his deputy or one of the other judges.

81.2. The president shall be in charge of the proceedings and shall take all the measures provided for in this Code to ensure a fair trial and fulfil the other procedural requirements concerning the conduct of the parties to the court proceedings. The president shall remove from the court hearing any person unconnected with the examination of the case or material.

81.3. The president in a jury trial shall exercise judicial powers on all matters connected with the hearing of the criminal case, apart from bringing in the verdict. The president shall ensure that the jurors properly examine and fully understand the evidence and can exercise their rights.

81.4. During the hearing of a case by a bench of judges, the president shall present for their consideration all matters connected with examining and resolving the case.

## **Article 82. Jurors**

82.1. Jurors shall fulfil the following duties in accordance with this Code:

82.1.1. to come to the court hearing at which the jury is selected and to answer the president's questions correctly;

82.1.2. to provide additional information about themselves and their relationship with other persons to the president;

82.1.3. to swear the oath set out in Article 367.2 of this Code

82.1.4. to follow the rules of court and comply with the instructions of the president;

82.1.5. following suspension or delay of the hearing, to come at the time set by the president to continue the hearing .

82.1.6. in the jury room, to vote for or against the answers to the questions put by the president on each point, and issues relating to the verdict;

82.1.7. not to disseminate information about circumstances relating to the inviolability of private and family life or state, professional, commercial and other secrets protected by law;

82.1.8. to fulfil the other duties provided for in this Code.

82.2. Jurors shall exercise the following rights in accordance with this Code:

82.2.1. to take part in the examination of evidence before the court;

- 82.2.2. to request the president of the court to ask questions to determine the circumstances relating to the case which are not clear to them;
- 82.2.3. to take part in examining material evidence, documents, places and buildings, and all other investigative steps taken by the court;
- 82.2.4. to ask the president to explain the legal rules governing the criminal case being heard, the contents of documents, the ingredients of the offences with which the accused is charged and unclear concepts;
- 82.2.5. to ask the president to address specialists in writing to seek an explanation of matters within their competence;
- 82.2.6. to make written notes during the court hearing.

82.3. Jurors shall be forbidden:

- 82.3.1. to leave the courtroom in the course of the hearing on the criminal case;
- 82.3.2. to have any contacts on the nature of the case without the permission of the president;
- 82.3.3. to collect information on the case outside the court hearing.

### **Article 83. The chairperson of the jury**

83.1. The chairperson of the jury shall have equal rights with the other jurors at the hearing in resolving all matters which arise during the examination of the case and in reaching the jury's verdict.

83.2. As well as general duties of other jurors, the chairperson shall have the following additional duties:

- 83.2.1. to head their deliberations and give equal opportunities to every juror to participate in discussing the case;
- 83.2.2. to read out the questionnaire to the jurors in the jury room;
- 83.2.3. when necessary, to organise jury voting and to sum up the results;

- 83.2.4. to write down the jury's answers to the questionnaire;
- 83.2.5. to announce the verdict of the jury in court;
- 83.2.6. to put questions to the president on the jurors' instructions.

## **Chapter VIII**

### **The prosecution**

#### **Article 84. The prosecutor**

84.1. The prosecutor in the criminal proceedings shall rely on the results of the investigation of all the circumstances of the case and shall be guided only by the requirements of the law and his conscience.

84.2. The prosecutor shall fulfil the following duties in accordance with this Code:

84.2.1. to examine applications and other documents on offences which have been committed or are planned, to begin the criminal case if there are sufficient reasons and grounds for doing so and, if so, exercising the powers of the investigator, to conduct the investigation or delegate it to the preliminary investigator or the investigator;

84.2.2. to take charge of the procedural aspects of the investigation of the case;

84.2.3. to bring and defend a civil claim in court;

84.2.4. to defend the charge on the criminal case in court;

84.2.5. to carry out other duties in the course of the criminal prosecution.

84.3. During the pre-trial proceedings the prosecutor in charge of the procedural aspects of the investigation of the case shall be responsible for applying the provisions of this Code. A prosecutor who has carried out the investigation, been in charge of the procedural aspects of the investigation or acted as public prosecutor in court shall not disseminate information about circumstances relating to the

inviolability of private and family life or state, professional, commercial and other secrets protected by law.

84.4. A prosecutor who has carried out the investigation on the criminal case or been in charge of the procedural aspects of the investigation may not take part in the court hearing as a public prosecutor.

84.5. A prosecutor in charge of the procedural aspects of the investigation shall exercise the following rights while supervising the preliminary investigation and the investigation:

84.5.1. to ensure that the investigating and preliminary investigating authorities observe the legal requirements in their reception, registration and processing of applications and other information on offences committed or planned;

84.5.2. to obtain material and documents on the criminal case and information about the progress of the investigation from the preliminary investigator or investigator, and to check the material and documents on the criminal case and acquaint himself with the course of the investigation;

84.5.3. excluding cases of transfer of the investigation from one authority to another, to remove the criminal case from one preliminary investigator or investigator and transfer it to another in order to guarantee the thorough, full and objective conduct of the investigation, and in cases where the law is violated during the investigation;

84.5.4. to charge the investigating authority with the criminal investigation and to appoint its members;

84.5.5. where circumstances are established which preclude the participation of defence counsel in the criminal procedure, to debar him from acting in the criminal case;

84.5.6. to examine objections to the preliminary investigator or investigator as well as their requests to withdraw;

84.5.7. to give written instructions to the preliminary investigator or investigator concerning the investigation of the offence, the choice, alteration or discontinuation

of restrictive measures, the search for the guilty party, the contents of the indictment, the adoption of decisions and investigative or other procedures;

84.5.8. to set aside an illegal or groundless decision of the preliminary investigator or investigator;

84.5.9. to examine complaints concerning decisions or acts of the preliminary investigator or investigator;

84.5.10. if it is necessary to bring a criminal prosecution against a person exercising the right to immunity, to apply to the Principal Public Prosecutor's Office of the Azerbaijan Republic with a view to requesting the corresponding authority to approve the waiving of that person's immunity;

84.5.11. to apply to the court for detention on remand of the accused as a restrictive measure, for an increase in the period of detention and in cases provided for in Articles 177.3 and 444 of this Code;

84.5.12. to represent the prosecuting authority in court;

84.5.13. to discontinue the criminal prosecution against the accused or refrain from prosecution in circumstances provided for in Articles 39 and 40 of this Code;

84.5.14. to confirm the indictment and the decisions of the preliminary investigator or investigator in the circumstances provided for in this Code or if not, to refer the criminal case to the investigator with mandatory instructions;

84.5.15. to refer the criminal case or other prosecution matter to the court for examination on the merits;

84.5.16. to take the appropriate decisions on the criminal case and conduct different investigative and other procedures;

84.5.17. to order search operations in order to detect offences and find missing persons or property, and to receive information on the measures taken;

84.5.18. to obtain documents and other material on criminal acts and the persons connected with them;

84.5.19. to verify the legality of detention, forced appearance before the prosecuting authority and other coercive procedural measures taken by the preliminary investigator or investigator, as well as to charge the preliminary investigating authorities with the conduct of procedures;

84.5.20. to take measures to ensure the security of the victim, witnesses and other participants in criminal proceedings;

84.5.21. to release the suspect from custody or the accused from detention on remand if there are no longer legal grounds for holding them or if the detention periods provided for in Articles 148.4, 158 and 159 of this Code have been exceeded;

84.5.22. to exercise the other rights provided for in this Code.

84.6. Except in the case of private prosecutions the prosecutor, when taking part in court hearings as public prosecutor, shall have the following rights pursuant to the rules provided for in this Code:

84.6.1. to make objections;

84.6.2. to submit applications;

84.6.3. to give his opinion on matters being resolved in court and on applications by other parties to the criminal proceedings;

84.6.4. to present the evidence for the prosecution and to take coercive procedural measures by court decision so as to ensure the submission of evidence to the court;

84.6.5. to take part in the court's examination of the case file in the courts of first instance and appeal;

84.6.6. to take part in the selecting of the jurors in court hearings at first instance;

84.6.7. to raise objections to unlawful acts by the defence;

84.6.8. to require the inclusion of acts subject to mandatory recording in the record of the investigation, other procedural records or the record of the court hearing;

84.6.9. to withdraw the criminal prosecution of the accused in the circumstances provided for in Article 41.3 of this Code;

84.6.10. to make introductory and summing up speeches and replies in courts of first instance and appeal, and to speak on cases heard in the Supreme Court;

84.6.11. to appeal against judgments and other decisions of the court;

84.6.12. to exercise the other rights provided for in this Code.

84.7. The public prosecutor shall fulfil the following duties:

84.7.1. to comply with the rules during the court hearing;

84.7.2. to obey the orders of the president;

84.7.3. to fulfil the other duties provided for in this Code.

84.8. The prosecutor in charge of the procedural aspects of the investigation shall comply with the instructions of a senior prosecutor. If the prosecutor in charge of the procedural aspects of the investigation disagrees with the instructions on the prosecution of the accused, the choice of restrictive measures or changes to them, the classification of the offence, the scale of the charge, the termination of the case or committal for trial, he shall have the right to send his reasoned objection to the senior prosecutor. If the latter agrees with the arguments he shall rescind his written instructions; if he disagrees, he shall transfer responsibility for the investigation to another prosecutor. An objection to the prosecutor's written instructions shall not stay the execution of those instructions.

#### **Article 85. The investigator**

85.1. In the context of criminal prosecution the investigator shall obey the requirements of the law and rely on the prosecutor's instructions and his own conscience in taking the necessary procedural decisions and carrying out the investigation and other procedures.

85.2. The investigator shall fulfil the following duties in accordance with this Code:

85.2.1. to examine applications and other information received concerning offences committed or planned, to instigate proceedings where there are sufficient reasons and grounds, to take charge of the case, to take the necessary steps to detect the offence and investigate the case thoroughly, fully and objectively, and to carry out all the investigative and other procedures within his powers;

85.2.2. to inform the suspect from the moment of detention and the accused from the time when he is charged or arrested about their rights, and to explain the reasons for detention, charges or detention on remand, as the case may be;

85.2.3. to guarantee the right to the assistance of defence counsel from the moment of detention, charge or arrest (in accordance with the provisions of Articles 153.2.5. -153.2.8 of this Code);

85.2.4. where sufficient evidence is collected confirming that the suspect committed the offence, to charge him;

85.2.5. where necessary, to ensure that restrictive measures are imposed on the suspect or the accused in accordance with the requirements of Articles 154-157, 160 and 163-172 of this Code;

85.2.6. to release the suspect or the accused if they are detained without grounds or for longer than the periods provided for in Articles 148.4, 158 and 159 of this Code;

85.2.7. to execute the instructions of the prosecutor;

85.2.8. to give written and verbal explanations to the prosecutor and the court;

85.2.9. to exempt the suspect or the accused from payment of legal aid costs in accordance with Article 193 of this Code;

85.2.10. to recognise the appropriate persons in the case as the victim, the civil party and the defendant to the civil claim;

85.2.11. to take steps to ensure payment of compensation for material damage as a result of the offence and arrange seizure of property as appropriate;

85.2.12. to complete the investigation, to acquaint the accused, defence counsel, the victim, the civil party and their representatives with the case file, to examine applications connected with it and, having drawn up the criminal indictment, to send it to the prosecutor in charge of the procedural aspects of the investigation, in accordance with Articles 158, 159 and 218-221 of this Code;

85.2.13. not to divulge information on circumstances concerning the inviolability of private and family life or state, professional, commercial and other secrets protected by law;

85.2.14. to fulfil the other duties provided for in this Code.

85.3. The investigator who carries out the investigation in a criminal case shall be responsible for carrying out the investigative and other procedures lawfully and in good time.

85.4. In accordance with this Code, the investigator shall exercise the following rights:

85.4.1. to obtain documents and other material providing information on the criminal act and the persons linked to it;

85.4.2. to detain the suspect, to question him and the victim and witnesses, to call for expert reports, to arrange for identification and carry out investigative acts such as crime scene examination, search of premises, searching of persons (including body search) and seizure of property;

85.4.3. to require the state authorities to furnish interpreters, specialists and experts and, with the agreement of the persons concerned, to summon them to attend the appropriate investigative procedures as circumstantial witnesses, interpreters, specialists or experts;

85.4.4. to require the state authorities and auditors' firms to carry out inspections, inventories, expert appraisals and other verifications;

85.4.5. to instruct the appropriate preliminary investigating authority to carry out search operations in order to detect an offence or find missing persons or property, and to receive information on the action taken;

85.4.6. to instruct the appropriate preliminary investigating authority to implement detention, forced appearance before the prosecuting authority and other coercive procedures and to require its assistance in carrying out investigative or other procedures;

85.4.7. to instruct the appropriate preliminary investigating authority or the preliminary investigator to carry out separate investigative acts;

85.4.8. where circumstances are established which preclude the participation of defence counsel in the proceedings, to present a request to the prosecutor about his exclusion from participation in the proceedings;

85.4.9. to examine objections against circumstantial witnesses, interpreters, specialists or experts;

85.4.10. to examine applications by the parties and complaints and other applications by other persons connected with the proceedings;

85.4.11. to examine complaints by the parties;

85.4.12. except for decisions which are the prerogative of the court, to take decisions on the choice of restrictive measures, changes to them and termination thereof, and the carrying out of investigative and other coercive procedural measures;

85.4.13. to take a decision on the suspension or discontinuation of the proceedings;

85.4.14. to exercise the other rights provided for in this Code.

85.5. If the investigator disagrees with the instructions or decisions of the prosecutor in charge of the procedural aspects of the investigation on the prosecution of the accused, the choice, changes in or termination of restrictive measures, the classification of the offence, the scale of the charge, termination of the case or committal for trial, he shall have the right to send his reasoned objection to the senior prosecutor. If the latter agrees with his arguments, he shall rescind the written instructions of the junior prosecutor; if he disagrees with the arguments, he shall transfer the investigation to another investigator. An objection

to the prosecutor's written instructions shall not stay the execution of those instructions.

85.6. Following all the requirements of this Code, the chief (in his absence his deputy) of the investigation department (section, office) shall employ the full powers of the investigator:

85.6.1. to arrange for registration of applications and other information received concerning offences committed or planned, and to order their examination and the investigation of the case or separate investigative acts by the investigator or group of investigators;

85.6.2. to supervise the taking of timely and appropriate measures by the investigator to detect, investigate and prevent an offence;

85.6.3. to take the necessary organisational measures to conduct thorough, full and objective investigations of criminal cases;

85.6.4. to send applications for mandatory examination on matters covered by Articles 84.5.5, 84.5.8., 84.5.10. and 84.5.20 of this Code to the prosecutor in charge of the procedural aspects of the investigation.

#### **Article 86. The preliminary investigator**

86.1. During the criminal prosecution, the preliminary investigator shall take the necessary procedural decisions pursuant to the law, on the basis of the prosecutor's instructions and his own conscience, and shall carry out investigative or other procedures within his powers.

86.2. The preliminary investigator shall fulfil the following duties in accordance with this Code:

86.2.1. to examine applications and other information received concerning offences committed or planned, to instigate proceedings where there are sufficient reasons and grounds for doing so, to take charge of the case, to take the necessary steps to detect the offence and make a thorough, full and objective investigation of the case, and to carry out all the investigative and other procedures within his powers;

- 86.2.2. to inform the suspect of his rights from the moment of detention and to explain the reasons for detention;
- 86.2.3. to guarantee the right of the person to the assistance of defence counsel from the moment of detention (in accordance with the provisions of Articles 153.2.5-153.2.8 of this Code);
- 86.2.4. where necessary, to ensure that restrictive measures are imposed on the suspect in accordance with the requirements of Articles 154-156, 160 and 165-172 of this Code;
- 86.2.5. to release the person if there are no legal grounds for detention or if he has been detained for more than 48 hours;
- 86.2.6. to recognise appropriate persons in the case as the victim, the civil party and the defendant to the civil claim;
- 86.2.7. to take steps to ensure payment of compensation for material damage caused by the offence and arrange seizure of property as appropriate;
- 86.2.8. to exempt the detained suspect from payment of for legal aid costs in accordance with Article 193 of this Code;
- 86.2.9. to execute the instructions and decisions of the prosecutor and the investigator;
- 86.2.10. to give written and verbal explanations to the prosecutor or the court;
- 86.2.11. in criminal cases subject to mandatory investigation, after taking the immediate investigative steps, to send all the material pertinent to the case to the appropriate investigating authority not later than 10 (ten) days after the beginning of the case, in accordance with the rules on investigative jurisdiction;
- 86.2.12. not to divulge information about circumstances concerning the inviolability of private and family life or state, professional, commercial and other secrets protected by law;

86.2.13. in the case of offences which do not pose a major public threat, to send the simplified investigation file, with the final record, to the prosecutor not later than 10 (ten) days after the beginning of the investigation;

86.2.14. to carry out the other duties provided for in this Code.

86.3. The preliminary investigator conducting the criminal prosecution shall be responsible for carrying out investigative and other procedures within his powers legally and in good time.

86.4. The preliminary investigator shall exercise the following rights in accordance with this Code:

86.4.1. to take statements from witnesses to the criminal act, to acquaint himself with the circumstances in which it took place, to obtain documents and other material providing information on the criminal act and the persons connected with it;

86.4.2. to detain the suspect, to question him, as well as the victim and witnesses, to call for expert reports, to arrange for identification; to perform such investigative acts as cannot be delayed, such as crime scene examination, search of premises, searching of persons (including body search) and seizure of property;

86.4.3. to require the state authorities to furnish interpreters, specialists and experts and, with the agreement of the persons concerned, to summon them to attend the appropriate investigative procedures as witnesses, interpreters, specialists or experts;

86.4.4. to require the state authorities and auditors' firms to carry out inspections, inventories, expert appraisals and other verifications;

86.4.5. to instruct the appropriate preliminary investigating authority to carry out search operations in order to detect the offence or find missing persons or property, and to receive information on the action taken;

86.4.6. where circumstances are established which preclude the participation of defence counsel in the proceedings, to present a request to the prosecutor about his exclusion from participation in the proceedings;

86.4.7. to examine objections against witnesses, interpreters, specialists or experts;

86.4.8. to examine applications by the parties and complaints and other applications by other persons connected with the proceedings;

86.4.9. to examine complaints by the parties;

86.4.10. except for decisions which are the prerogative of the court, to take decisions on the choice of restrictive measures, changes to them and termination thereof, and the carrying out of investigative and other coercive procedural measures;

86.4.11. to take a decision on the discontinuation of criminal proceedings and to submit it to the prosecutor for confirmation;

86.4.12. to exercise the other rights provided for in this Code.

86.5. The preliminary investigator shall not have the right to carry out search operations using covert procedures in connection with a case within his jurisdiction.

86.6. Once the prosecutor or investigator has taken charge of a criminal case, the preliminary investigator shall carry out the different investigative acts and the appropriate search operations only on the instructions of the prosecutor or investigator and through the preliminary investigating authority with which he works.

86.7. The chief of the preliminary investigating authority pursuant to the requirements of this Code and within his powers, shall:

86.7.1. arrange for registration of applications and other information received concerning offences committed or planned, and order their examination and the preliminary investigation of the criminal case or the conduct of separate investigative acts by the preliminary investigator or group of preliminary investigators;

86.7.2. supervise the taking of timely and appropriate measures by the preliminary investigator to detect, investigate and prevent offences;

86.7.3. empower the prosecutor acting within his own sphere of responsibility to verify the execution and application of the law in the activity of the bodies conducting the preliminary investigation and search operations, and ensure that the proper measures are taken for the execution of the instructions and decisions of the prosecutor and investigator;

86.7.4. organise the execution of court decisions.

86.8. Officials of the preliminary investigating authority, pursuant to the requirements of this Code and within their powers, shall:

86.8.1. take measures to prevent offences under criminal law;

86.8.2. detain persons who commit or are suspected of committing offences under criminal law;

86.8.3. search the detained person at the place of detention;

86.8.4. explain his rights to the detained person;

86.8.5. take the necessary measures for surveillance of the scene of the incident, to protect the traces of the offence and to take statements from witnesses to the incident;

86.8.6. carry out the instructions of the investigator or prosecutor for the conduct of procedures at the scene of the incident.

#### **Article 87. The victim**

87.1. If there are sufficient grounds to show that the individual suffered direct non-material, physical or material damage as a result of the act provided for in criminal law, he shall be referred to as a victim.

87.2. If the offence causes the death of the victim, the victim's rights under this article shall be exercised by his close relatives.

87.3. A legal entity which has been caused material or non-material damage may be referred to as the victim. In this case the victim's rights and duties shall be exercised by the authorised representative of the legal entity.

87.4. As soon as the decision is taken by the preliminary investigator, investigator, prosecutor or court, the person shall be referred to as the victim. If at the start of the criminal proceedings there are insufficient grounds to declare the person a victim, that decision shall be taken as soon as sufficient grounds are determined.

87.5. If, after recognition of the person as a victim, it is determined that there are no grounds for this person to remain a victim, the preliminary investigator, investigator, prosecutor or court shall order that the person no longer be classed as a victim and shall present their reasoned decision.

87.6. The victim shall have the following rights in accordance with this Code:

87.6.1. to know the nature of the charge;

87.6.2. to give statements;

87.6.3. to make submissions;

87.6.4. to present evidence to add to the case file for examination in court;

87.6.5. to raise objections;

87.6.6. to submit applications;

87.6.7. at any time before the beginning of the court hearings, to ask to be recognised as a victim bringing a private prosecution;

87.6.8. to raise objections to the acts of the prosecuting authorities and to ask that these objections be noted in the records of the investigation and of other procedures;

87.6.9. to take cognisance of the records of the investigation or other procedures in which he takes part, to make observations on the accuracy and completeness of the written record; while taking part in the investigation and other procedures as

well as in the court hearing, to ask that the requisite facts be properly recorded; and to take cognisance of the record of the hearing and add observations to it;

87.6.10. from the time of the end of the investigation, including the time of the discontinuation of the criminal proceedings, to acquaint himself with the case file and to make copies of the necessary documents relating to it;

87.6.11. to take part in the hearings of courts of first instance and appeal and in the examination of the case file;

87.6.12. to speak and reply at the hearings of first instance and appeal courts if his representative is not present;

87.6.13. to be informed of the decisions taken by the prosecuting authority which affect his rights and legal interests and on request, to receive copies of these decisions; to receive copies of the decisions on discontinuing the proceedings, charging of the accused and waiving of the criminal prosecution, the indictment, the judgment and court decisions;

87.6.14. to appeal to the court of appeal or the Supreme Court against the decisions and acts of the preliminary investigator, investigator, prosecutor or court, including the judgment and other decisions of the court;

87.6.15. to become reconciled with the accused while conducting a private prosecution;

87.6.16. to raise objections about circumstances known to him from the information provided by the prosecuting authority or the complaints of parties to the criminal proceedings;

87.6.17. to take part in Supreme Court hearings on appeal, on additional appeal or on the basis of newly discovered facts further to a complaint of his own, or if he has an objection to a complaint by another party to the criminal case;

87.6.18. to receive compensation from the state as determined by law for prejudice suffered as a result of the act provided for in criminal law;

87.6.19. to be reimbursed for the costs incurred during the proceedings and receive compensation for damage caused by illegal acts of the prosecuting authority;

87.6.20. to recover property and originals of official documents belonging to him taken as material evidence or on other grounds by the prosecuting authority; to recover property from the person who committed the criminal offence;

87.6.21. to appoint and dismiss a representative;

87.6.22. to withdraw any complaint lodged by him or his representative, including a complaint concerning the commission of criminal acts against him;

87.6.23. to exercise the other rights provided for in this Code.

87.7. The victim shall fulfil the following duties in accordance with this Code:

87.7.1. to attend as required by the prosecuting authority;

87.7.2. to give evidence at the request of the prosecuting authority;

87.7.3. to provide items, documents and samples as required by the prosecuting authority for the purposes of comparative examination;

87.7.4. to be examined concerning the alleged offence at the request of the prosecuting authority;

87.7.5. where there is reason to doubt the person's ability to understand the incident and describe it, to undergo an outpatient medical examination at the request of the prosecuting authority in order to determine this;

87.7.6. to obey the instructions of the preliminary investigator, investigator, prosecutor or court president;

87.7.7. not to leave the courtroom without the permission of the president until a break is announced;

87.7.8. to comply with the rules of court;

87.7.9. not to divulge information about circumstances which affect the inviolability of private and family life or state, professional, commercial and other secrets protected by law;

87.7.10. to carry out the other duties provided for in this Code.

87.8. The victim shall exercise his rights and fulfil his duties in person or through his representative. The rights of victims who are under age or lack legal capacity shall be exercised by their legal representative as laid down in this Code.

#### **Article 88. The victim bringing a private prosecution**

88.1. The following persons shall be recognised as victims bringing a private prosecution:

88.1.1. a person who applies before, during or after the preparatory court hearing on semi-public criminal prosecution, but before the court starts examining the case, to be allowed to appear in court as a victim bringing a private investigation: as from the receipt of the application;

88.1.2. in a semi-public criminal prosecution, a person who has suffered damage as a result of the offence and asks the prosecuting authority for proceedings to be instituted, for an investigation to be carried out and for recognition as victim: from the moment when he is recognised as victim in the ongoing case;

88.1.3. a victim of an offence who lodges a complaint with the court with a view to a private prosecution: from the moment when the court decides that the complaint falls within its jurisdiction or schedules it for consideration by the court.

88.2. If the victim is under age or lacks legal capacity, his legal representative who submits the application, request or complaint provided for in Article 88.1. of this Code shall be referred to as victim bringing a private prosecution.

88.3. In the circumstances provided for in Article 88.1.1. of this Code, the legal heir of a victim who has applied for permission to take part in the court hearing shall be referred to as a victim bringing a private prosecution.

88.4. The victim bringing a private prosecution shall exercise all the rights of the victim and fulfil his duties. In addition, in accordance with this Code, he shall:

88.4.1. prepare the file on the private prosecution;

88.4.2. exercise his right to withdraw the prosecution at any time during the proceedings;

88.4.3. give his opinion, during court hearings, on applications by other parties to the criminal proceedings and on matters examined in court;

88.4.4. undertake to present the evidence to the court on his own or with the aid of the court;

88.4.5. take part in the examination of the case file at hearings of first instance and appeal courts;

88.4.6. raise objections to unlawful acts by the opposite party;

88.4.7. continue the prosecution of the accused if the public prosecutor withdraws the prosecution;

88.4.8. make an introductory statement (announcing the private prosecution) and speak and reply at hearings of first instance and appeal courts if his representative is not present, and make a statement on the matter under consideration before the Supreme Court.

88.5. The victim bringing a private prosecution shall exercise his rights and fulfil his duties in person or through his representative.

#### **Article 89. The civil party**

89.1. If there are sufficient grounds for concluding that as a result of the offence under criminal law material damage was done, the individual or legal entity claiming compensation for it during the criminal proceedings shall be referred to as the civil party.

89.2. The decision on recognition as civil party shall be taken by the preliminary investigator, investigator, prosecutor or court. If at the time of submission of the claim there are insufficient grounds to recognise the person as civil party, this decision shall be taken as soon as sufficient grounds are determined.

89.3. If, after the person is recognised as civil party, it is determined that the claim was not submitted by the proper person or there are no grounds for the person to continue as civil party, the preliminary investigator, investigator, prosecutor or court shall terminate the participation of this person in the criminal proceedings as civil party by means of a reasoned decision.

89.4. In defending his claim, the civil party shall exercise the following rights in accordance with this Code:

89.4.1. to know the nature of the charge;

89.4.2. to make submissions and statements concerning the claim;

89.4.3. to present evidence and documents for inclusion in the criminal case file and examination in court;

89.4.4. to raise objections;

89.4.5. to submit applications, including an application for measures to secure the claim;

89.4.6. to object to the acts of the prosecuting authority and to require that these objections be noted in the records of the investigation and other procedures;

89.4.7. to acquaint himself with the records of the investigation and other procedures in which he takes part, to make observations on the accuracy and completeness of the written records; when taking part in investigative or other procedures and in the court hearing, to require that matters subject to mandatory recording be noted in the record; to take cognisance of and make additions to the record of the hearing;

- 89.4.8. from the time when the investigation ends or the criminal proceedings are discontinued, to acquaint himself with the case file and make copies of the necessary documents relating to it;
- 89.4.9. to take part in court hearings at first instance and on appeal and the examination of the case file;
- 89.4.10. to speak and reply in courts of first instance and appeal in the absence of his representative and to speak on the matter under consideration before the Supreme Court;
- 89.4.11. to be informed by the prosecuting authority of the decisions it has taken which affect his rights and legal interests, and on request to receive copies of official decisions and copies of the indictment, judgment or other decisions of the court;
- 89.4.12. to appeal to the appeal court or Supreme Court against the decisions and acts of the preliminary investigator, investigator, prosecutor or court, including the part of the judgment or other court decision relating to the claim;
- 89.4.13. to object to circumstances made known to him through the information given to him by the prosecuting authority about the part relating to his claim or through the complaints of other parties;
- 89.4.14. to take part in Supreme Court hearings on appeal, on additional appeal or on the basis of newly discovered facts. Further to a complaint of his own, if he has an objection to an appeal by another party to the criminal proceedings, and to take part in the court's examination of the case file;
- 89.4.15. to give his opinion in court on the applications and suggestions of the other parties to the proceedings as well as on matters being settled by the court;
- 89.4.16. to object to illegal acts by another party to the criminal proceedings;
- 89.4.17. to appoint and dismiss a representative;
- 89.4.18. to withdraw any complaint lodged by himself or his representative;

- 89.4.19. to waive his claim at any time during the proceedings;
  - 89.4.20. to be reimbursed for costs incurred during the criminal proceedings and receive compensation for prejudice caused as a result of illegal acts by the prosecuting authority;
  - 89.4.21. to recover property and the originals of official documents taken by the prosecuting authority as material evidence or on other grounds; to recover his property from the person who committed the criminal offence;
  - 89.4.22. to exercise the other rights provided for in this Code.
- 89.5. The civil party shall fulfil the following duties in accordance with this Code:
- 89.5.1. to attend as required by the prosecuting authority;
  - 89.5.2. to provide copies of the claim in accordance with the number of defendants to the civil party's claim;
  - 89.5.3. to provide items, documents and samples as required by the prosecuting authority for the purposes of comparative examination;
  - 89.5.4. to comply with the instructions of the preliminary investigator, investigator, prosecutor or court president;
  - 89.5.5. not to leave the courtroom without the permission of the president until a break is announced;
  - 89.5.6. to comply with the rules of court;
  - 89.5.7. not to divulge information about circumstances involving the inviolability of private and family life or state, professional, commercial and other secrets protected by law;
  - 89.5.8. to fulfil the other duties provided for in this Code.
- 89.6. The civil party may be questioned by the prosecuting authority as a witness.

89.7. The civil party shall exercise his rights and fulfil his duties in person or with the aid of his representative.

## **Chapter IX**

### **THE DEFENCE**

#### **Article 90. The suspect**

90.1. The following individuals shall be recognised as suspects:

90.1.1. a person whom it has been decided to detain with a view to a criminal charge;

90.1.2. a person detained on suspicion of committing an offence;

90.1.3. a person about whom a decision on the choice of restrictive measure, excluding arrest, bail and house arrest, is taken.

90.2. The prosecuting authority shall be empowered to detain a suspect for the following periods:

90.2.1. persons detained: no more than 48 hours;

90.2.2. a suspect about whom a choice of restrictive measure has been made, excluding arrest, bail and house arrest: no more than 10 days after the announcement of the decision.

90.3. Before the end of the period provided for in Article 90.2. of this Code, the prosecuting authority shall release the suspect and end the restrictive measure or take a decision to charge him.

90.4. If there are not sufficient grounds for suspicion, the prosecuting authority or the court shall release the suspect and end the restrictive measure before expiry of the periods laid down in Article 90.2 of this Code.

90.5. From the time of release, ending of the restrictive measure or when the decision is taken to bring charges, the person concerned shall cease to be considered as the suspect.

90.6. The preliminary investigator, investigator or prosecutor in charge of the criminal prosecution shall guarantee the suspect's rights, and shall not prevent him from using all lawful means of exercising his defence rights.

90.7. From the outset of detention or the decision on the choice of restrictive measure, the suspect shall exercise the following rights in accordance with this Code:

90.7.1. to know what he is suspected of (the nature of the suspicion □ factual description and legal classification of the offence of which he is accused);

90.7.2. to know the grounds for detention, if detained, to receive legal aid from the defence counsel from the outset of detention, and to receive written notification of his rights from the person who detained him or the preliminary investigator, investigator or prosecutor;

90.7.3. to receive a copy of the decision on his detention or on the choice of restrictive measure;

90.7.4. to take cognisance the record of detention immediately after it is drawn up and to make observations, which must be appended to the record;

90.7.5. to have access to defence counsel from the time of the decision on detention or on the choice of restrictive measure;

90.7.6. to inform his family, relatives, home or workplace (or place of study) immediately after he is detained, by telephone or other means;

90.7.7. to choose his defence counsel independently, to dismiss him and to conduct his own defence if he waives the right to defence counsel;

90.7.8. to have unlimited opportunity and time to meet his defence counsel in private and in confidence;

- 90.7.9. to have the help of defence counsel free of charge and, at his own request, to make statements with his defence counsel present;
- 90.7.10. to give statements, not to incriminate himself or his relatives and in general to refuse to give a statement;
- 90.7.11. to give statements in his mother tongue or a language he knows;
- 90.7.12. to have the help of an interpreter free of charge;
- 90.7.13. to raise objections and to submit applications;
- 90.7.14. to participate in investigative or other procedures or to refrain from participating in them unless this is prohibited by another article of this Code;
- 90.7.15. to participate in investigative or other procedures conducted at his own request with the aid of his defence counsel;
- 90.7.16. to present evidence and other materials for inclusion in the case file;
- 90.7.17. to object to the acts of the prosecuting authority and to have such objection placed on the record of the investigative or other procedures;
- 90.7.18. to acquaint himself with the record of the investigative and other procedures in which he participates, to make observations about the accuracy and completeness of the written record; to require the inclusion of the necessary circumstances in the record while taking part in investigative and other procedures;
- 90.7.19. to be informed by the prosecuting authority of its decisions which affect his rights and legal interests and, on request, to receive copies of those decisions;
- 90.7.20. to complain against decisions and acts of the preliminary investigator, investigator, prosecutor or court as well as to withdraw his own complaint and that of his defence counsel;
- 90.7.21. to be reconciled with the victim;

90.7.22. to be reimbursed for the costs incurred during the proceedings and to receive compensation for prejudice incurred as a result of unlawful acts by the prosecuting authority;

90.7.23. to be acquitted if the suspicion is not confirmed;

90.7.24. to exercise the other rights provided for in this Code.

90.8. If the suspect independently conducts his own defence, he shall exercise all the rights of defence counsel as provided for in this Code, as far as is possible in his position.

90.9. Whether the suspect exercises his rights or declines to do so, he shall not thereby suffer prejudice or detriment. Except where he intentionally names a person in the knowledge that he was unconnected with the offence, no liability shall accrue to the suspect on account of his statements and explanations.

90.10. The rights of the suspect shall be exercised by his legal representative in accordance with this Code if the suspect is under age or lacks legal capacity.

90.11. The suspect shall fulfil the following duties in accordance with this Code:

90.11.1. to attend as required by the prosecuting authority;

90.11.2. to submit to a search and body search when detained;

90.11.3. to be medically examined, to have his fingerprints taken, to be photographed, to have samples of blood and body fluids taken;

90.11.4. to be examined;

90.11.5. to submit to an expert opinion;

90.11.6. to comply with the instructions of the preliminary investigator, investigator, prosecutor or court president;

90.11.7. to fulfil the other duties provided for in this Code.

#### **Article 91. The accused**

91.1. The individual whom the investigator, prosecutor or court decides to charge shall be referred to as the accused.

91.2. A person who is charged with having committed a criminal offence unwittingly or when under age shall also be considered as the accused. Besides the additions and exceptions provided for in this Code, he shall also have the rights and duties of the accused.

91.3. The person shall no longer be considered as the accused from the time when the prosecution against him is discontinued.

91.4. The investigator, prosecutor or court shall guarantee the rights of the accused, shall not prevent him from exercising his right of defence by all lawful means and methods and, if he so requests, shall allow him sufficient time for the preparation of his defence.

91.5. The accused shall exercise the following rights in accordance with this Code:

91.5.1. to know what he is accused of (content, factual description and legal classification of the charge) and to receive a copy of the corresponding decision immediately after the charge is brought, the accused is remanded in custody or the decision on the choice of restrictive measure is announced;

91.5.2. to receive written notification of his rights from the person who detained or arrested him or from the preliminary investigator, investigator or prosecutor;

91.5.3. to acquaint himself with the record of detention and arrest immediately after it is drawn up and to make observations for inclusion in the record;

91.5.4. to have defence counsel from the time of the arrest or the announcement of the charge;

91.5.5. to have the help of defence counsel free of charge;

91.5.6. to inform his family, relatives, home, workplace or place of study immediately after detention, by telephone or other means;

- 91.5.7. to choose his defence counsel independently, to dismiss counsel and to conduct his own defence if he waives the right to defence counsel;
- 91.5.8. to have unlimited opportunities and time to meet his defence counsel in private and in confidence;
- 91.5.9. to be questioned at his own request with his defence counsel present;
- 91.5.10. to give statements, not to incriminate himself or his relatives and in general to refuse to testify as well as to give or refuse to give statements concerning the charge against him;
- 91.5.11. to give statements in his mother tongue or in a language he knows;
- 91.5.12. to have the help of an interpreter free of charge;
- 91.5.13. to raise objections and to submit applications;
- 91.5.14. to participate in investigative or other procedures or to refrain from participating in them unless this is prohibited by another provision of this Code;
- 91.5.15. to participate in investigative or other procedures conducted at his own request with the help of his defence counsel;
- 91.5.16. to present evidence and other material for inclusion in the case file and examination by the court;
- 91.5.17. to plead guilty or not guilty;
- 91.5.18. to object to the acts of the prosecuting authority and to have such objections noted in the records of investigative and other procedures;
- 91.5.19. to acquaint himself with the records of investigative or other procedures in which he takes part, to make observations on the accuracy and completeness of the written record, and when participating in investigative or other procedures and in court hearings, to require the inclusion of the necessary circumstances in the appropriate record;

91.5.20. to take cognisance of decisions on expert reports and of the experts' opinions;

91.5.21. to take cognisance of documents presented to the court by the prosecuting authority confirming that the arrest and detention on remand are lawful and justified;

91.5.22. to take cognisance of the case file from the end of the investigation or the discontinuation of the criminal proceedings and to make copies of the necessary documents relating to it;

91.5.23. to object to the discontinuation of the criminal proceedings without grounds of acquittal;

91.5.24. to demand a public hearing within a reasonable time;

91.5.25. to participate in court hearings at first instance and on appeal and in the examination of the case file;

91.5.26. to participate in the selection of jurors in the court hearing at first instance;

91.5.27. when conducting his own defence, to make an introductory statement (pleading either guilty or not guilty of the charge against him and stating whether or not he recognises the civil claim), to speak and to reply at hearings of first instance and appeal courts;

91.5.28. to make a final statement in court;

91.5.29. to be informed by the prosecuting authority of the decisions which affect his rights and legal interests and, on request, to receive copies of those decisions, including those concerning the choice of restrictive measure, the conduct of investigative or other coercive procedural measures, the charging of the accused and the announcement of the charge, and copies of the indictment, civil claim, judgment, other final decisions of the court and complaints and appeals to the appeal courts and the Supreme Court;

- 91.5.30. to lodge complaints against the decisions and acts of the preliminary investigator, investigator or prosecutor;
- 91.5.31. to appeal against the judgment and other decisions of the court to the court of appeal and the Supreme Court, or to the latter on additional appeal, and to receive copies of those decisions;
- 91.5.32. to acquaint himself with the record of the court hearing and to add observations to it;
- 91.5.33. to withdraw any complaint lodged by himself or his defence counsel;
- 91.5.34. to be reconciled with the victim;
- 91.5.35. to express objections to circumstances made known to him through information brought to his attention by the prosecuting authority or through complaints made by the other parties to the criminal proceedings;
- 91.5.36. to participate in appeal court hearings and Supreme Court hearings on appeal, on additional appeal and on the basis of newly discovered facts, further to a complaint of his own, if he is not held on remand and if he objects to a complaint by another party to the proceedings and to take part in the court's examination of the case file;
- 91.5.37. to be informed of appeals and complaints relating to the case and to raise objections to them;
- 91.5.38. to express opinions on applications and suggestions by other parties to the criminal proceedings as well as on matters being decided by the court;
- 91.5.39. to object to unlawful acts of the opposite party to the criminal proceedings;
- 91.5.40. to be reimbursed for costs incurred during the proceedings and receive compensation for prejudice caused by unlawful acts of the prosecuting authority;
- 91.5.41. to be acquitted if the charge is not proved;

91.5.42. to exercise the other rights provided for in this Code.

91.6. When independently conducting his own defence, the accused shall exercise all the rights of his defence counsel as provided for in this Code, as far as is possible in his position.

91.7. The accused's exercise of or refusal to exercise his rights shall not cause him to suffer prejudice or detriment. Except where he intentionally names a person in the knowledge that he was unconnected with the offence, no liability shall accrue to the accused on account of his statements and submissions.

91.8. The accused shall fulfil the following duties in accordance with this Code:

91.8.1. to attend as required by the prosecuting authority;

91.8.2. to submit to a search and body search when detained;

91.8.3. to be medically examined, to have fingerprints taken, to be photographed, to have samples of his blood and body fluids taken;

91.8.4. to be examined;

91.8.5. to submit to an expert opinion;

91.8.6. to comply with the instructions of the preliminary investigator, investigator, prosecutor or the president of the court;

91.8.7. to not leave the courtroom during the hearing without the permission of the president, until a break is announced;

91.8.8. to observe the rules of court;

91.8.9. to fulfil the other duties provided for in this Code.

91.9. The rights of an accused person who is under age or lacks legal capacity shall be exercised in his stead by his legal representative in accordance with this Code.

## **Article 92. Counsel for the defence**

92.1. Only persons entitled to work as lawyers in the Azerbaijan Republic may act as defence counsel in criminal proceedings. The defence counsel shall not be identified with the personality of the suspect or accused or the nature of the criminal case in which he participates.

92.2. The suspect or accused may have several defence counsels. The absence of one defence counsel during those parts of the procedure where the participation of defence counsel is obligatory shall not invalidate them.

92.3. The participation of defence counsel shall be ensured in the following circumstances:

92.3.1. where the suspect or accused so requires;

92.3.2. if the suspect or the accused is dumb, blind, deaf, has other serious speech, hearing, or visual disabilities, or because of serious chronic illness, mental incapacity or other defects cannot exercise the right to defend himself independently;

92.3.3. if during the criminal proceedings the mental illness of the suspect or the accused worsens or if a temporary mental disorder is diagnosed;

92.3.4. if the suspect or the accused does not know the language used in court;

92.3.5. if the suspect or the accused is under age at the time of committing the offence;

92.3.6. if the suspect or the accused is engaged on temporary military service;

92.3.7. if the suspect or the accused is charged with an especially serious offence;

92.3.8. if the suspect or the accused is forcibly detained in a special medical institution (psychiatric hospital);

92.3.9. if the suspect or accused is in detention or the accused is held on remand as a restrictive measure (excluding the circumstances provided for in Article 153.2. of this Code);

92.3.10. if the criminal prosecution is brought after the time limit for prosecution has expired;

92.3.11. if the interests of the accused persons diverge and one of them has defence counsel;

92.3.12. if the criminal prosecution is brought against a person who committed the offence unwittingly;

92.3.13. if the suspect or the accused lacks legal capacity;

92.4. The participation of defence counsel shall be ensured in the criminal proceedings from the following times:

92.4.1. when the suspect or the accused asks for defence counsel, in the case provided for in Article 92.3.1. of this Code;

92.4.2. when the person is questioned for the first time, when he is informed of the prosecuting authority's decision to detain him, of the record of his detention or of the choice of restrictive measure, or when the charges are brought, in the cases provided for in Articles 92.3.2, 92.3.4, 92.3.5 and 92.3.7 of this Code;

92.4.3. when the person is diagnosed as ill or unable to understand, in the cases provided for in Article 92.3.3 and 92.3.12 of this Code;

92.4.4. when the decision to charge him as the accused is taken, in the cases provided for in Article 92.3.6 and 92.3.10 of this Code;

92.4.5. when the submissions of the prosecutor concerning placement of the suspect or the accused in a special medical institution (psychiatric hospital) are considered in court, in the case provided for in Article 92.3.8 of this Code;

92.4.6. when the suspect or the accused is detained or when the submission of the prosecutor on the choice of detention on remand as a restrictive measure are considered in court, in the case provided for in Article 92.3.9 of this Code;

92.4.7. when the charge against the accused is examined in court, in the case provided for in Article 92.3.11 of this Code;

92.4.8. when it is established that the suspect or the accused lacks legal capacity for civil proceedings or for criminal proceedings, in the case provided for in Article 92.3.13 of this Code.

92.5. If the suspect or the accused waives his right to defence counsel, his renewed request for defence counsel on the basis of Article 92.3.1 of this Code shall not entail the compulsory participation of defence counsel after the start of the court's examination of the case.

92.6. The compulsory participation of defence counsel shall be ensured by the prosecuting authority. If the criminal prosecution takes the form of a private prosecution, the court shall ensure the participation of defence counsel from time when it accepts jurisdiction for the complaint lodged as part of a private prosecution.

92.7. The defence counsel who takes responsibility for defending the suspect or the accused shall present the prosecuting authority with documents which confirm his identity and his entitlement to work as a lawyer in the territory of the Azerbaijan Republic as well as the bar association's authorisation;

92.8. If the conditions provided for in Article 92.7. of this Code are not met, the prosecuting authority shall give a reasoned decision on the refusal to permit the person to act as defence counsel in the criminal proceedings.

92.9. Defence counsel shall exercise the following rights in accordance with this Code:

92.9.1. to be informed of the nature of the suspicion or the charge;

92.9.2. to have unlimited opportunities and time to meet his client in private and in confidence;

92.9.3. to participate at the suggestion of the prosecuting authority in investigative and other procedures conducted by the authority as well as in any investigative or other procedures involving the participation of his client;

92.9.4. to remind the suspect or the accused of his rights and to draw the attention of the person

conducting investigative or other procedures to infringements of the law by that person;

92.9.5. during pre-trial or court proceedings, to collect evidence and other material for inclusion in the case file or examination in court and to submit them to the prosecuting authority;

92.9.6. to lodge objections and applications;

92.9.7. to object to the acts of the prosecuting authority, and to require them to be noted in the record of the investigative or other procedure;

92.9.8. to acquaint himself with the records of the investigative and other procedures held with his participation or that of his client and with the records of the court hearings; to make observations on the accuracy and completeness of the written records of the investigation and other procedures in which he participates; when participating in investigative and other procedures, to require the inclusion of the necessary circumstances in the appropriate record;

92.9.9. to collect evidence to elucidate matters connected with the defence of the suspect or the accused; for this purpose, when the criminal prosecution takes the form of a private prosecution, to question individuals and legal entities with their consent, and to consult experts and specialists on the basis of an agreement;

92.9.10. further to a decision of the prosecuting authority to appoint experts, to acquaint himself with the decision, with the expert opinion and with the documents submitted to the court by the prosecuting authority to certify that detention, arrest or detention on remand is legal and justified;

92.9.11. to acquaint himself with the case file from the end of the investigation or the discontinuation of the criminal proceedings, and to make copies of the necessary documents relating to his client;

92.9.12. to participate in court hearings at first instance and on appeal and in the examination of the case file;

92.9.13. to participate in selecting jurors at the hearing at first instance;

92.9.14. to speak and reply at court hearings at first instance and on appeal and to speak on the matters examined in the Supreme Court;

92.9.15. to be informed by the prosecuting authority of decisions which affect his rights and legal interests and, on request, to receive copies of those decisions, including those concerning the choice of restrictive measures, the conduct of investigative or other coercive procedures, the charging of the accused and the announcement of the charge, as well as the indictment, civil claim, judgment and other final decisions of the court, and appeals and complaints to the court of appeal or the Supreme Court;

92.9.16. to object to acts and decisions of the preliminary investigator, investigator or prosecutor;

92.9.17. to appeal against the judgment or other decisions of the court to the court of appeal or, on appeal or additional appeal, to the Supreme Court;

92.9.18. withdraw any complaint he has filed, except an appeal against the conviction; .

92.9.19. on his client's instructions, to promote the reconciliation of the suspect or the accused with the victim;

92.9.20. to raise objections to circumstances made known to him through information given to him by the prosecuting authority or through complaints of other parties to the proceedings;

92.9.21. to participate in the hearing of the criminal case before the Supreme Court concerning a complaint relating to his client's legal rights, either on appeal, on additional appeal or on the basis of newly discovered facts, and in the examination of the case file;

92.9.22. at court hearings, to express his opinions about applications and suggestions by other parties to the criminal proceedings and about matters to be decided by the court;

92.9.23. to object to unlawful acts by the opposite party;

92.9.24. to receive payment for the legal aid furnished to the suspect or the accused in the course of the criminal proceedings, from his client or, if legal aid is rendered free of charge, from the state budget of the Azerbaijan Republic;

92.9.25. to exercise the other rights proved for in this Code.

92.10. Defence counsel shall be prohibited from:

92.10.1. taking any action that is at variance with the legal interests of his client, which includes confirming his link with the offence and his guilt, admitting the civil claim against him, refusing to participate in the procedures involving him and preventing him from exercising his rights;

92.10.2. divulging information made known to him in connection with the provision of legal aid if it can be used in a manner contrary to the legal interests of his client, except if he receives information about the planning or commission of a further offence or if he objects to the reasons given by his client during examination of the lawyer's liability further to a claim by his client that he is not defending him properly;

92.10.3. unilaterally refusing to defend his client or withdrawing as counsel for the defence, or defending two or more accused persons whose legal interests conflict;

92.10.4. preventing the participation or instruction of another defence counsel;

92.10.5. entrusting his authority to participate in the criminal proceedings to another counsel;

92.10.6. without his client's consent, calling somebody as a witness or expert, announcing a link between the suspect or accused and the offence or his guilt of the offence, announcing his reconciliation with the victim, admitting the civil claim or withdrawing his client's complaint or his appeal against the conviction

92.11. Counsel for the defence shall fulfil the following duties in accordance with this Code:

92.11.1. when taking part in criminal proceedings, to observe the requirements of the law; to defend the suspect or the accused using all legal means; to give the

necessary legal advice to his client in order to terminate the case to his advantage as far as possible, and to act in accordance with the position chosen by the defence; to observe professional confidentiality and the lawyers<sup>□</sup> oath.

92.11.2. to present to the prosecuting authority a document confirming the authority of defence counsel and to observe legal ethics during the proceedings;

92.11.3. to attend as required by the prosecuting authority in order to provide legal aid to the suspect or the accused;

92.11.4. to submit, with the consent of his client, items and documents to the prosecuting authority if they are not contrary to the interests of his client;

92.11.5. to comply with the instructions of the court president;

92.11.6. to not leave the courtroom without the permission of the president before a break is announced;

92.11.7. to comply with the rules of court;

92.11.8. not to divulge the information about circumstances concerning the inviolability of private and family life or state, professional, commercial and other secrets protected by law;

92.11.9. to fulfil the other duties provided for in this Code.

92.12. A refusal of the suspect or the accused to accept defence counsel shall be mentioned in the record. The preliminary investigator, investigator, prosecutor or court shall admit the refusal to accept the defence counsel only if the suspect or the accused makes the application on his own initiative, voluntarily and with the participation of defence counsel or the lawyer to be appointed as defence counsel. Refusal to accept defence counsel shall not be admitted if the suspect or the accused is unable to pay for legal aid or in the cases provided for in Articles 92.3.2-92.3.5, 92.3.8, 92.3.12 and 92.3.13 of this Code; defence counsel shall then be appointed for him compulsorily, or the lawyer appointed as defence counsel shall retain his authority.

92.13. The suspect or the accused shall be regarded as defending himself independently from the moment when he refuses defence counsel. A person who has refused defence counsel shall have the right to change his position after the admission of this refusal, at any time in criminal proceedings before the beginning of the court examination of the case.

92.14. The preliminary investigator, investigator, prosecutor or court shall have no right to suggest that the suspect or the accused instruct a certain defence counsel. However, they shall request the head of the bar association in the appropriate area to appoint defence counsel from the list of lawyers in the following circumstances:

92.14.1. at the request of the suspect or the accused;

92.14.2. in cases where the participation of defence counsel in the criminal proceedings is compulsory and the suspect or the accused does not have defence counsel.

92.15. The preliminary investigator, investigator, prosecutor or court shall have the right to request the head of the bar association in the appropriate area to replace defence counsel with another lawyer in the following circumstances:

92.15.1. if the lawyer chosen as defence counsel does not come to meet the suspect or the accused within 6 hours of his detention or arrest;

92.15.2. if defence counsel does not come to participate in the necessary investigative and other procedures as part of the criminal proceedings for a long period (in any case not longer than 5 (five) days) and the prosecuting authority cannot delay the said acts any further.

92.16. The lawyer acting as defence counsel shall be regarded as no longer participating in the proceedings in the following circumstances:

92.16.1. if he has no authority to participate in the proceedings;

92.16.2. if the suspect or the accused refuses him (if the agreement is terminated);

92.16.3. if the prosecuting authority establishes circumstances which preclude participation by defence counsel in the criminal proceedings and removes him.

92.17. If the prosecuting authority does not accept the suspect's or the accused's refusal of defence counsel, the latter's participation in the proceedings shall not be terminated.

#### **Article 93. The defendant to the claim by the civil party**

93.1. The person referred to as defendant to the claim by the civil party shall be someone who can legally be held materially liable for the material damage caused by a criminal offence.

93.2. The decision to recognise a person as defendant to the civil claim may be made by the preliminary investigator, investigator, prosecutor or court. If there are not sufficient grounds to recognise the person as defendant to the civil claim at the time when the claim is brought, that decision shall be taken as soon as sufficient grounds are determined.

93.3. After recognition of the person as defendant to the civil claim, if it is determined that it is not possible to hold him materially liable for the acts of the accused or that there are no other grounds for him to remain as defendant to the civil claim, the preliminary investigator, investigator, prosecutor or court shall terminate his participation in the criminal proceedings as defendant to the civil claim by means of a reasoned decision.

93.4. The defendant to the civil claim shall exercise the following rights in accordance with this Code:

93.4.1. to know the nature of the charge;

93.4.2. to give statements and make submissions concerning the claim against him;

93.4.3. to present evidence and other documents for inclusion in the criminal case file and for examination in court;

93.4.4. to raise objections and lodge applications;

93.4.5. for the purpose of securing the claim against him, to deposit money, stocks and gold with the public bank for safe keeping;

93.4.6. to object to the acts of the prosecuting authority and to require that the objections be noted in the records of investigative and other procedures;

93.4.7. to acquaint himself with the records of the investigative and other procedures in which he takes part, to make observations on the accuracy and completeness of the written record and when participating in investigative or other procedures or in the court hearing, to require the inclusion of necessary additions in the record; to acquaint himself with the record of the hearing and to make observations thereon;

93.4.8. from the end of the investigation or the discontinuation of the criminal proceedings, to acquaint himself with the case file and to make copies of the necessary documents relating to it;

93.4.9. to participate in court hearings at first instance and on appeal and in the examination of the case file;

93.4.10. to speak and reply at hearings at first instance and on appeal in the absence of his representative;

93.4.11. to be informed by the prosecuting authority of the decisions it has taken which affect his rights and legal interests and, on request, to receive copies of those decisions;

93.4.12. to take copies of the indictment, judgment or other court decisions;

93.4.13. to object to decisions or acts of the preliminary investigator, investigator or prosecutor, to the part of the judgment concerning the claim against him and to other final decisions of the court;

93.4.14. to withdraw any complaint of his own or of his representative;

93.4.15. to object to a part of the claim made known to him through the information given to him by the prosecuting authority or through the complaints of the other parties to the criminal proceedings;

93.4.16. to take part in the hearing of the criminal case before the Supreme Court on appeal, on additional appeal or on the basis of newly discovered facts, further to

a complaint of his own concerning his legal rights, or to object to a complaint by other parties to the criminal proceedings, and to participate in the examination of the case file;

93.4.17. at the court hearing, to give his opinion on the applications and suggestions of other parties to the proceedings as well as on matters to be decided by the court;

93.4.18. to object to unlawful acts by the opposite party in the proceedings;

93.4.19. to have a representative and to dismiss him;

93.4.20. to accept the civil claim at any time during the criminal proceedings;

93.4.21. to be reimbursed for the costs incurred during the criminal proceedings and receive compensation for damage caused by unlawful acts of the prosecuting authority;

93.4.22. to recover property and the originals of official documents taken as material evidence or on other grounds by the prosecuting authority;

93.4.23. to exercise the other rights provided for in this Code.

93.5. The defendant to the civil claim shall fulfil the following duties in accordance with this Code:

93.5.1. to attend as required by the prosecuting authority;

93.5.2. to present items, documents and samples for comparative examination at the request of the prosecuting authority;

93.5.3. to comply with the instructions of the preliminary investigator, investigator, prosecutor or court president;

93.5.4. not to leave the courtroom during the hearing without the permission of the president until a break is announced;

93.5.5 to comply with the rules of court;

93.5.6. not to divulge information about circumstances affecting the inviolability of private and family life or state, professional, commercial and other secrets protected by law;

93.5.7. to fulfil the other duties provided for in this Code.

93.6. The defendant to the civil claim may be questioned as a witness by the prosecuting authority.

93.7. The defendant to the civil claim shall exercise his rights and fulfil his duties either in person or with the aid of his representative.

## **Chapter X**

### **OTHER PARTIES TO THE CRIMINAL PROCEEDINGS**

#### **Article 94. Circumstantial witness**

94.1. A person who has no personal interest and who is summoned to participate of his own accord in the investigation in the circumstances covered by Articles 236, 244 and 246 of this Code, in order to confirm the substance, course and outcome of the facts, may be referred to as a circumstantial witness. Persons who are employees of the preliminary investigating, investigating or prosecuting authorities or the courts, who are under age, who are not citizens of the Azerbaijan Republic, who are parties to the criminal proceedings or close relatives of parties, and those who have visual, hearing or speech disabilities or who suffer from a mental illness may not be circumstantial witnesses in a criminal case. A person called as a circumstantial witness shall be able to comprehend fully and correctly events that occurred in his presence.

94.2. A circumstantial witness shall fulfil the following duties in accordance with this Code:

94.2.1. to attend as required by the prosecuting authority;

94.2.2. to disclose all relationships to the parties to the criminal proceedings at the request of the prosecuting authority;

94.2.3. to comply with the instructions of the person carrying out the investigative procedure;

94.2.4. during the investigative procedure in which he takes part, to follow events carefully, and not to leave the place where the procedure is taking place;

94.2.5. to sign the record of the relevant procedure and refuse to sign it if his observations are not reflected in the record;

94.2.6. not to divulge information about the investigative procedure in which he is participating or about facts disclosed during it without the permission of the prosecuting authority; not to divulge information about circumstances relating to the inviolability of private and family life or state, professional, commercial and other secrets;

94.2.7. to fulfil the other duties provided for in this Code.

94.3. A circumstantial witness shall be liable under the legislation of the Azerbaijan Republic for violations of the law in the fulfilment of his duties.

94.4. A circumstantial witness shall exercise the following rights in accordance with this Code:

94.4.1. to participate in the relevant investigative procedure from beginning to end;

94.4.2. to acquaint himself with the record of the investigative procedure in which he has taken part, and to require the inclusion of the necessary facts in the appropriate record;

94.4.3. when acquainted with the relevant investigative measures and the record, to raise objections;

94.4.4. to sign the record only if he understands it;

94.4.5. to be reimbursed for costs incurred in the criminal proceedings and receive compensation for damage incurred as a result of unlawful acts by the prosecuting authority;

94.4.6. to exercise the other rights provided for in this Code.

#### **Article 95. Witnesses**

95.1. A person who is aware of any important circumstances may be summoned and questioned as a witness by the prosecution during the investigation or the court hearing and by the defence during the court hearing.

95.2. The following persons may not be called or questioned as witnesses:

95.2.1. those who because they are under age or because of their physical or mental disabilities cannot understand and testify about the matters to be investigated in the criminal proceedings;

95.2.2. lawyers who have information relating to the criminal proceedings in connection with their legal services as defence counsel;

95.2.3. persons who have information relating to the criminal proceedings in connection with their participation therein as representative of the victim, civil party or defendant to the civil claim;

95.2.4. except in cases where there have been deficiencies or misuse of power during the criminal prosecution, where the case is reopened because of newly discovered facts or where a lost case file is restored, the judge, jurors, prosecutor, preliminary investigator, investigator or clerk of the court who have exercised their procedural responsibilities in connection with the criminal proceedings.

95.3. Defence counsel and persons who have information on the criminal case in connection with their participation as representatives of the victim, civil party or defendant to the civil claim may testify in favour of the person they are defending or whose rights they represent, with that person's consent. This shall preclude the subsequent participation of those persons in the criminal proceedings.

95.4. The witness shall fulfil the following duties in accordance with this Code:

95.4.1. to attend and participate in the investigation and other procedures as required by the prosecuting authority and to answer questions fully and correctly on all facts known to him;

95.4.2. to confirm the accuracy of his testimony by signing the record of the investigative or other procedure;

95.4.3. to present items, documents and samples for comparative examination at the request of the prosecuting authority;

95.4.4. to be examined at the request of the prosecuting authority;

95.4.5. if there are strong grounds for doubting his ability to comprehend and testify, to undergo an outpatient medical examination at the request of the prosecuting authority in order to verify those abilities;

95.4.6. to comply with the instructions of the preliminary investigator, investigator, prosecutor and court president;

95.4.7. to be at the disposal of the court, not to go elsewhere without the permission of the court or without notifying the prosecuting authority of his whereabouts;

95.4.8. not to leave the courtroom or the court building without the permission of the president before a break is announced;

95.4.9. to comply with the rules of court;

95.4.10. to fulfil the other duties provided for in this Code.

95.5. If the witness does not fulfil his duties, he shall incur liability under the legislation of the Azerbaijan Republic.

95.6. The witness shall exercise the following rights in accordance with this Code:

95.6.1. to know for which criminal case he is called;

95.6.2. to object to the interpreter participating in his interrogation;

- 95.6.3. to make requests;
- 95.6.4. to refuse to testify or present documents or information against himself or his close relatives;
- 95.6.5. while testifying, with the permission of the prosecuting authority, to use documents relating to complicated mathematical calculations, numerous geographical names and other information difficult to memorise, and to refer to notes written during the incident or immediately afterwards;
- 95.6.6. to accompany his testimony with drawings, diagrams and pictures;
- 95.6.7. to write his testimony down during the pre-trial proceedings;
- 95.6.8. to acquaint himself with the record of the investigative and other procedures in which he takes part, as well as the part of the record of the court hearing relating to him, and to require inclusion of the necessary appendices and observations in the record, for the accuracy and completeness of the testimony;
- 95.6.9. to be reimbursed for the costs incurred during the criminal proceedings and to receive compensation for damage incurred as a result of unlawful acts by the prosecuting authority;
- 95.6.10. to recover the items and originals of official documents taken by the prosecuting authority as material evidence or on other grounds;
- 95.6.11. when investigative and other procedures take place, to be represented;
- 95.6.12. to exercise the other rights provided for in this Code.

#### **Article 96. Specialists**

- 96.1. A specialist shall be a person who has no personal interest in the proceedings, appointed by the prosecuting authority to assist in investigative and other procedures through his special knowledge and skills in science, technology, the arts and other professional fields, with his consent. A teacher who participates in questioning an under-age victim, suspect, accused or witness shall be considered as

a specialist. A specialist may be appointed from the list of persons suggested by the parties to the criminal proceedings.

96.2. A specialist shall have sufficient knowledge and skills to assist the prosecuting authority.

96.3. He may not be appointed as a specialist on the judicial aspects of the criminal proceedings or be called in any other capacity. The opinion of the specialist shall not replace that of the expert.

96.4. A specialist shall fulfil the following duties in accordance with this Code:

96.4.1. to attend as required by the prosecuting authority in order to furnish the necessary assistance;

96.4.2. to present documents confirming his specialist professional status to the prosecuting authority; to estimate correctly his ability to provide the necessary assistance;

96.4.3. to inform the prosecuting authority of his professional experience and his relationship to the parties to the criminal proceedings;

96.4.4. throughout the time when his assistance is necessary, to be present at the place where the investigative or other procedure is taking place or in the courtroom, and not to leave the former without the permission of the person carrying out the procedure or the latter without the permission of the court president;

96.4.5. in order to assist the person carrying out the investigative or other procedure, draw on his skills and knowledge to find, consolidate and seize documents and other items, use technical means and computer programs, examine the case file and put questions to the expert, and explain questions and procedures relevant to his profession to the person or authority in charge of the prosecution or to the parties to the criminal proceedings in court;

96.4.6. to comply with the instructions of the preliminary investigator, investigator, prosecutor or president of the court;

- 96.4.7. to comply with the rules of court;
- 96.4.8. to confirm by his signature the accuracy and completeness of the conduct, subject-matter and results of procedures involving him;
- 96.4.9. unless the prosecuting authority so permits, not to divulge information about investigative or other procedures in which he has taken part, facts ascertained or court hearings held in camera; not to divulge information known to him about circumstances relating to the inviolability of private and family life or state, professional, commercial and other secrets protected by law;
- 96.4.10. to fulfil the other duties provided for in this Code.

96.5. Failure of a specialist to fulfil his duties shall entail liability under the legislation of the Azerbaijan Republic.

96.6. The specialist shall exercise the following rights in accordance with this Code:

- 96.6.1. with the permission of the prosecuting authority, to acquaint himself with the case file and put questions to the parties to the criminal proceedings in order to fulfil his duties more efficiently;
- 96.6.2. to draw the attention of the parties to the finding, consolidation and seizure of documents and other items, the use of technical means and computer programs, the examination of the case file, the questions to the expert and the content of the questions relating to his own profession;
- 96.6.3. to make observations for inclusion in the record on the finding, consolidation and, seizure of documents and other items, the use of technical means and computer programs, the examination of the case file and the questions to the expert;
- 96.6.4. to acquaint himself with the record of the investigative or other procedures in which he takes part as well as with the appropriate part of the record of the court hearing, and to make observations for inclusion in the record on the accuracy and completeness of the written records reflecting the conduct, subject-matter and results of these procedures;

96.6.5. to be reimbursed for the costs incurred during the criminal proceedings and receive compensation for damage caused by unlawful acts of the prosecuting authority;

96.6.6. to be paid for the work done;

96.6.7. to exercise the other rights provided for in this Code.

#### **Article 97. Experts**

97.1. An expert shall be a person who is competent to give an opinion based on his special knowledge of science, technology, the arts and other professional fields, who has no personal interest in the proceedings and is appointed by the prosecuting authority or, at its request, by the head of his professional association, with his consent, for the examination of the case file.

97.2. The expert shall have sufficient special knowledge of scientific, technical, artistic and other professional fields to give his opinion on the questions put before him.

97.3. A person may not be appointed as an expert or be called in another capacity on judicial aspects of the criminal proceedings.

97.4. The expert shall fulfil the following duties in accordance with this Code:

97.4.1. to give reasoned and objective opinions on the matters put before him; in those opinions, to meticulously distinguish between the conclusions he personally reaches in examining the case file, the correctness of which he shall verify, and the conclusions he reaches using computer programs and other data;

97.4.2. to refuse to give an opinion if the questions put before him are outside his specialist knowledge or if the material presented is not sufficient to enable him to answer the question; if he decides that it is impossible to give an opinion because of the above-mentioned circumstances, to refuse to continue to provide his expertise; such reasoned refusal shall be notified in writing to the person who commissioned his services;

- 97.4.3. to present, at the request of the prosecuting authority, the estimated cost of providing the expertise and a statement of actual expenditure;
- 97.4.4. to present written opinions to the parties to the criminal proceedings, to explain the content of those opinions, to answer their questions and to attend as required by the prosecuting authority in order to give verbal opinions explaining the written opinion;
- 97.4.5. to present documentary evidence of his professional status to the prosecuting authority and to the person who commissioned his services; at the request of that authority or person and, in court, of the parties to the criminal proceedings, to properly assess his ability to deal with the matters presented;
- 97.4.6. at the request of the prosecuting authority and, in court, of the parties to the criminal proceedings to provide information about his professional experience and his relations with the participants in the relevant criminal proceedings;
- 97.4.7. when participating in investigative or other procedures, not to absent himself without the permission of the person in charge of the procedure or the president of the court;
- 97.4.8. to comply with the instructions of the preliminary investigator, investigator, prosecutor or president of the court;
- 97.4.9. to comply with the rules of court;
- 97.4.10. unless the prosecuting authority so permits, not to divulge information about the investigative or other procedures in which he has taken part or about facts determined at that time, or information about court hearings held in camera; not to divulge information known to him about circumstances relating to the inviolability of private and family life or state, professional, commercial and other secrets protected by law;
- 97.4.11. to fulfil the other duties provided by this Code.
- 97.5. Failure of an expert to fulfil his duties shall make him liable under the legislation of the Azerbaijan Republic.

97.6. The expert shall exercise the following rights in accordance with this Code:

97.6.1. in order to give an opinion, to obtain the necessary objects and samples for the purpose of comparative examination; to request the presentation of additional objects and other items;

97.6.2. in order to give his opinion, and with the permission of the prosecuting authority, to acquaint himself with the necessary documents and extract the necessary information from the case file, and in order to fulfil his duties better, to put questions to the suspect, the accused, victims and witnesses;

97.6.3. to participate in the investigative or other procedures relating to the subject-matter of the opinion which are necessary to enable him to give an opinion;

97.6.4. to give his opinion on the questions put before him and on other circumstances covered by the expert opinion which are discovered during the examination of the case file documents relating to his special field;

97.6.5. to draw the attention of the court or the parties to criminal proceedings to circumstances relating to the subject-matter of the expert opinion and to the substance of the questions to the relevant expert;

97.6.6. to acquaint himself with the record of the investigative or other procedures in which he takes part as well as with the appropriate part of the record of the court hearing, and to make observations for inclusion in the record on the accuracy and completeness of these procedures and of his verbal opinion;

97.6.7. to be reimbursed for the costs incurred during the criminal proceedings and receive compensation for prejudice caused by unlawful acts of the prosecuting authority;

97.6.8. to be paid for the work done;

97.6.9. to exercise the other rights provided for in this Code.

#### **Article 98. The court clerk**

98.1. A court employee who does not have a personal interest in the criminal proceedings shall be appointed court clerk to draw up a record of the court hearings.

98.2. The court clerk shall perform the following duties in accordance with this Code:

98.2.1. to be present in the courtroom throughout the time required to draw up the record of the hearing, and not to leave the room without the permission of the court president;

98.2.2. to fully and accurately record the course of the court proceedings, the court decisions, the applications, objections, evidence and submissions of parties to the proceedings and the other matters which must be mentioned in the record;

98.2.3. to prepare and sign the record of the hearing within the period prescribed in Article 51.7. of this Code;

98.2.4. to give information about his relationship with the participants in the criminal proceedings at the request of the court or of parties to the proceedings;

98.2.5. to obey the instructions of the court president;

98.2.6. not to divulge information about circumstances relating to the inviolability of private and family life or state, professional, commercial and other secrets protected by law;

98.2.7. to perform the other duties provided for in this Code.

98.3. The court clerk shall bear personal responsibility for the accuracy and completeness of the record of the criminal hearing and shall accept no instructions on the contents of the written record.

98.4. If the court clerk does not perform his duties, he shall be liable under the legislation of the Azerbaijan Republic.

## **Article 99. Interpreters**

99.1. The interpreter shall be a person who has no personal interest in the criminal proceedings and is appointed with his consent by the prosecuting authority to translate the case documents as well as all the verbal exchanges held during court hearings and investigative or other procedures. The interpreter may be appointed from the list of interpreters proposed by the parties to the criminal proceedings.

99.2. The interpreter shall have fluent knowledge of the language used during the court proceedings and the target language. Even if a judge, juror, prosecutor, investigator, preliminary investigator, defence counsel, representative or other party to the proceedings, circumstantial witness, court clerk, expert or witness knows the languages in question, they shall not take upon themselves the interpreting duties.

99.3. A person who understands the signs of the dumb and the deaf or a person able to communicate with them in sign language shall be considered as an interpreter.

99.4. The interpreter shall perform the following duties in accordance with this Code:

99.4.1. to attend for interpreting duty as required by the prosecuting authority;

99.4.2. to present to the prosecuting authority documentation which confirms his knowledge of the languages to be interpreted; at the request of the prosecuting authority or, in court, of the parties to the criminal proceedings, to estimate correctly his ability to translate fully and accurately;

99.4.3. at the request of the prosecuting authority or, in court, of parties to the criminal proceedings, to give information about his professional experience and relations with the parties to the relevant criminal proceedings;

99.4.4. to be present in the place where investigative or other procedures are conducted and in the courtroom for all the time during which interpretation is required; not to leave the place where those activities are taking place without the permission of the person conducting them, or the courtroom without the permission of the president;

- 99.4.5. to interpret fully, accurately and in good time;
  - 99.4.6. to obey the instructions of the preliminary investigator, investigator, prosecutor or court president;
  - 99.4.7. to comply with the rules of court;
  - 99.4.8. to certify by his signature the accuracy and completeness of the translation of the record of the investigative or other procedures in which he takes part and the accuracy of the translation of the documents presented to the parties to the criminal proceedings;
  - 99.4.9. unless the prosecuting authority so permits, not to divulge information relating to the investigative and other procedures in which he has taken part or to the facts established at this time, and not to divulge information on circumstances relating to the inviolability of private and family life or state, professional, commercial and other secrets protected by law;
  - 99.4.10. to perform the other duties provided for in this Code.
- 99.5. If the interpreter does not perform his duties he shall be liable under the legislation of the Azerbaijan Republic.
- 99.6. The interpreter shall exercise the following rights in accordance with this Code:
- 99.6.1. in order to clarify the interpretation, to ask the participants questions while interpreting;
  - 99.6.2. to acquaint himself with the records of the investigative and other procedures in which he takes part as well as with the appropriate part of the record of the court hearing and to make observations for inclusion in the record on the accuracy and completeness of the written translation;
  - 99.6.3. to be reimbursed for costs incurred during the criminal proceedings and receive compensation for damage resulting from unlawful acts by the prosecuting authority;

99.6.4. to be paid for the services rendered;

99.6.5. to exercise the other rights provided for in this Code.

## **Chapter XI**

### **REPRESENTATIVES AND LEGAL HEIRS**

#### **Article 100. Capacity to take part in criminal proceedings**

100.1. Except those who lack legal capacity, all parties to criminal proceedings who have reached full age may independently exercise the rights provided for in this Code.

100.2. In criminal proceedings the following persons shall be considered to lack legal capacity:

100.2.1. persons defined as lacking legal capacity by the legislation of the Azerbaijan Republic;

100.2.2. victims, civil parties, suspects, accused persons and defendants to a civil claim who are below the age of 14.

100.3. A victim, civil party, suspect, accused or defendant to a civil claim may be regarded as lacking legal capacity in criminal proceedings if he is unable to exercise his rights and fulfil his duties independently as a result of mental illness, temporary mental disorder or imbecility. The court shall restore the legal capacity of such a person who becomes able to exercise his rights and fulfil his duties independently again.

100.4. Between the ages of 14 and 18 a victim, civil party, suspect, accused or defendant to a civil claim shall have limited legal capacity. The possibility of such persons exercising their rights independently as parties to criminal proceedings shall be limited with the consent of their legal representatives.

100.5. The capacity of a victim, civil party, suspect, accused or defendant to a civil claim for the purposes of criminal proceedings shall be determined when the criminal proceedings begin.

100.6. The capacity of parties to criminal proceedings who are under full age but have reached the age of 14 shall be recognised within the appropriate limits by the prosecuting authority.

100.7. A party to criminal proceedings who lacks legal capacity in accordance with this Code may not exercise his rights independently. These rights shall be exercised by his legal representative in accordance with this Code.

100.8. If a victim is considered to lack legal capacity and has no representative his participation in criminal proceedings by means of a private prosecution shall be discontinued, and if the criminal prosecution is carried out as a private prosecution it shall be suspended.

100.9. If a civil party who lacks legal capacity does not have a legal representative, his participation in criminal proceedings shall be discontinued

100.10. If a defendant to a civil claim is considered to lack legal capacity, his participation in the criminal proceedings shall be discontinued and the claim against him shall not be examined within the criminal proceedings.

100.11. A party to criminal proceedings who has limited legal capacity may not do the following without the consent of his legal representative:

100.11.1. withdraw a complaint that an act provided for by criminal law has been committed against him;

100.11.2. be reconciled with the victim, suspect or accused;

100.11.3. accept the civil claim against him;

100.11.4. reject the civil claim against him;

100.11.5. withdraw a complaint lodged in order to defend his legal interests.

**Article 101. Legal representatives of the victim, civil party, suspect, accused or defendant to a civil claim**

101.1. If a victim, civil party, suspect, accused or defendant to a civil claim lacks or has limited legal capacity and has no parents, adoptive parents or guardian, the prosecuting authority shall appoint the guardianship institution as legal representative of that person.

101.2. The prosecuting authority shall allow only one of the parents, adoptive parents or guardians of the victim, civil party, suspect, accused or defendant to a civil claim who lacks or has limited legal capacity to participate in the criminal proceedings as that person's legal representative.

101.3. If the legal representative of the victim, civil party, suspect, accused or defendant to a civil claim is charged with causing non-material, physical or material damage to the person concerned by means of a criminal act, he shall not be allowed to participate in the criminal proceedings as legal representative.

101.4. If, after recognition of a person as legal representative of the victim, civil party, suspect, accused or defendant to a civil claim, grounds are found which prevent the person from remaining in this position, the prosecuting authority shall give a reasoned decision ending his participation in the criminal proceedings. The participation of the legal representative shall also be discontinued if the victim, civil party, suspect or accused reaches full age or attains legal capacity.

101.5. The legal representative of the victim, civil party, suspect, accused or defendant to a civil claim shall exercise the following rights in accordance with this Code:

101.5.1. to know the nature of the charge (in the case of the legal representative of the suspect, to know the nature of the suspicion);

101.5.2. to know that the person he represents has been summoned to the prosecuting authority and to accompany him;

101.5.3. to have unlimited opportunities and time to meet the person whom he represents in private and in confidence;

101.5.4. in the circumstances defined by this Code, and on the proposal of the prosecuting authority, to take part in the authority's investigative and other

procedures, as well as in any investigative and other procedures involving the participation of the person he represents;

101.5.5. to make submissions;

101.5.6. to present evidence and other items for inclusion in the criminal case file or for examination in court;

101.5.7. to raise objections and submit applications;

101.5.8. to object to the prosecuting authority's acts and request that these objections be noted in the record of the investigative or other procedure;

101.5.9. to acquaint himself with the record of the investigative and other procedures carried out with his participation or with that of the person he represents, and with the record of the court hearing; to make observations on the accuracy and completeness of the written record of the investigative and other procedures in which he participates; when participating in these and other procedures and in court hearings, to request the inclusion of the necessary circumstances in the appropriate record;

101.5.10. to acquaint himself with the documents submitted to the court by the prosecuting authority to confirm the legality and grounds of the detention, arrest or detention on remand of the suspect or accused whom he represents;

101.5.11. from the end of the investigation or the discontinuation of the criminal proceedings, to acquaint himself with the case file and make copies of the necessary documents relating to the person he represents;

101.5.12. to participate in court hearings at first instance and on appeal, and in the examination of the case file;

101.5.13. if the victim or accused whom he represents does not have a representative or defence counsel, to speak and reply at hearings of first instance and appeal courts, and to speak about the case before the Supreme Court;

101.5.14. to be informed by the prosecuting authority of its decisions which affect his rights and legal interests and those of the person he represents and to receive, on request, copies of those decisions from the prosecuting authority;

101.5.15. to complain about the decisions and acts of the preliminary investigator, investigator, prosecutor or court, including the judgment and other court decisions;

101.5.16. to withdraw any complaint he has lodged;

101.5.17. to object to circumstances made known to him through the information given to him by the prosecuting authority or through the complaints of other parties to the criminal proceedings, insofar as they affect the legal interests of the person he represents;

101.5.18. in connection with a complaint concerning the legal interests of the person he represents, to participate in the hearing of the criminal case before the Supreme Court on appeal, on additional appeal or on the basis of newly discovered facts, and in the examination of the case file;

101.5.19. to give his opinion on applications and suggestions made by other parties to the criminal proceedings during the court hearing, and on the matters to be decided by the court;

101.5.20. to object to unlawful acts by the other party;

101.5.21. to appoint and dismiss a suitable defence counsel and representative for the person he represents;

101.5.22. to be reimbursed for the costs incurred during the criminal proceedings and receive compensation for any damage caused by unlawful acts of the prosecuting authority;

101.5.23. to recover property, as well as the originals of official documents, taken from the person he represents as material evidence or on other grounds by the prosecuting authority; to recover property belonging to the person he represents from the person who committed the criminal acts;

101.5.24. to exercise the other rights provided for in this Code.

101.6. The legal representative of a victim, civil party, suspect, accused or defendant to a civil claim shall exercise the rights of the person he represents during the criminal proceedings, excluding inalienable personal rights.

101.7. The legal representative of a person with limited legal capacity shall be entitled:

101.7.1. with the consent of the victim he represents, to withdraw a charge brought on his behalf and to dismiss his lawyer;

101.7.2. to withdraw the complaint concerning the commission of a criminal act against him, to be reconciled with the victim, civil party, suspect, accused or defendant to the civil claim as the case may be, to withdraw a civil claim he has filed, to accept a civil claim filed against him and to withdraw a complaint lodged in defence of his rights and legal interests;

101.7.3. to know the intentions of the person he represents.

101.8. The legal representative of a victim, civil party, suspect, accused or defendant to a civil claim shall not have the right to take any action against the person's legal interests, including refusal of defence counsel on behalf of the accused.

101.9. The legal representative of a victim, civil party, suspect, accused or defendant to a civil claim shall perform the following duties:

101.9.1. to present the prosecuting authority with documentation confirming his authority as legal representative;

101.9.2. to attend as required by the prosecuting authority;

101.9.3. to present, at the request of the prosecuting authority, items, documents and samples for comparative examination;

101.9.4. to obey the instructions of the preliminary investigator, investigator, prosecutor or court president;

101.9.5. not to leave the courtroom without the permission of the court president until a break is announced;

101.9.6. to comply with the rules of court;

101.9.7. not to divulge information about circumstances relating to the inviolability of private and family life or state, professional, commercial and other secrets protected by law;

101.9.8. to perform the other duties provided for in this Code.

101.10. The legal representative of a victim, civil party, suspect, accused or defendant to a civil claim may be questioned as a witness.

101.11. The legal representative of a victim, civil party, suspect, accused or defendant to a civil claim shall exercise his rights and fulfil his duties in person or with the aid of the representative of the person he represents.

**Article 102. Representatives of the victim, civil party and defendant to the claim by the civil party**

102.1. Those who represent the legal interests of a victim, civil party or defendant to a civil claim during criminal proceedings shall be considered as their representatives.

102.2. Lawyers and other persons holding power of attorney given by the person concerned and confirmed by a solicitor may participate in criminal proceedings as the representative of the victim, civil party or defendant to the civil claim. If the civil party or defendant to the civil claim is a legal entity, the head of that entity may be allowed to participate in the criminal proceedings on presentation of the requisite document.

102.3. After a person has been recognised as representative of a victim, civil party or defendant to a civil claim, his participation in the criminal proceedings may be discontinued by a reasoned decision of the prosecuting authority if it is determined that there are no grounds for this person to remain in the same position. If he is dismissed by the victim, civil party or defendant to the civil claim, his participation as a representative in the criminal proceedings shall be discontinued.

102.4. A victim, civil party or defendant to a civil claim may have more than one representative. The prosecuting authority shall have the right to limit the number of representatives taking part in an investigative or other procedure or in the court hearing to one at a time.

102.5. The representative of a victim, civil party or defendant to a civil claim shall exercise the rights of the person he represents, excluding inalienable personal rights.

102.6. The representative of a victim, civil party or defendant to a civil claim shall exercise the following rights in accordance with this Code:

102.6.1. to know the nature of the charge;

102.6.2. at the suggestion of the prosecuting authority and in the circumstances defined by this Code, to participate in the investigative and other procedures conducted by that authority, as well as in any investigative and other procedures involving the participation of the person he represents;

102.6.3. to make submissions;

102.6.4. to present evidence and other items for inclusion in the case file or for examination in court;

102.6.5. to raise objections and file applications;

102.6.6. to object to the acts of the prosecuting authority and request the inclusion of such objections in the records of investigative and other procedures;

102.6.7. to acquaint himself with the record of investigative or other procedures carried out with his participation or that of the person he represents, and with the record of the court hearing; to make observations on the accuracy and completeness of the written record of the investigative and other procedures in which he participates; when participating in investigative or other procedures and in the court hearing, to require the inclusion of the necessary circumstances in the appropriate record;

- 102.6.8. to acquaint himself with the case file as from the end of the investigation or the discontinuation of the criminal proceedings and to make copies of the necessary documents relating to the person he represents;
- 102.6.9. to participate in court hearings during the trial as well as in all other court hearings in which the person he represents could participate on the same grounds;
- 102.6.10. to make an introductory statement, speak or reply, as the case may be, on behalf of the victim, civil party or defendant to the civil claim at hearings of first instance and appeal courts, and to speak on the matter concerned before the Supreme Court;
- 102.6.11. to object to circumstances made known to him through information given to him by the prosecuting authority or through complaints lodged by other parties to the criminal proceedings, insofar as they affect the legal interests of the person he represents;
- 102.6.12. exercising the rights of the person he represents, to express his opinion on applications and suggestions by other parties to the criminal proceedings as well as on matters to be decided by the court;
- 102.6.13. exercising the rights of the person he represents, to object to unlawful acts by the opposite party to the criminal proceedings;
- 102.6.14. with the consent of the person he represents, to invite another representative and confer power of attorney on him;
- 102.6.15. to request compensation for any damage caused as a result of unlawful acts by the prosecuting authority;
- 102.6.16. to be informed by the prosecuting authority about any decision which affects the legal interests of the person he represents, and on request, to receive copies of those decisions;
- 102.6.17. to exercise the other rights provided for in this Code.

102.7. The representative of a victim, civil party or defendant to a civil claim shall not have the right to take any action against the legal interests of the person he represents.

102.8. In the circumstances covered by the power of attorney given to him, the representative of a victim, civil party or defendant to a civil claim or the head of the appropriate legal entity representing a civil party or defendant to a civil claim shall be entitled to take the following steps in accordance with his powers and with this Code:

102.8.1. to withdraw a complaint concerning the commission of a criminal act against the person he represents;

102.8.2. to be reconciled with the suspect or the accused;

102.8.3. to request that the person whose representative he is be recognised as a victim bringing a private prosecution;

102.8.4. to withdraw a civil claim filed by the person he represents;

102.8.5. to accept a civil claim against the person he represents;

102.8.6. to receive property awarded to the person he represents by a court decision.

102.9. The representative of a victim, civil party or defendant to a civil claim shall perform the following duties in accordance with this Code:

102.9.1. to comply with the instructions of the person he represents;

102.9.2. to present the prosecuting authority with documentation confirming his authority to represent the person;

102.9.3. to attend as required by the prosecuting authority in order to defend the legal interests of the person he represents;

102.9.4. at the request of the prosecuting authority, to submit items, documents and samples for comparative examination;

- 102.9.5. to obey the instructions of the preliminary investigator, investigator, prosecutor or court president;
- 102.9.6. not to leave the courtroom without the permission of the court president before a break is announced;
- 102.9.7. to comply with the rules of court;
- 102.9.8. not to divulge information about circumstances relating to the inviolability of private and family life or state, professional, commercial and other secrets protected by law;
- 102.9.9. to perform the other duties provided for in this Code.

#### **Article 103. The representative of the victim bringing a private prosecution**

- 103.1. During a criminal prosecution the representative of a victim bringing a private prosecution shall exercise the rights of the person represented, excluding inalienable personal rights;
- 103.2. The representative of the victim bringing a private prosecution shall participate in a criminal prosecution in accordance with the provisions of Article 102 of this Code governing the representative of the victim and the specific provisions of this article.
- 103.3. At the request of a victim bringing a private prosecution in criminal proceedings, the court shall appoint a lawyer as his representative.
- 103.4. The representative of the victim bringing a private prosecution may participate in the court hearing of the criminal case on behalf of the person he represents.
- 103.5. The representative of the victim bringing a private prosecution shall exercise the following rights in accordance with this Code:
  - 103.5.1. to undertake the preparation of material for the criminal prosecution;

103.5.2. with the consent of the person he represents, to withdraw the charge at any stage of the criminal proceedings;

103.5.3. to continue the prosecution of the accused if the public prosecutor decides against a criminal prosecution;

103.5.4. to make an introductory statement, speak and reply at hearings of first instance and appeal courts, and to speak on the matter concerned before the Supreme Court on behalf of the person he represents;

103.5.5. to exercise the other rights provided for in this Code.

103.6. The representative of the victim bringing a private prosecution shall be entitled to be reimbursed by the person he represents for the costs incurred during the criminal proceedings, and where legal aid is provided free of charge to the victim bringing a private prosecution, in the circumstances provided for in Article 194.1 of this Code, to be reimbursed under the state budget of the Azerbaijan Republic.

103.7. The representative of the victim bringing a private prosecution shall perform the duties provided for in Article 102.9 of this Code.

#### **Article 104. The legal representative of a witness**

104.1. If a witness is under the age of 14, lacks legal capacity or is older but under full age, and does not have a legal representative, the prosecuting authority shall appoint the guardianship institution as his legal representative.

104.2. When taking part in investigative and other procedures, the legal representative of the witness shall exercise the following rights in accordance with this Code:

104.2.1. to know that the person he represents has been summoned to the prosecuting authority, and to participate in investigative and other procedures;

104.2.2. with the permission of the prosecuting authority, to give advice, make remarks and address questions to the person he represents;

- 104.2.3. to submit applications;
  - 104.2.4. to object to the acts of the prosecuting authority and require such objections to be noted in the record of the investigative or other procedure;
  - 104.2.5. during the pre-trial proceedings, to acquaint himself with the records of investigative and other procedures in which he has taken part jointly with the person he represents; to make observations on the accuracy and completeness of the written record; while participating in investigative or other procedures or in court hearings, to require the inclusion of the necessary circumstances in the appropriate record; to acquaint himself with the record of the court hearing and make observations on it;
  - 104.2.6. to invite a lawyer to represent the person he represents;
  - 104.2.7. to exercise the other rights provided for in this Code.
- 104.8. The legal representative of the witness shall perform the duties prescribed by Article 101.9 of this Code.

#### **Article 105. The representative of a witness**

- 105.1. During the investigative and other procedures the representative (lawyer or other person) who has been invited by a witness to accompany him to the office of the prosecuting authority and has attended these procedures from the outset shall, after presenting the documents confirming his authority, have the following rights:
  - 105.1.1. to know in respect of which criminal case or other prosecution material the person he represents is summoned;
  - 105.1.2. to participate in investigative and other procedures involving the participation of the person he represents;
  - 105.1.3. with the consent of the person he represents, to object to the interpreter participating in his interrogation;
  - 105.1.4. to make requests;

- 105.1.5. to explain legal matters to the person he represents.
- 105.2. The representative of the witness shall perform the duties provided for in Article 102.9 of this Code.

#### **Article 106. The legal heir of the victim**

- 106.1. If the victim dies as a result of the incident, a close relative of the victim who expresses the wish to exercise the rights and fulfil the duties of the deceased person during the criminal proceedings shall be considered as his legal heir.
- 106.2. A close relative who has caused the victim non-material, physical or material damage through a criminal act may not be considered the legal heir of this victim.
- 106.3. A decision on whether to recognise the close relative of the victim as his legal heir shall be made by the prosecuting authority at the relative's request. If there is a dispute on the subject among several relatives who make the appropriate requests, the matter shall be decided by the court. If at the time of the request there are insufficient grounds for a person to be recognised as the legal heir of the victim, the appropriate decision shall be made as soon as these grounds have been established.
- 106.4. If, after recognition of a person as the legal heir of the victim, it is determined that there are no grounds for him to remain in this position, the prosecuting authority shall give a reasoned decision ending this person's participation in the criminal proceedings as the legal heir of the victim. The legal heir of the victim may at any stage of the proceedings waive the powers in question.
- 106.5. The legal heir of the victim shall participate in the criminal proceedings instead of the victim. At this time, except for the victim's right to testify and inalienable personal rights, he shall exercise the other rights and fulfil the other duties of the victim. The legal heir of the victim may, on the same grounds as the victim, exercise the rights and fulfil the duties of a victim bringing a private prosecution.
- 106.6. The legal heir of the victim shall not have the following rights:

- 106.6.1. to be reconciled with the suspect or the accused;
  - 106.6.2. to withdraw the criminal prosecution in his capacity as victim bringing a private prosecution;
  - 106.6.3. to withdraw a complaint lodged by the victim.
- 106.7. The legal heir of the victim may be questioned as a witness.
- 106.8. The legal heir of the victim shall exercise the other rights and fulfil the other duties provided for in this Code.

## **Chapter XII**

### **OBJECTIONS DURING CRIMINAL PROCEEDINGS**

#### **Article 107. General provisions on objections and requests to withdraw**

- 107.1. Objections to the participation of certain persons in criminal proceedings and requests to withdraw shall be made in written, reasoned form.
- 107.2. If the circumstances provided for in Articles 109, 110 and 112-118 of this Code preclude the participation in the criminal proceedings of the judge, juror, prosecutor, investigator, preliminary investigator, defence counsel, victim (victim bringing a private prosecution), civil party, defendant to the civil claim, representative of the witness, circumstantial witness, court clerk, interpreter, specialist or expert, they shall request to withdraw.

107.3. Objections may be raised in the following manner:

- 107.3.1. at any stage in the criminal proceedings any party thereto may object to the prosecutor, investigator, preliminary investigator, court clerk, interpreter, specialist or expert;
- 107.3.2. at any stage in the criminal proceedings the suspect or accused, prosecutor, victim bringing a private prosecution, victim, civil party, defendant to the civil claim, their legal representatives or their representatives may object to

defence counsel or to the representatives of the victim, victim bringing a private prosecution, civil party, defendant to the civil claim or witness;

107.3.3. objections may be made to the judge or a juror by any party to the criminal proceedings before the start of the court's examination of the case; similarly they may be made after the start of the examination only if the objecting party to the criminal proceedings can prove that he knew about the circumstances precluding the person's participation in the proceedings before he raised the objection;

107.3.4. objections may be made to a circumstantial witness before the start of the appropriate investigative procedure, by any party to the criminal proceedings who has the right to participate in that investigative procedure.

107.4. If objections to the judge (the court) or a juror are raised for the purpose of delaying the court proceedings, or if the reasons for the objection are fabricated (do not correspond to the facts), the person who raised the objection shall be liable to a fine equivalent to two hundred times the minimum wage, imposed by decision of the court;

107.5. The prosecuting authority, in the exercise of its powers, shall be entitled to resolve objections and requests to withdraw in the course of the criminal proceedings and, if it discovers grounds for the exclusion of a person from the proceedings, to remove him from the proceedings on its own initiative.

107.6. Relatives and persons with other dependent relationships may not be included among the members of the court.

107.7. Any objection to the person who has authority to rule on objections to other persons shall be resolved first. If there is an objection to the judge or a juror at the same time as an objection to another party to the criminal proceedings or to the court clerk, interpreter, expert or specialist, the objection to the judge or juror shall be resolved first.

107.8. If the participation of several persons in the criminal proceedings is simultaneously precluded because of kinship or another dependent relationship, the

persons designated last as judge, juror or party to the criminal proceedings shall be removed from the proceedings first.

107.9. If the members of the court include persons connected through kinship or another dependent relationship, the court president shall decide whom to remove from the criminal proceedings and in this case the juror shall be removed before the judge.

#### **Article 108. Exemption from participation in criminal proceedings**

108.0. In the absence of circumstances precluding the participation of the court clerk, interpreter, specialist or expert in the criminal proceedings, the court may, at their request, exempt them from participation before the start of the court's examination of the case in the following circumstances:

- 108.0.1. if there are good reasons which prevent them from performing their duty;
- 108.0.2. in other cases provided for in this Code.

#### **Article 109. Objections to a judge**

109.1. An objection to a judge may be considered justified and be granted unconditionally if there is at least one of the following grounds for exclusion of the person as a judge:

109.1.1. if the person was not appointed judge in accordance with the provisions of legislation of the Azerbaijan Republic;

109.1.2. if the judge has not the necessary authority to hear the criminal case or other prosecution matter in accordance with the legislation of the Azerbaijan Republic;

109.1.3. if the judge is the victim, civil party, defendant to the civil claim or their representative or legal representative in the same criminal case or another prosecution matter relating to it;

109.1.4. if the judge is questioned or may be questioned as a witness in the same criminal case or in another prosecution matter relating to it;

109.1.5. if the judge has participated previously as circumstantial witness, court clerk, interpreter, specialist or expert in the same criminal case or in another prosecution matter relating to it;

109.1.6. if the judge has participated as a judge in hearing the same criminal case or another prosecution matter in a court of first instance or appeal or before the Supreme Court, or on the basis of newly discovered facts (the judge's examination of the file at the pre-trial stage by way of judicial supervision, or the initial hearing of the case, shall not preclude his subsequently examining the case as a member of the court of first instance or appeal or the Supreme Court);

109.1.7. if the judge has any kinship or other dependent relationship with any party to the criminal proceedings (prosecution or defence) or with the representative or legal representative of such a party;

109.1.8. if there are grounds for believing that the judge has a direct or indirect interest in the prosecution, as well as in other circumstances when there is a doubt as to his impartiality.

109.2. In any of the cases covered by Article 109.1 of this Code, the judge shall request to withdraw.

109.3. Objections shall be resolved as follows:

109.3.1. if the criminal case is heard at first instance with the participation of a jury or by the judge alone, or if another prosecution matter is heard by the judge alone, the judge's request to withdraw or an objection to him shall be resolved by the court president;

109.3.2. if the criminal case or other prosecution matter is heard at first instance or on appeal, or before the Supreme Court, by a bench of several judges, the judge's request to withdraw or an objection to him shall be resolved by the bench without his participation;

109.3.3. at first instance, if two judges or the whole court request to withdraw or there are objections to them, or if the president solely responsible for hearing the

case or other prosecution matter requests to withdraw or there is an objection to him, the objection shall be resolved by the appeal court judge;

109.3.4. if two court or Supreme Court judges, or the whole court, request to withdraw or if an objection is made to them, the matter shall be resolved by the president of the appeal court or of the Supreme Court, as the case may be.

109.4. When a judge's request to withdraw or an objection to him under Article 109.3. of this Code is examined, the parties to the criminal proceedings and the judge shall be consulted and the appropriate decision made. No appeal lies against this decision. If the number of votes for and against on the bench of judges is equal, the judge shall be removed from the criminal proceedings.

109.5. When a request to withdraw or an objection is granted in a court of first instance or appeal or before the Supreme Court, the case shall be examined by other judges at this court. If this is not possible at first instance for objective reasons, the case file or other prosecution material shall be transferred by the court of appeal for examination at another court of first instance.

#### **Article 110. Objections to a juror**

110.1. In any of the circumstances covered by Article 109.1 of this Code, or if the person is not one who may be included in the list of jurors on grounds of law, or if he is dependent on the judge or the parties to the criminal proceedings in the context of jury service, an objection to a juror shall be granted unconditionally.

110.2. In connection with the established number of jurors, the prosecution or the defence may object to any juror in accordance with Article 364 of this Code, without giving reasons.

110.3. An objection to a juror shall be resolved solely by the court president.

#### **Article 111. The release of a juror from performance of his duties**

111.1. The court president may release a juror from performance of his duties in the following cases:

111.1.1. if he is accused or suspected of committing an offence;

111.1.2. if he is deaf, blind or has other physical or mental disabilities, if he does not know the language used in court or if, as a result of not knowing it properly, he cannot comprehend the trial proceedings completely, acquaint himself with the documents or express his opinions;

111.1.3. if a request to strike him off the list is granted before the selection of jurors for the specific case is completed.

111.2. The following jurors may be released from performance of their duties on the basis of their own written applications:

111.2.1. those who are over the age of 65;

111.2.2. women who have a child under the age of 3;

111.2.3. those whose participation in a trial is considered impossible because of their religious or other beliefs;

111.2.4. those whose release from their professional duties may cause significant damage to public and state interests;

111.2.5. those who have other good reasons for not participating in the court proceedings.

## **Article 112. Objections to a prosecutor**

112.1 Objections to a prosecutor in any of the circumstances covered by Article 109.1 of this Code shall be considered justified and be granted unconditionally.

112.2. The participation of a prosecutor in the investigation of a criminal case or his taking charge of the procedural aspects of the investigation shall preclude his acting as public prosecutor in court.

112.3. In any of the circumstances covered by Article 109.1 of this Code, the prosecutor shall request to withdraw.

112.4. Objections to a prosecutor shall be resolved as follows:

- 112.4.1. in the course of pre-trial criminal proceedings, by the senior prosecutor;
- 112.4.2. when the case is heard by the jury or by the judge on his own, or another prosecution matter is heard by the judge on his own, objections shall be resolved by the president;
- 112.4.3. when the case is heard in court by a bench of several judges, objections shall be resolved by the bench.

#### **Article 113. Objections to an investigator or preliminary investigator**

- 113.1. Objections to an investigator or preliminary investigator in any of the circumstances covered by Article 109.1 of this Code shall be considered justified and be granted unconditionally.
- 113.2. The participation of an investigator or preliminary investigator in the investigation of a criminal case shall not preclude his further participation in the investigation of the same criminal case, except in case of serious violations of the law.
- 113.3. In any of the circumstances covered by Article 109.1 of this Code, the investigator or preliminary investigator shall request to withdraw.
- 113.4. Objections to an investigator or preliminary investigator shall be resolved by the prosecutor in charge of the procedural aspects of the investigation.

#### **Article 114. Objections to defence counsel and representatives**

- 114.1. Objections to defence counsel or to the representative of the victim (victim bringing a private prosecution), civil party, defendant to the civil claim or witness, in any of the following cases which preclude his further participation in the criminal proceedings, shall be considered justified and be granted unconditionally:
  - 114.1.1. in the case of kinship with, or personal or professional dependence on, a judge participating or who has participated in the criminal proceedings, a juror, a prosecutor, an investigator or preliminary investigator or the court clerk;

114.1.2. if he takes part in the prosecution as judge, juror, prosecutor, investigator, preliminary investigator, circumstantial witness, court clerk, interpreter, specialist, expert or witness;

114.1.3. if he is the judge, prosecutor, investigator or preliminary investigator (except in cases where he is a legal representative of the accused, the suspect or a party to the criminal proceedings who lacks legal capacity, or where he takes part as representative of the body for which he works, which has been recognised as civil party or defendant to the civil claim);

114.1.4. if he provides legal assistance to a person whose legal interests conflict with those of the accused or suspect whose legal interests he defends or those of the civil party or defendant to the civil claim whom he represents;

114.1.5. if he does not have the right to be a defence counsel or representative under the terms of the law or a court decision.

114.2. In any of the circumstances described in Article 114.1 of this Code, defence counsel and the representative of the victim (victim bringing a private prosecution), civil party, defendant to the civil claim or witness shall request to withdraw.

114.3. Objections to defence counsel and to the representative of the victim (victim bringing a private prosecution), civil party, defendant to the civil claim or witness shall be resolved by the prosecuting authority.

114.4. If there is a doubt or other concern about the competence and honesty of the defence counsel or of the person appointed as a representative, the defence counsel or representative shall be removed from the criminal proceedings in response to an application by the defendant or the person represented.

#### **Article 115. Objections to a circumstantial witness**

115.1. In any of the circumstances described in Article 109.1.3 - 109.1.8 of this Code, or if the person concerned does not meet the requirements of Article 94.1 of this Code, he may not participate in the criminal proceedings as a circumstantial witness.

115.2. Other than when the participation of the circumstantial witness is constant, his previous participation in an investigative procedure shall not preclude his renewed participation in another investigative procedure relating to the same prosecution.

115.3. Objections to circumstantial witnesses shall be resolved by the person conducting the investigation.

115.4. The participation of any person in an investigative procedure as a circumstantial witness other than in pursuance of Article 115.1 and 115.2 of this Code may render the procedure invalid.

#### **Article 116. Objections to a court clerk**

116.1. In any of the circumstances described in Article 109.1.3-109.1.8 of this Code, and if the court clerk has no right to be a court clerk under the terms of the law or a court decision, he may not participate in the criminal proceedings as court clerk.

116.2. The person's previous participation in a court hearing as court clerk shall not preclude his participation in further hearings in this position.

116.3. Objections to the court clerk shall be resolved as follows:

116.3.1. when the case or other prosecution matter is heard by the judge alone or with the participation of a jury, by the court president;

116.3.2. when the case is heard by the court as a bench, by the court.

#### **Article 117. Objections to an interpreter or specialist**

117.1. In any of the circumstances described in Article 109.1.3-109.1.8. of this Code, or if the interpreter or specialist does not have the right to be an interpreter or specialist under the terms of the law or a court decision, he may not participate in the criminal proceedings.

117.2. The previous participation of the person in the criminal proceedings as interpreter or specialist shall not preclude his subsequent participation in the criminal proceedings in that capacity.

117.3. Objections to an interpreter or specialist shall be resolved as follows:

117.3.1. when the criminal case is heard by the court as a bench, by the court;

117.3.2. during the preliminary investigation or the investigation, by the preliminary investigator, investigator or prosecutor as the case may be;

117.3.3. when the case or other matter is heard by the judge alone or with the participation of a jury, by the court president.

#### **Article 118. Objections to experts**

118.1. An expert may not participate in criminal proceedings in the following circumstances:

118.1.1 in any of the circumstances described in Article 109.1.3-109.1.8 of this Code;

118.1.2. if, under the law or a court decision, he has no right to act as an expert;

118.1.3. if he conducted inspections or other supervisory activities as a result of which the criminal proceedings were started.

118.2. Except where a further expert report is required because of a doubt about the accuracy of the previous one, a person's participation as an expert in a trial shall not preclude his further participation in the proceedings.

118.3. Objections to experts shall be resolved as follows:

118.3.1. during the investigation or preliminary investigation, by the preliminary investigator, investigator or prosecutor as the case may be;

118.3.2. when the case or other matter is heard by the judge alone or with the participation of a jury, by the court president;

118.3.3. when the criminal case is heard by the court as a bench of several judges, by the court.

## **Chapter XIII**

### **SECURITY OF THE RIGHTS AND LEGAL INTERESTS OF PARTIES TO CRIMINAL PROCEEDINGS**

#### **Article 119. The obligation to examine applications for recognition of a person as a party to criminal proceedings**

119.1. If there are sufficient grounds under this Code, any person shall have a right to apply to the prosecuting authority for recognition as a victim, victim bringing a private prosecution, civil party or defendant to a civil claim, or as the legal representative or representative of those persons or of a witness.

119.2. The prosecuting authority shall examine any application for recognition as a victim, victim bringing a private prosecution, civil party or defendant to a civil claim, or as the legal representative or representative of those persons or of a witness, no later than 3 (three) days after its receipt, give a decision according to the result and send a copy of this decision to the applicant.

119.3. The applicant shall have the following rights:

119.3.1. after receipt of the copy of the decision of the prosecuting authority refusing recognition as a party to the criminal proceedings, he shall have 5 (five) days in which to appeal to a court against the decision;

119.3.2. if the decision on the application for recognition as a party to the criminal proceedings is not made within 1 (one) month of the date of the application, he may complain to a court about the prosecuting authority's failure to reply or apply to the court for recognition as a party to the criminal proceedings.

119.4. If a close relative of a person who died as a result of the incident wishes to be his legal heir, he may request recognition as a victim. His request shall be examined by the prosecuting authority in pursuance of Article 119.2 of this Code.

**Article 120. Explanation of their rights and duties, and of the scope for exercising these, to the parties to criminal proceedings**

120.1. Any party to criminal proceedings shall be entitled to know his rights and duties, to know the legal consequences of his chosen position and to receive explanations about the contents of the documents presented to him, so that he may acquaint himself with the nature of the procedures in which he is to participate.

120.2. The prosecuting authority shall:

120.2.1. explain to every party to the criminal proceedings his rights and duties and make it possible for him to fulfil them (giving him the check list of his rights and duties as provided for in this Code shall not absolve the prosecuting authority from giving appropriate explanations at the person's request);

120.2.2. provide the surnames of persons to whom objections may be raised, as well as any other information on those persons needed by the parties to criminal proceedings.

120.3. The rights and duties of a person with the status of party to the criminal proceedings shall be explained before the start of the investigative or other procedures involving his participation and before the announcement of his position as a party to the criminal proceedings.

120.4. Whether or not the rights and duties of a party to criminal proceedings present at a trial were explained during the pre-trial proceedings on the criminal case, the court shall explain his rights and duties to him.

120.5. The prosecuting authority and the person conducting the investigative or other procedure shall explain their rights and duties to the circumstantial witness, interpreter, specialist and expert before the start of any investigative or other procedure involving their participation. An expert's rights and duties may also be explained at the request of the prosecuting authority by the head of the office that appointed the expert. A witness' rights and duties shall be explained firstly by the prosecuting authority before he is questioned and again at the court hearing.

120.6. The parties to the criminal proceedings as well as other participants in the criminal proceedings shall have their rights and duties explained as appropriate to their level of intelligence, life experience, education and other circumstances.

The prosecuting authority shall explain their rights and duties again whenever any participant so requests.

120.7. It shall not be compulsory to explain their rights and duties to the prosecutor, defence counsel or persons representing the prosecution or the defence who have degrees in law, or to a court clerk with appropriate work experience.

### **Article 121. The obligation to consider applications and requests**

121.1. The prosecuting authority shall:

121.1.1. include applications made by the parties to the criminal proceedings during an investigative or other procedure, as well as requests by other participants in the criminal proceedings, in the record of those procedures (or the court hearing);

121.1.2. add the written applications and requests of the parties and of other participants in the criminal proceedings to the prosecution file;

121.1.3. unless otherwise ordered by this Code, examine applications and requests as soon as they are made and take an appropriate decision on their outcome (the determination of an application may be delayed until circumstances are established which make it imperative for the prosecuting authority to decide on it; in the circumstances provided for in this Code, failure to submit an application in time shall result in its not being examined);

121.1. 4. send a copy of the decision on the application or the request to the applicant immediately.

121.2. Reasons shall be given for the decision taken on an application or request, together with an assessment of the applicant's arguments. Applications and requests for any matters connected with the prosecution to be examined thoroughly, fully and objectively under the required legal procedure, and for the

violated rights and legal interests of the parties to the criminal proceedings and of other participants in the proceedings to be restored, may not be rejected.

121.3. The rejection of an application or request shall not preclude its renewed presentation at later stages of the criminal proceedings or to another prosecuting authority. The application or request may be renewed in other circumstances if new evidence is adduced or if it is confirmed during the criminal proceedings that it must be granted.

#### **Article 122. The right to complain about procedural acts and decisions**

122.1. The parties to criminal proceedings and, in accordance with the provisions of this Code, other participants in criminal proceedings, may complain about procedural acts or decisions of the prosecuting authority.

122.2. Complaints about procedural acts and decisions of the prosecuting authority shall be made:

122.2.1. if they relate to an act or decision of the investigator or preliminary investigator, to the prosecutor in charge of the procedural aspects of the investigation;

122.2.2. if they relate to an act or decision of the prosecutor in charge of the procedural aspects of the investigation, to a senior prosecutor;

122.2.3. if they relate to an act or decision of the preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation under Article 449.3 of this Code, to the court exercising supervisory responsibilities;

122.2.4. if they relate to court acts or decisions in accordance with this Code, to the higher court.

122.3. Complaints about acts and decisions of the prosecuting authority may be in writing, or, if this Code does not specify the written form, they may be made orally (the prosecuting authority shall in this case note the oral complaint in the record of the procedure or in a separate record).

122.4. Complaints shall be lodged either directly or through the prosecuting authority whose act or decision they concern. When the preliminary investigator, investigator, prosecutor or court receives a complaint regarding their acts or decisions or the acts or decisions of others, they shall send this directly to the appropriate place for examination within 24 hours, unless another time limit is set by this Code.

122.5. A complaint by a party to the criminal proceedings shall be considered without delay, and in any case no later than 3 (three) days after receipt by the prosecuting authority. Complaints by other participants in the criminal proceedings shall be examined no later than 15 (fifteen) days after receipt by the prosecuting authority. This Code may also provide for other time limits for examination of complaints.

122.6. Complaints may remain unexamined or may be returned if they are not signed by the party to the criminal proceedings or other participant in the proceedings, or if the act or decision complained of is not specified.

122.7. The following persons shall be entitled to withdraw complaints against acts or decisions of the prosecuting authority or of a person carrying out investigative or other procedures:

122.7.1. the person who made the complaint (complaints made in the legal interests of the suspect or accused may be withdrawn only with his consent);

122.7.2. the suspect or accused may withdraw a complaint made by defence counsel;

122.7.3. the civil party, victim (victim bringing a private prosecution) or defendant to a civil claim may withdraw a complaint by his representative (except one lodged by his legal representative).

122.8. Except where otherwise provided by this Code, if the time limit for withdrawal of a complaint has not expired, it is possible to submit it again.

122.9. If a complaint is made by the suspect or accused or by another person in the legal interests of the suspect or accused, the prosecuting authority shall have no right to use it against this person.

122.10. The prosecuting authority shall give a reasoned decision based on the grounds for the complaint and inform the complainant in writing.

122.11. When the legal remedies of parties to criminal proceedings or other participants in criminal proceedings, as provided for in this Code and other laws of the Azerbaijan Republic, are exhausted, those persons shall have the right to apply to international courts for the protection of human rights and fundamental freedoms on the basis of the international treaties to which the Azerbaijan Republic is a party.

**Article 123. The obligation to take government measures to protect victims, witnesses, accused persons and other participants in criminal proceedings**

123.1. When the prosecuting authority detects circumstances in which the victim, witness, accused or other participant in criminal proceedings requires or may require protection from criminal activity, it shall take appropriate security measures, at the person's request or on its own initiative, to ensure his protection by the state.

123.2. Security measures for the protection of those participating in criminal proceedings shall be carried out in accordance with the legislation of the Azerbaijan Republic.

123.3. Applications and requests by participants in criminal proceedings regarding measures for their security shall be examined by the prosecuting authority without delay and not later than 72 hours after receipt. The result of the examination of the application or request shall be made known to the applicant immediately, and a copy of the relevant decision sent to him by the prosecuting authority.

123.4. The applicant shall have the right to complain to a court within 5 (five) days of receiving a copy of the decision rejecting his application or request for security measures for his protection, or, if he does not receive a copy of the relevant

decision of the prosecuting authority, to apply to the court with a view to security measures within 7 (seven) days of submitting his application or request.

123.5. If, after the rejection of his application or request for security measures for his protection, the person participating in criminal proceedings is threatened or attacked again, or if new circumstances arise which were not reflected in the application or request, he may again submit the application or request for the above-mentioned measures.

## **SECTION THREE**

### **EVIDENCE AND PROOF**

#### **Chapter XIV**

##### **EVIDENCE**

###### **Article 124. Concept and types of evidence**

124.1. Reliable evidence (information, documents, other items) obtained by the court or the parties to criminal proceedings shall be considered as prosecution evidence. Such evidence:

124.1.1. shall be obtained in accordance with the requirements of the Code of Criminal Procedure, without restriction of constitutional human and civil rights and liberties or with restrictions on the grounds of a court decision (on the basis of the investigator's decision in the urgent cases described in this Code);

124.1.2. shall be produced in order to show whether or not the act was a criminal one, whether or not the act committed had the ingredients of an offence, whether or not the act was committed by the accused, whether or not he is guilty, and other circumstances essential to determining the charge correctly.

124.2. The following shall be accepted as evidence in criminal proceedings:

124.2.1. statements by the suspect, the accused, the victim and witnesses;

124.2.2. the expert's opinion;

124.2.3. material evidence;

124.2.4. records of investigative and court procedures;

124.2.5. other documents.

#### **Article 125. The availability of evidence**

125.1. If there is no doubt as to the accuracy and source of the information, documents and other items and as to the circumstances in which they were obtained, they may be accepted as evidence.

125.2. Information, documents and other items shall not be accepted as evidence in a criminal case if they are obtained in the following circumstances:

125.2.1. if the accuracy of the evidence is or may be affected by the fact that the parties to the criminal proceedings are deprived of their lawful rights, or those rights are restricted, through violation of their constitutional human and civil rights and liberties or other requirements of this Code;

125.2.2. through the use of violence, threats, deceit, torture or other cruel, inhuman or degrading acts;

125.2.3. through violation of the defence rights of the suspect or accused, or the rights of a person who does not know the language used in the criminal proceedings;

125.2.4. where the rights and duties of a party to the criminal proceedings are not explained, or not explained fully and accurately and, as a result, he exercises them wrongly;

125.2.5. where the criminal prosecution and investigative or other procedures are conducted by a person who does not have the right to do so;

125.2.6. where a person whose participation should be objected to, and who knows or should know the reasons precluding his participation, takes part in the criminal proceedings;

125.2.7. where the rules governing investigative or other procedures are seriously violated;

125.2.8. where the document or other item is taken from a person unable to recognise it or who cannot confirm its accuracy, its source and the circumstances of its acquisition;

125.2.9. where evidence is taken from a person unknown at the trial or from an unknown source;

125.2.10. where evidence is taken through means conflicting with modern scientific views.

125.3. Information, documents and other items taken in the circumstances described in Article 125.2. of this Code shall be regarded as invalid and may not be used to prove any circumstance with a view to determining a charge correctly.

125.4. Material obtained through the violations described in Article 125.2. of this Code may be used as evidence of the violations concerned and the guilt of those committing them.

125.5. After a violation of the requirements of the Code of Criminal Procedure by the prosecution, the material whose evidential value is deemed to have been lost may be accepted as evidence at the request of the defence. In this case, such evidence may not concern other participants in the proceedings, but only the relevant suspect or accused. Acceptance of this material as evidence shall not mean that its accuracy cannot be disputed.

125.6. Any complaint lodged or decision taken on any matter significant to the prosecution concerned shall only confirm the fact that the complaint was lodged or the procedural decision was taken and shall not be accepted as evidence.

125.7. The prosecuting authority shall determine, either on its own initiative or further to an application by the parties to the criminal proceedings, whether information, documents and other items may not be used as evidence during the criminal prosecution, and whether they may be put to limited use.

125.8. If evidence is obtained in accordance with the requirements of this Code, it shall be for the objecting party to demonstrate grounds for its refusal.

125.9. When a criminal case is examined by the jury, the court president shall produce the material which cannot be accepted as evidence, explain its lack of legal justification to the jurors and prevent an erroneous point of view from being adopted by the parties to the criminal proceedings.

#### **Article 126. Statements by the suspect, accused, victim and witnesses**

126.1. Oral and written information received by the prosecuting authority from the suspect, accused, victim or witnesses in pursuance of this Code shall be considered as evidence.

126.2. Only statements based on the information or conclusions of a person directly comprehending the act and its causes, character, mechanism or development may be considered as evidence.

126.3. Information given to the prosecuting authority by the suspect, accused, victim or witnesses on the basis of hearsay may not be used as evidence. Only information derived from the words of a deceased person may exceptionally be accepted as evidence by court decision.

126.4. The value of evidence may not be assigned to statements given in the following situations:

126.4.1. when a person is agreed to be unable to comprehend or describe matters significant to the prosecution at the appropriate time;

126.4.2. when a person refuses to undergo an examination by experts of his ability to comprehend or describe matters significant to the prosecution.

126.5. Information from persons who may not be questioned as witnesses shall not be used as evidence.

126.6. The accused person's confession of guilt may be accepted as grounds for the charge against him only if confirmed by the contents of all the evidence on the case.

## **Article 127. The expert's opinion**

127.1. The expert's opinion, expressed in written form and based on his specialised knowledge of scientific, technical, artistic or professional fields, shall consist of:

127.1.1. his findings on the questions put to him by the prosecuting authority or the parties to the criminal proceedings, as well as on the investigation of other matters relating to his competence which emerge during the examination of the case file;

127.1.2. a description of the investigation carried out by the expert to substantiate those findings.

127.2. The expert's investigative techniques, the grounds for his answers to the questions asked, as well as other significant prosecution matters determined by the expert on his own initiative, shall be reflected in the expert's opinion.

127.3. The expert's opinion shall not be binding on the preliminary investigator, investigator, prosecutor or court; it shall be checked by the prosecuting authority in the same way as any other evidence and evaluated in the light of all the relevant facts. If the opinion is not approved, a reasoned decision to that effect shall be given.

## **Article 128. Material evidence**

128.1. Any item that can help to determine circumstances of importance to the prosecution because of its characteristics, features, origin, place and time of discovery or the imprints it bears may be considered to be material evidence.

128.2. An item shall be considered as material evidence if so decided by the prosecuting authority.

128.3. The significance of an item as material evidence shall be accepted by the court if:

128.3.1. immediately after its acquisition, the item is described in detail and sealed, and other similar acts are carried out making it impossible significantly to alter the imprints it bears and its features or characteristics;

128.3.2. the suspect, accused, victim or witness recognises it immediately before it is examined in court.

#### **Article 129. The preservation of material evidence and other items**

129.1. Material evidence shall where possible be packed and kept in sealed form in the case file; if it is of a large size, it shall be given for safekeeping to an organisation, institution or appropriate person, subject to their consent.

129.2. During the prosecution, as soon as the following items have been examined, and no later than 7 (seven) days after they were obtained, the prosecuting authority shall deposit in the state bank:

129.2.1. precious metals and stones, pearls and jewellery made from them;

129.2.2. cash in national and foreign currency, cheques, securities, bonds and lottery tickets.

129.3. Cash in national or foreign currency acquired during the investigation as well as other securities shall be kept with the prosecution file if it has or they have individual characteristics of significance to the prosecution.

129.4. The material evidence and other items acquired during the case shall be kept by the prosecuting authority until their allocation is settled by final decision of the court and by the decision of the prosecuting authority to discontinue the prosecution. In the circumstances provided for in this Code, a decision on the material evidence may also be taken before the conclusion of the prosecution.

129.5. When a legal dispute concerning an item added to the prosecution file as material evidence has to be heard by a civil court, this item shall be kept until the decision on the civil case becomes final.

#### **Article 130. Safekeeping of items during a criminal prosecution**

130.1. When material evidence and other items are kept, and if they are examined by an expert or sent to another investigating authority, prosecutor or court concerned with the criminal case, the appropriate measures shall be taken to prevent these items from becoming lost, damaged, spoilt, disarranged or coming into contact with each other.

130.2. When a prosecution file is sent anywhere, all material evidence and other items sent with the file shall be recorded in the letter which accompanies the file, as well as on a separate list or in a note attached to the indictment. The places where the items are kept, if they are not sent with the prosecution file, shall be recorded in the above-mentioned documents.

130.3. Material evidence and other items sent by post or by hand shall be examined by the expert, preliminary investigator, investigator, prosecutor or judge and compared with the letter accompanying them, the list, the note attached to the indictment, the records describing their characteristics and acquisition and other prosecution material. A record shall be drawn up of the examination process and of its results.

#### **Article 131. Decisions about material evidence before the end of the prosecution**

131.1. Before the prosecution ends, the prosecuting authority shall return the following material evidence either to the owner or to the lawful holder:

131.1.1. perishable items;

131.1.2. items which are in daily use at home;

131.1.3. domestic animals, birds and other animals which need daily care;

131.1.4. cars and other means of transport not retained to satisfy a civil claim or a property demand.

131.2. Where the owner or lawful holder of the items provided for in Article 131.1 of this Code is not known, or for some reason their return is impossible, these items shall be given to the appropriate organisations to be used, kept or cared for.

#### **Article 132. Decisions about material evidence after the end of the prosecution**

132.0. When the court gives a judgment or the prosecuting authority gives a decision to discontinue the prosecution, the following rules shall be observed in connection with the solution of matters relating to the material evidence:

132.0.1. the instruments used to commit the offence and belonging to the convicted person, as well as items which are prohibited from circulation, shall be confiscated and given to the appropriate organisations; if they are not of any value they shall be destroyed;

132.0.2. other items of no value shall be destroyed or, at the request of interested persons, may be given to them;

132.0.3. money and valuables removed from their owners as a result of the criminal act shall be returned to their holders, their owners or the legal heirs thereof;

132.0.4. money and valuables which were obtained as a result of the offence, or are the subject of the offence, shall contribute by decision of the court to compensation for the damage caused by the offence; if the victim is unknown, they shall become state property;

132.0.5. during the period for which the prosecution file is kept, documents that are material evidence shall be kept in the case file or shall be given to interested organisations and persons.

### **Article 133. Outcome of the spoiling, destruction or loss of items**

133.1. The value of items spoiled, destroyed or lost during the expert□s examination or other lawfully conducted investigative or procedural act shall be included in the court costs. If an item belongs to the convicted person or to the defendant to the civil claim, its value shall not be reimbursed. If an item belongs to another person, its value shall be reimbursed under the state budget of the Azerbaijan Republic by court decision, or may be recovered from the convicted person and the defendant to the civil claim.

133.2. When an acquittal is made by the court or when a prosecution is discontinued, the value of items spoiled, destroyed or lost during the expert□s

examination or other lawfully conducted investigative or procedural act shall be paid, irrespective of the procedural situation, to the holder or the legal owner under the state budget of the Azerbaijan Republic.

**Article 134. Records of investigative procedures and court hearings**

134.1. Records of investigative procedures and court hearings shall be documents drawn up in writing in accordance with this Code which confirm the prosecuting authority's direct understanding of matters significant to the prosecution.

134.2. The records of the following investigative procedures, drawn up in accordance with this Code, may be used as evidence by the prosecuting authority:

134.2.1. examination of places and objects;

134.2.2. body search;

134.2.3. identification of persons and objects;

134.2.4. seizure of property;

134.2.5. search operations;

134.2.6. attachment of property;

134.2.7. confiscation of mail, telegraphic and other messages;

134.2.8. interception of telephone or other conversations and interception of information sent by other technological means of communication;

134.2.9. acquisition of information concerning not only financial transactions, bank account statements and tax payments but also personal, family, state, commercial or professional secrets;

134.2.10. exhumation;

134.2.11. questioning, confrontation and verification of testimony at the scene;

134.2.12. taking of samples for examination;

134.2.13. investigative experiments.

134.3. Records of the receipt of a verbal application regarding the offence, of a voluntary confession of guilt, of detention and of the explanation of persons□ rights and duties may be used as evidence confirming those facts.

134.4. The admissibility as evidence of records of investigative procedures which have not been registered or not been registered in time shall be decided by the court depending on the result of the investigation.

134.5. The incompleteness of the record of an investigative procedure may not be offset by the testimony of the preliminary investigator, investigator, prosecutor or circumstantial witness.

#### **Article 135. Documents**

135.1. Paper, electronic and other materials bearing information which may be of importance to the prosecution, in the form of letters, numbers, graphics or other signs, shall be considered as documents. A document setting out matters known to a person through his duties and his work, confirmed with his signature and drawn up in the form prescribed by legislation, shall be considered as an official document.

135.2. Documents which have the characteristics described in Article 128.1 of this Code may also be considered as material evidence.

135.3. Evidence in support of a charge shall be from the original documents or a true copy of the original. The use of copies of documents during criminal proceedings shall be permitted with the consent of the parties.

#### **Article 136. Inclusion of documents in the prosecution file, their keeping in the file and their return**

136.1. Documents shall be added to the prosecution file by the prosecuting authority and shall be kept in the case file for the whole period during which the file is kept.

136.2. When the lawful holder of the documents requires them for routine recording, accounting or other legal purposes, he shall be allowed to use them temporarily or to make copies thereof.

136.3. One year after the court judgment becomes final or after the prosecuting authority's decision to discontinue the prosecution becomes final, the originals of the documents which are in the prosecution file may be returned to their lawful holders at the latter's request. In this case, depending on where the prosecution file is kept, the investigator, prosecutor or court shall make copies of these documents, certify their validity and keep the copies in the file.

#### **Article 137. The use as evidence of material obtained in the course of search operations**

If material obtained as a result of a search operation is obtained in accordance with the law of the Azerbaijan Republic on search operations and is presented and verified in accordance with the requirements of this Code, it may be accepted as evidence for the prosecution.

### **Chapter XV**

#### **PROOF**

##### **Article 138. The concept of proof**

138.1. Proof shall consist in the obtention, verification and assessment of evidence in order to establish facts of importance for the lawful, thorough and equitable determination of the criminal charge.

138.2. The prosecutor shall be responsible for proving the grounds for the criminal responsibility of the accused and whether or not he is guilty.

##### **Article 139. Facts which need to be proven**

139.0. During prosecution, the following may be determined only on the basis of evidence:

139.0.1. the facts and circumstances of the criminal act;

- 139.0.2. the connection of the suspect or accused with the criminal act;
- 139.0.3. the criminal ingredients of the act provided for in criminal law;
- 139.0.4. the guilt of the person in committing the act provided for in criminal law;
- 139.0.5. the circumstances which mitigate or aggravate the punishment for which criminal law provides;
- 139.0.6. if there is no other circumstance covered by this Code, the grounds for a request by a party to the criminal proceedings or another participant in the proceedings.

#### **Article 140. Facts determined on the basis of particular evidence**

- 140.0. In the course of criminal proceedings, the following facts may be determined only if the following evidence is obtained and investigated beforehand:
  - 140.0.1. cause of death, degree and nature of an injury: the opinion of a medical expert;
  - 140.0.2. whether the suspect or accused, when committing an offence which constitutes a public threat, is able or not, as a result of chronic mental illness, temporary mental disorder, debility or other mental disorder, to comprehend or control the factual nature of his act (act or failure to act) and the public threat it poses: the opinion of psychiatric experts;
  - 140.0.3. whether a witness or the victim is unable, as a result of chronic mental illness, temporary mental disorder, debility or other mental disorder, to comprehend and describe facts which need to be established for the purposes of the criminal case: the opinion of psychiatric experts;
  - 140.0.4. age, if the victim, suspect or accused does not have documents to prove his age: the opinion of medical and psychiatric experts;
  - 140.0.5. previous conviction of the accused, and the sentence passed: a copy of the court judgment.

## **Article 141. Facts determined without evidence**

141.1 Without reference to the prosecution file, the following facts shall be regarded as proven:

141.1.1. generally known facts;

141.1.2. the accuracy of the investigative methods generally accepted in modern science, technology, arts and other fields;

141.1.3. facts determined by a preliminary decision which is binding on the court.

141.2. The parties to criminal proceedings may come to an agreement, without investigation, about the existence of, or the value to be assigned to, any fact of significance to the prosecution. If, on the basis of the evidence in the prosecution file, the court accepts the existence of these facts and that the value assigned to them is not inconsistent with the law, this agreement may be considered as the basis for the judgment or other decision. In this case the facts determined without investigation of the evidence shall be considered as established only in relation to those who subscribe to the agreement and not to the other participants in the criminal proceedings.

141.3. The following facts shall be regarded as established without reference to the prosecution file:

141.3.1. persons $\square$  knowledge of the law;

141.3.2. persons $\square$  knowledge of their professional duties and staff rules;

141.3.3. lack of specialised training and education, if the person does not present documents certifying his specialised training and education or does not give the name of the institution or other organisation providing the specialised training and education.

## **Article 142. Preliminary rulings**

142.1. During the prosecution a final decision of a criminal court shall be binding on the preliminary investigator, investigator, prosecutor and court in respect of established facts and their legal value.

142.2. During the prosecution a final court decision on a civil case shall be binding on the preliminary investigator, investigator, prosecutor and court only as regards the question of whether or not the incident or act took place, and shall not predetermine whether or not the accused is guilty.

#### **Article 143. Collection of evidence**

143.1. Evidence shall be collected during the investigation and court proceedings by questioning, confrontation, attachment of property, search operations, examination of places and objects, expert reports, presentation for identification and other procedures.

143.2. During the process of collecting evidence, the preliminary investigator, investigator, prosecutor or court shall have the right, at the request of parties to the criminal proceedings or on their own initiative, to request the presentation of documents and other items of significance to the prosecution by individuals, legal entities, officials and the authorities which carry out search operations, and to request checks and inspections by the authorised authorities and officials.

143.3. In accordance with this Code, defence counsel authorised to participate in criminal proceedings shall have the right, for the purpose of providing legal assistance, to present evidence and collect information, including the right to receive explanations from individuals and to request memoranda, references and other documents from various organisations and associations.

143.4. The suspect, accused, defence counsel, prosecutor, victim, civil party, defendant to the civil claim and their representatives, and individuals and legal entities, shall have the right to present objects and documents as well as oral and written information which may be regarded as evidence.

#### **Article 144. Verification of evidence**

Evidence collected for the purposes of prosecution shall be verified fully, thoroughly and objectively. As part of the verification process the items of evidence collected shall be analysed and compared with one another, new evidence shall be collected and the reliability of the source of the evidence obtained shall be established.

#### **Article 145. Assessment of evidence**

145.1. All evidence shall be assessed as to its relevance, credibility and reliability. The content of all evidence collected for the purposes of prosecution shall be assessed in terms of whether it is sufficient to substantiate the charge.

145.2. The preliminary investigator, investigator, prosecutor, judge and jury shall assess the evidence according to their personal conviction on the basis of a thorough, full and objective examination of its content, guided by the law and their conscience.

145.3. If suspicions which emerge during the process of proving the charge cannot be removed by other evidence, they shall be interpreted in favour of the suspect or accused.

#### **Article 146. The sufficiency of evidence**

146.1. The notion that sufficient evidence has been collected for the prosecution means that the amount of evidence on the facts to be determined is such as to allow a reliable and final conclusion to be reached on the case.

146.2. The sufficiency of evidence for the prosecution shall help to achieve the following:

146.2.1. the investigation and the court proceedings to be carried out purposefully;

146.2.2. the court's perspective on the prosecution to be determined in good time;

146.2.3. a correct and well founded decision to be taken on the prosecution.

146.3. The collection of comprehensive evidence shall not result in:

- 146.3.1. the collection of unnecessary material;
- 146.3.2. the prolongation (dilatory conduct) of the investigation or the court proceedings.

## **SECTION FOUR**

### **COERCIVE PROCEDURAL MEASURES**

#### **Chapter XVI**

##### **DETENTION**

###### **Article 147. The use of detention during criminal proceedings**

147.1. Detention during criminal proceedings may be applied only to the following:

147.1.1. a person suspected of committing an offence;

147.1.2. a person who is to be charged or an accused who has violated the conditions governing the restrictive measure applied to him;

147.1.3. a sentenced person, in order to settle the question of forcibly sending him to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release.

147.2. Detention shall be applied in the following circumstances:

147.2.1. if there is a suspicion that the person concerned committed an offence;

147.2.2. if there is an appropriate decision by the prosecuting authority about a person covered by Article 147.1.2;

147.2.3. if there is a court decision on the detention of a sentenced person pending settlement of the question of forcibly sending him to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release.

147.3. The illegal detention of a person shall entail liability under the legislation of the Azerbaijan Republic.

**Article 148. Detention of persons suspected of committing an offence**

148.1. A person suspected of committing an offence shall be detained if there is a direct suspicion that he committed the offence or other information giving grounds for suspicion that he committed the act provided for in criminal law.

148.2. If there is a direct suspicion that a person committed an offence, the preliminary investigator, another official of the preliminary investigating authority, the investigator or the prosecutor may detain him in the following cases:

148.2.1. if the person is caught in the act of committing an offence provided for in criminal law or immediately thereafter on the scene of the offence;

148.2.2. if the victim or other witnesses to the act themselves assert that the act provided for in criminal law was committed by this person;

148.2.3. if clear marks indicative of the commission of the criminal act are discovered on the person's body, on his clothes or on other items he uses, in his home or in his means of transport.

148.3. If there is other information giving grounds to suspect a person of committing an act provided for in criminal law, he may be detained by the preliminary investigator, another official of the investigating authority, the investigator or the prosecutor in the following cases:

148.3.1. if he tries to escape from the crime scene into hiding, or to hide from the prosecuting authority;

148.3.2. if he has no permanent home or lives in another area;

148.3.3. if his identity cannot be established.

148.4. In the circumstances provided for in Article 148.1 and 148.2 of this Code, the person may be detained before the start of the criminal case. If no decision to start the criminal case is taken within 24 hours of the person being detained, the

person shall be released immediately. Even if this decision is taken, the detention of the person may not exceed 48 hours. The detained person shall be charged within 48 hours of being taken into custody and shall be brought before a court; the court shall examine the case without delay and decide between arrest as a restrictive measure and release.

**Article 149. Apprehension of a person who has committed an offence with the aid of a person who witnessed the act**

149.1. If the person committing an offence tries to escape during or immediately after the offence, a witness to the act may assist the prosecuting authority in apprehending the person, as follows:

149.1.1. he may tie up the person's hands and feet if he resists;

149.1.2. if the person who committed the offence is thought to have a gun or other dangerous weapon or to be carrying anything else which may be of significance to the criminal case, he may search him and seize these items for presentation to the prosecuting authority.

149.2. If he is not an official of the prosecuting authority, the person apprehending the offender shall immediately call the police, and, if this is impossible, shall bring the detained person to the police by force without delay.

**Article 150. Detention of a person to charge him**

150.1. If the evidence collected on a criminal case gives grounds to suppose that a person has committed an act provided for in criminal law, and if this person lives in another area or if his abode is not known, the investigator or prosecutor may decide to detain him. If a person hides from the prosecuting authority or intentionally fails to comply with a summons, and it is decided to detain him in order to charge him, the investigator or prosecutor shall at the same time announce a search for him.

150.2. Any official of the preliminary investigating authority, investigator or prosecutor who traces the suspect shall execute the decision to detain him in order

to charge him, and immediately afterwards shall inform the investigator or prosecutor who took that decision.

150.3. The detention of the suspect shall not exceed 48 hours before he is charged. Pending the decision on arrest as a restrictive measure, the detained person shall be brought before a court within 48 hours of being taken into custody, and the court shall examine the case without delay and decide between arrest as a restrictive measure and release.

**Article 151. Detention of an accused person who has violated a restrictive measure**

151.1. If the conditions governing the chosen restrictive measures are violated by the accused, the investigator or prosecutor may decide to detain him.

151.2. If house arrest or bail is chosen by the judge as a restrictive measure in respect of the accused and if he violates the conditions governing that measure, the prosecutor shall take a decision about the detention of the person and shall also send a recommendation for his arrest to the court.

151.3. When a decision is made to detain a person who is hiding from the prosecuting authority or intentionally failing to comply with a summons in violation of the conditions governing a restrictive measure, the investigator or prosecutor shall announce a search for this person immediately.

151.4. The decision to detain the accused because of his violation of the conditions governing a restrictive measures shall be executed by the official of the preliminary investigating authority, the investigator or the prosecutor who discovers the accused, and who shall immediately inform the investigator or prosecutor who issued the decision..

151.5. The detention of the accused for violation of restrictive measures may not exceed 48 hours. To resolve the question of replacing the chosen restrictive measure with arrest, the person shall be brought to court within 48 hours, the court shall examine the case without delay and shall decide between arrest as a restrictive measure and release.

**Article 152. Detention in order to settle the question of forcibly sending the sentenced person to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release**

152.1. In the following cases the institution or authority enforcing the sentence shall submit a recommendation for the court to give a decision on the detention of the sentenced person in order to settle the question of forcibly sending him to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release:

152.1.1. if the sentenced person escapes and hides or attempts to avoid going to the appropriate institution or authority;

152.1.2. if the sentenced person constantly and intentionally evades performing the duties imposed on him by the court.

152.2. When making the decision about detention in order to settle the question of forcibly sending the sentenced person to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release, the court shall decide on the period of detention within 7 (seven) days of the date on which he was detained.

152.3. The court decision about the detention of a person in order to settle the question of forcibly sending him to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release shall be sent for enforcement to the police authority in the home area of the sentenced person. The authority which has implemented the decision about detention shall immediately inform the court of this.

152.4. The detention of a person in order to settle the question of forcibly sending him to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release may not exceed the period set by the court; within this period the detained person shall be brought to court and the court shall

examine the case without delay and decide about forcibly sending him to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release, as well as whether the sentence handed down in the judgment is to be executed or the person is to be released.

#### **Article 153. Safeguarding of detainees□ rights**

153.1. In the event of detention, the prosecuting authority shall secure the detainee□s rights as suspect or accused, depending on his legal status as provided for in this Code.

153.2. To secure the rights of the detainee, the officials of the prosecuting authority and those in charge of the temporary detention facility shall:

153.2.1. inform the detainee immediately after detaining him of the grounds for detention, and explain to him his right not to testify against himself and his close relatives as well as his right to the assistance of defence counsel;

153.2.2. take the detainee without delay to the police or other preliminary investigating authority□s temporary detention facility, register the detention, draw up a record and show him the detention record;

153.2.3. report each instance of detention, immediately after registration in the temporary detention facility, to the head of the appropriate preliminary investigating authority and to the prosecutor in charge of the procedural aspects of the investigation (this information shall be given in writing within 12 hours of detention);

153.2.4. secure the right of the person to inform others of his detention immediately after detention (the authority in charge of the temporary detention facility, on his own initiative, shall inform the family members of any detainees who are elderly, under age or unable to do so themselves because of their mental state);

153.2.5. provide opportunities for the person, from the moment of detention, to meet in private and in confidence with his lawyer and legal representative under decent conditions and under supervision;

153.2.6. if the detainee does not have a lawyer of his own, present him with a list of lawyers from the bar association offices in the vicinity of the temporary detention facility, contact the chosen lawyer and create an opportunity for the detainee to meet him;

153.2.7. if the financial position of the detainee does not enable him to retain a lawyer at his own expense, create an opportunity for him to meet the duty lawyer from one of the bar association offices in the vicinity of the temporary detention facility, at the state's expense;

153.2.8. if the detainee refuses the services of a lawyer, receive his written request to that effect (if he evades writing the request, a record to that effect shall be drawn up between the lawyer and the representative of the temporary detention facility);

153.2.9. secure the right of any person who does not know the language of the criminal proceedings to use the services of an interpreter free of charge;

153.2.10. not treat the detainee in a way that fails to respect his personality or dignity, and pay special attention to women and persons who are under age, elderly, ill or disabled;

153.2.11. take the restrictive measure of arrest in respect of the detainee, and bring him to court in good time in order to ensure that the question of forcibly sending him to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release is settled within the time limits provided for in Articles 148 and 150-152 of this Code;

153.2.12. perform the duties prescribed in Article 161.0.1-161.0.8 and 161.0.10 of this Code.

153.3. The prosecuting authority shall release the detainee in the following circumstances:

153.3.1. if suspicions of the commission of an act provided for in criminal law are not confirmed;

153.3.2. if there is no need to remand the person in custody;

153.3.3. if it is determined that detention involved a serious violation of the law;

153.3.4. if the court decision to arrest the detainee is not made within 7 (seven) days of his detention to settle the question of forcibly sending him to the place where the sentence or other final court decision is to be executed, replacing the penalty given to him with another or repealing his suspended sentence or conditional release, or in other cases within 48 hours of his detention.

153.4. In the cases described in Article 153.3.1-153.3.3 of this Code, the detainee may be released as appropriate by the preliminary investigator, the investigator, the prosecutor in charge of the procedural aspects of the investigation or the court and, in the case described in Article 153.3.4. of this Code, also by the authority in charge of the temporary detention facility.

153.5. A person detained as the suspected perpetrator of an offence and released because the suspicion is not proven may not be detained again on the same suspicion.

## **Chapter XVII**

### **RESTRICTIVE MEASURES**

#### **Article 154. Concept and types of restrictive measure**

154.1. A restrictive measure is a coercive procedural measure intended to prevent unlawful behaviour by the suspect or accused during criminal proceedings and to ensure the execution of the sentence; it shall be applied in the cases described in Article 155.1 of this Code.

154.2. Restrictive measures may be the following:

- 154.2.1. arrest;
  - 154.2.2. house arrest;
  - 154.2.3. bail;
  - 154.2.4. restraining order;
  - 154.2.5. personal surety;
  - 154.2.6. surety offered by an organisation;
  - 154.2.7. police supervision;
  - 154.2.8. supervision;
  - 154.2.9. military observation;
  - 154.2.10. removal from office or position.
- 154.3. Arrest, house arrest or bail may be applied only to an accused person. Only minors may be placed under supervision. Military observation may be applied only to military personnel or to a person undergoing military training on a course for officers.
- 154.4. The restrictive measures prescribed for in Article 154.2.1-154.2.9 of this Code shall be the principal restrictive measures and may not be combined. Removal from office or position may be applied as a principal restrictive measure or combined with another restrictive measure. House arrest and bail shall be alternatives to arrest and, after a court decision to arrest the accused, may be applied instead of arrest.

#### **Article 155. Grounds for the application of restrictive measures**

- 155.1. Restrictive measures may be applied by the relevant preliminary investigator, investigator, prosecutor in charge of the procedural aspects of the investigation or court when the material in the prosecution file gives sufficient grounds to suppose that the suspect or accused has:

- 155.1.1. hidden from the prosecuting authority;
  - 155.1.2. obstructed the normal course of the investigation or court proceedings by illegally influencing parties to the criminal proceedings, hiding material significant to the prosecution or engaging in falsification;
  - 155.1.3. committed a further act provided for in criminal law or created a public threat;
  - 155.1.4. failed to comply with a summons from the prosecuting authority, without good reason, or otherwise evaded criminal responsibility or punishment;
  - 155.1.5. prevented execution of a court judgment.
- 155.2. In resolving the question of the necessity for a restrictive measure and which of them to apply to the specific suspect or accused, the preliminary investigator, investigator, prosecutor in charge of the procedural aspects of the investigation or court shall bear in mind:
- 155.2.1. the seriousness and nature of the offence with which the suspect or accused is charged and the conditions in which it was committed;
  - 155.2.2. his personality, age, health and occupation and his family, financial and social positions, including whether he has dependents and a permanent residence;
  - 155.2.3. whether he has committed a previous offence, the previous choice of restrictive measure and other significant facts.
- 155.3. Arrest, or restrictive measures as an alternative to it, may be applied only as follows:
- 155.3.1. to a person charged with an offence punishable by deprivation of liberty for a period of more than two years;
  - 155.3.2. in order to prevent the acts provided for in Article 155.1.1. and 155.1.2., to a person charged with an offence punishable by deprivation of liberty for a period of less than two years.

155.4. A suspect or accused may be placed under police supervision only if he is charged with an offence punishable by deprivation of liberty.

155.5. If there is no need for a restrictive measure, a written undertaking shall be obtained from the suspect or accused to attend when summoned by the preliminary investigator, investigator, prosecutor in charge of the procedural aspects of the investigation or court, and to notify them of any change of address.

155.6. In all cases where a restrictive measure is applied, as well as in the case described in Article 155.5. of this Code, the passport or other document confirming the identity of the suspect or accused shall be taken from him and added to the prosecution file until the final resolution of the suspicion or charge.

#### **Article 156. General rules governing the choice of restrictive measure**

156.1. Restrictive measures shall be decided by the preliminary investigator, the investigator, the prosecutor in charge of the procedural aspects of the investigation or the court. The offence committed by the suspect or accused and the grounds for the need to apply a restrictive measure based on the preliminary evidence shall be indicated in the decision on the choice of restrictive measure.

156.2. Arrest and removal from office or position may be chosen at the request of the investigator, on a submission by the prosecutor in charge of the procedural aspects of the investigation or on the initiative of the court examining the criminal case, but only on the basis of a court decision. House arrest or bail may be chosen by the court instead of arrest at the request of the defence.

156.3. The prosecuting authority shall immediately inform the suspect or accused of the restrictive measure chosen and present him with a copy of the decision.

156.4. In the event of the criminal proceedings being discontinued, the restrictive measures chosen for the suspect or accused shall be terminated.

#### **Article 157. Arrest**

157.1. In accordance with the principle of the presumption of innocence, if the connection of the person to the offence committed is not proven, he may not be arrested or unnecessarily detained on remand.

157.2. Arrest as a restrictive measure may be chosen in the light of the requirements of Articles 155.1 - 155.3 of this Code.

157.3. A person arrested on the grounds of a court decision may not be held in a temporary detention facility for longer than 24 hours, and before the expiry of this period, he shall be transferred to the investigating authority's remand facility (this period shall not include the time spent transporting the arrested person to the remand facility).

157.4. The investigator, the prosecutor in charge of the procedural aspects of the investigation or the court may instruct the authority in charge of the remand facility to hold persons charged with the same offence or related offences apart and to prevent conversations between the accused and other arrested persons, as well as on other matters, provided that these do not contravene the rules on detention on remand. .

157.5. When examining the question of arrest as a restrictive measure, the court, if it decides that there is no need to isolate the accused from society by detaining him on remand, shall have the right to substitute house arrest for arrest. The court may simultaneously make its decision about arrest and resolve the matter of releasing the accused from arrest by granting bail, and if this release is considered possible, it shall determine the amount of bail. The court may review its decision about the inadmissibility of bail and the amount of bail at the request of the defence.

157.6. The parties to criminal proceedings may complain to the appeal court about a court decision to apply, or not to apply, arrest as a restrictive measure. The decision of the appeal court on this matter shall be final.

157.7. A court which has decided on arrest as a restrictive measure shall have the right to change or cancel this decision before the end of the remand period on the basis of a submission by the prosecutor in charge of the procedural aspects of the procedural aspects of the investigation.

157.8. The investigator or the prosecutor in charge of the procedural aspects of the investigation may discontinue the application of arrest as a restrictive measure decided by a court only in the following cases:

157.8.1. if, according to medical opinion, the seriousness of the accused person's illness makes it impossible to detain him on remand;

157.8.2. if a decision is made to the effect that the act committed by the accused is not an offence posing a major public threat.

#### **Article 158. The remand period**

158.1. At the pre-trial stage of the criminal case, when it chooses arrest as a restrictive measure, the court shall specify a remand period of up to 2 (two) months in respect of offences which do not pose a major public threat or minor offences and of up to 3 (three) months in respect of serious and very serious offences.

158.2. The remand period shall begin at the time of actual arrest if the accused is detained or, if he is not held, at the time of the implementation of the court decision on arrest as a restrictive measure. The following shall be included in the period for which the suspect or accused is detained on remand:

158.2.1. the period of detention and remand;

158.2.2. the period of house arrest;

158.2.3. the period during which he was detained in a medical establishment for an in-patient medical report under coercive procedural measures or on account of temporary illness.

158.3. At the pre-trial stage of the criminal case, the remand period, other than in cases of prolongation of the period as prescribed by Article 159 of this Code, may not exceed the above-mentioned periods. The remand period in respect of the suspect or accused shall be calculated by adding together all periods of detention on remand, house arrest and time spent at a medical establishment. The remand period at the pre-trial stage of the criminal case shall be suspended on the day when the case is sent to court or when detention on remand or house arrest as a restrictive measure is discontinued.

158.4. When the period of detention on remand as a restrictive measure is calculated, the period during which the accused and his defence counsel acquaint themselves with the case file shall not be taken into consideration.

158.5. The period of detention on remand of the accused in criminal cases within the jurisdiction of first instance and appeal courts may not exceed:

158.5.1. 3 (three) months where offences do not constitute a major public threat;

158.5.2. 5 (five) months for minor offences;

158.5.3. 7 (seven) months for serious offences;

158.5.4. 9 (nine) months for very serious offences.

158.6. During the criminal proceedings (pre-trial and in first instance and appeal courts), the remand period shall be included in the term of punishment imposed on the accused by the court.

#### **Article 159. Prolongation of the period of detention on remand during the pre-trial proceedings**

159.1. At the pre-trial stage of criminal proceedings, the period of detention on remand of the accused may be prolonged by a court, depending on the complexity of the case: for those offences which do not pose a major public threat, for no longer than 1 (one) month; for minor offences, for no longer than 2 (two) months; for very offences, for no longer than 3 (three) months, and for very serious offences, for no longer than 4 (four) months.

159.2. At the pre-trial stage, in an exceptionally complicated case, the remand period may again be prolonged by the court: for minor offences, for no longer than 2 (two) months; for serious offences, for no longer than 3 (three months), and for very serious offences, for no longer than 5 (five) months.

159.3. An investigator who considers it necessary to prolong the period of detention on remand of the accused shall submit the appropriate reasoned request to the prosecutor in charge of the procedural aspects of the investigation at least 7 (seven) days before the expiry of the remand period. If the prosecutor in charge of

the procedural aspects of the investigation agrees with the need to prolong the remand period, he shall address the appropriate submissions at to the court least 5 (five) days before the expiry of the remand period decided by court. If the court agrees with the need to prolong the term of detention on remand of the accused, it shall decide to do so before the end of the period imposed by the decision adopting the restrictive measure.

159.4. When deciding whether to prolong the remand period, the court shall have the right to substitute house arrest for detention on remand or to release the accused by granting bail and determining the amount of bail.

159.5. When deciding to prolong the period of detention on remand of the accused, the court shall determine the further periods as prescribed by Articles 159.1 and 159.2 of this Code.

159.6. A court decision to prolong the remand period, or not to do so, shall be subject to an appeal to the appeal court. The appeal court's decision on this matter shall be final.

159.7. During the pre-trial proceedings, the period of detention on remand of the accused shall on no account exceed:

159.7.1. 3 (three) months for offences which do not pose a major public threat;

159.7.2. 6 (six) months for minor offences;

159.7.3. 9 (nine) months for serious offences;

159.7.4. 12 (twelve) months for very serious offences.

#### **Article 160. The right to protection and to supervision of property**

160.1. Persons who are under age or unfit for work, and who, as a result of the arrest of a parent or the family breadwinner or other acts of the prosecuting authority, are without care and supervision and are deprived of the essentials of life shall have the right to be protected, and the authority concerned shall provide protection at the expense of the state budget of the Azerbaijan Republic. The prosecuting authority's instructions on the temporary placement, supervision and

care in public social welfare or medical institutions of persons unfit for work shall be binding on guardianship institutions and their officials. The prosecuting authority shall have the right to entrust those who are under age or unfit for work to the protection of relatives with the latter's consent.

160.2. A person whose property is unsupervised as a result of his arrest or other acts of the prosecuting authority, shall have the right to have his property supervised. The said authority shall grant the person's request for supervision of his property at his own expense. The prosecuting authority's instructions about arrangements for supervision of the person's property shall be binding on the relevant public authorities, institutions, administrative departments and organisations.

160.3. The prosecuting authority shall without delay inform the arrested person or other interested parties of the measures taken in accordance with this article.

#### **Article 161. Duties of the authority in charge of the remand facility**

161.0. The authority in charge of the remand facility shall:

161.0.1. immediately register each person brought to the remand facility in compliance with a court decision on arrest as a restrictive measure;

161.0.2. immediately inform, at the request of the person newly brought to the remand facility, his family, friends or other lawful contacts about his arrest and place of detention (if the person concerned does not want to let the above-mentioned people know of his arrest and place of detention, the authority in charge of the remand facility shall not do so on its own initiative unless this is essential, for example by reason of the person's advanced age, mental state or similar circumstances);

161.0.3. except where restrictions apply in the interests of justice, security and the rules of the remand facility, arrange for the person to meet members of his family, friends or other lawful contacts in decent conditions and under supervision;

161.0.4. guarantee the security of those detained on remand and ensure that they receive the necessary defence and assistance;

161.0.5. give persons detained on remand copies of the procedural documents sent to them on the day of receipt; if the documents are received at night, then by 12 noon next day;

161.0.6. register complaints and any other applications by those detained on remand;

161.0.7. forward complaints and other applications addressed by persons detained on remand to the investigator, the prosecutor in charge of the procedural aspects of the investigation or the court without delay;

161.0.8. mention in the record the refusal of a person detained on remand to come to court;

161.0.9. allow the person to meet his defence counsel or legal representative without obstacles, confidentially, in private and without restrictions on the number of meetings or their duration;

161.0.10. ensure that the person detained on remand is taken to the prosecuting authority on time;

161.0.11. on the instructions of the investigator, prosecutor or court, enable investigative or other procedures to be carried out at the remand facility where the person is held;

161.0.12. transfer the person to another remand facility if so decided by the prosecuting authority; obey other instructions of the prosecuting authority which are not contrary to the regime of detention on remand as determined by law;

161.0.13. 7 (seven) days before the end of the remand period, inform the prosecutor in charge of the procedural aspects of the investigation;

161.0.14. release those arrested without the appropriate court decision, or whose remand period determined by court decision is over, and if the bail determined by a court has been paid, release the person from detention immediately and inform the appropriate judge (court) of the fact.

#### **Article 162. Release from detention on remand**

162.1. Persons shall be released from detention on remand by court decision in the following cases:

162.1.1. if the charge concerning an act provided for in criminal law is not confirmed, or if the criminal proceedings in court are discontinued;

162.1.2. if the penalty imposed by the court on a convicted person does not involve deprivation of liberty or detention in a disciplinary military unit or on remand;

162.1.3. if it is determined that there is no need for the person to be detained on remand.

162.2. The accused may also be released from detention on remand on the basis of a decision of the investigator or prosecutor to discontinue the criminal proceedings.

162.3. A person detained on remand in the circumstances provided for in Article 162.1.1 and 162.1.2 of this Code shall be released from detention immediately at the court hearing.

162.4. If a copy of the prosecuting authority's decision to cancel or alter the restrictive measure of arrest is received, the person shall immediately be released from detention by the head of the remand facility.

162.5. Without a decision of the prosecuting authority, the head of the remand facility shall release a person from detention in the following cases, and shall draw up a record of the fact:

162.5.1. if the remand period determined by court decision is over and has not been prolonged;

162.5.2. if the total remand period laid down in Article 159.7 of this Code is over;

162.5.3. if information is received from the prosecuting authority that the bail determined by the court for release from detention on remand has been received.

162.6. After release from detention, a person may not be arrested on the same charge again, except in cases where the prosecuting authority is informed of

important new circumstances or of a violation of the conditions governing the restrictive measure applied to him.

### **Article 163. House arrest**

163.1. House arrest is a restrictive measure which restricts a person's liberties and some other rights by a court decision, without the accused being detained on remand and isolated completely from society.

163.2. The choice of house arrest as a restrictive measure may be considered only at the request of the defence instead of the decision taken for the person's arrest.

163.3. House arrest may be accompanied by application of the following measures, separately or where possible jointly:

163.3.1. prohibition of leaving one's home at any time or at certain times;

163.3.2. prohibition of speaking on the telephone, sending mail or using other means of communication;

163.3.3. prohibition of contact with certain people and of receiving visits from anyone at home;

163.3.4. application of electronic monitoring devices and obligation to wear them and operate them;

163.3.5. obligation to answer supervisory telephone calls or other monitoring signals, to telephone the preliminary investigating authority or other authority monitoring the behaviour of the accused at fixed times, or to attend personally;

163.3.6. placing under observation of the accused or his home, as well as a police guard on his house, flat or other accommodation given to him;

163.3.7. other measures which ensure the required behaviour and partial isolation of the accused.

163.4. The rules governing decisions about house arrest, its duration and prolongation and release from house arrest shall be regulated by the provisions of this Code on arrest as a restrictive measure.

163.5. When a court decides whether to release an accused person from detention on remand, it shall decide whether or not to order house arrest as a restrictive measure. Complaints or appeals against the court decision to apply house arrest as a restrictive measure may be made to the court of appeal. If the prosecutor in charge of the procedural aspects of the investigation does not agree with the decision:

163.5.1. the court decision on house arrest as a restrictive measure shall become final only after confirmation by the court of appeal;

163.5.2. before the legality and grounds of this decision are examined by the court of appeal, the decision on arrest as a restrictive measure taken by the court of first instance shall remain in force until the matter of house arrest is decided.

163.6 Application of house arrest as a restrictive measure may be discontinued if so decided by the investigator or the prosecutor in charge of the procedural aspects of the investigation in the circumstances provided for in Article 157.8 of this Code.

#### **Article 164. Bail**

164.1. Bail shall require a sum of money (securities) or other items of value determined by a court to be deposited in the state bank in the court's name, in order to release from arrest, while guaranteeing that he remains at the disposal of the prosecuting authority, a person charged with an offence which does not pose a serious public threat, with a minor offence or with committing a serious offence through negligence. By court decision, immovable property may also be accepted as a deposit.

164.2. The choice of bail as a restrictive measure may be considered by a court only at the request of the defence, instead of the decision taken for the person's arrest.

164.3. The deposit may be taken from the property and funds of the accused or the property and funds of his close relatives or of other individuals and legal entities. The duty to prove the value of the deposit shall rest with the person making it.

164.4. In any of the cases provided for in Article 155.1 and 155.2 of this Code, a court may, on appropriate grounds, deny bail.

164.5. The court shall not set too high a sum to be deposited, but the amount shall not be less than:

164.5.1. the equivalent of five thousand times the minimum wage where the charge concerns an offence which does not pose a major social threat;

164.5.2. the equivalent of ten thousand times the minimum wage where the charge concerns a minor offence or an offence committed through negligence.

164.6. When the court considers whether to release the accused from arrest on bail, it shall decide whether to apply bail as a restrictive measure or not. Complaints and appeals against the application of bail as a restrictive measure may be made to the court of appeal. If the prosecutor in charge of the procedural aspects of the investigation does not agree with the decision:

164.6.1. the court decision on bail as a restrictive measure shall become final only after confirmation by the court of appeal;

164.6.2. before the legality and grounds of this decision are examined by the court of appeal, the decision taken by the court of first instance on arrest as a restrictive measure shall remain in force until the matter of bail is decided.

164.7. When the court substitutes bail for arrest, the accused shall be kept under arrest until the sum to be deposited shall be transferred to the state bank in the court's name. When the prosecuting authority receives confirmation that the deposit has been made, and once the court decision has become final, it shall inform the head of the remand facility that the accused is to be released immediately.

164.8. If the accused hides from the prosecuting authority or goes elsewhere without its permission or otherwise eludes criminal responsibility and punishment,

the prosecutor in charge of the procedural aspects of the investigation may apply to the court for the transfer of the deposit to the state. The person who placed the deposit may complain to the court of appeal against transfer of this deposit to the state.

164.9. After the court judgment has become final, and in cases where the violations provided for in Article 164.8 of this Code are not proven, or if bail is cancelled or altered, the deposit shall be returned to the person who placed it. The decision about the return of the deposit shall be made by the court at the same time as it gives the judgment or decides to alter or cancel the restrictive measure.

164.10. In the case described in Article 164.8 of this Code, at the same time as the transfer of the deposit to the state, the court shall substitute arrest for bail on the basis of a submission by the prosecutor in charge of the procedural aspects of the investigation.

164.11. The application of bail as a restrictive measure may be discontinued in the circumstances provided for in Article 157.8. of this Code on the grounds of a decision by the investigator or prosecutor.

#### **Article 165. Restraining order**

165.1. A restraining order is a restrictive measure under which the suspect or accused shall make a written undertaking to remain at the disposal of the prosecuting authority, not to go elsewhere without its permission, not to hide from it, not to engage in criminal activity, impede the investigation, investigation or court hearing, to attend as required by the preliminary investigator, investigator, prosecutor or court and to inform them of any change of address.

165.2. A restraining order shall be imposed on the suspect or accused by the prosecuting authority.

#### **Article 166. Personal surety**

166.1. Personal surety as a restrictive measure shall require a written commitment by an individual to the effect that the suspect or accused will not breach the peace,

will attend as required by the prosecuting authority and will carry out his other procedural duties.

166.2. Personal surety may be given by any citizen of the Azerbaijan Republic who is of full age, who can be relied on and who has deposited in advance the equivalent of five hundred times the minimum wage in the state bank in the court□s name, a sum which will be taken as a fine if he fails to honour his commitment.

166.3. The number of persons offering personal surety may be from 2 to 5, as decided by the prosecuting authority.

166.4. The rights and duties of the persons offering personal surety as well as the relevant arrangements are laid down in Article 168 of this Code.

#### **Article 167. Surety offered by an organisation**

167.1. Surety offered by an organisation as a restrictive measure shall require a written commitment by a legal entity registered by the state under the legislation of the Azerbaijan Republic to the effect that the suspect or accused will not breach the peace, will attend as required by the prosecuting authority and will carry out other procedural duties. A sum equivalent to one thousand times the minimum wage shall be deposited in advance in the court□s name at the state bank, and this shall be taken as a fine if the legal entity fails to honour its commitment.

167.2. The rights and duties of the organisation offering surety, as well as the relevant arrangements, are laid down in Article 168 of this Code.

#### **Article 168. Rules governing surety**

168.1. The prosecuting authority shall first ascertain the reliability of the provider of the surety and the possibility of choosing personal or organisational surety in respect of the suspect or accused, then acquaint the applicant (including the representative of the legal entity) with the substance of the suspicion or charge, explain the rights and duties of the provider of surety and inform the provider of his responsibility. After that the applicant may confirm or withdraw his request.

168.2. The procedures described in Article 168.1 of this Code shall be mentioned in the record. If the provision of personal or organisational surety is applied as a restrictive measure, information about the provider of surety shall be given in the decision of the prosecuting authority. A copy of the appropriate decision shall be given to the provider of the surety without delay.

168.3. The provider may withdraw surety at any stage of the criminal proceedings, if the suspect or accused is charged with a new or more serious offence, if significant circumstances are discovered which the provider did not and could not know when he agreed to provide surety, if he moves to another place or becomes seriously ill, if the activity of the organisation standing surety is discontinued, if the suspect or accused moves to another place or to another organisation, or if the provider of surety is unable to answer for the future behaviour of the suspect or accused. In such cases the prosecuting authority shall return to the provider the sum of money deposited as surety for the fine.

168.4. The provider of surety shall also have the right to withdraw the sum of money deposited as surety for the fine in the following cases:

168.4.1. if the prosecuting authority changes the restrictive measure, but not because of inappropriate behaviour by the suspect or accused;

168.4.2. if the prosecuting authority cancels personal or organisational surety as a restrictive measure.

168.4.3. if the provider of surety loses legal capacity.

168.5. The sum of money deposited as surety shall be transferred to the state by a decision of the prosecuting authority in the following cases:

168.5.1. if the commitment to appropriate behaviour by the suspect or accused is not met;

168.5.2. if he refuses the surety himself.

168.6. A complaint may be made to the courts against the transfer to the state of the sum deposited as surety.

## **Article 169. Police supervision**

169.1. Police supervision as a restrictive measure shall entail the application to the suspect or accused of the legal restrictions provided for in this article.

169.2. The suspect or accused who is under police supervision may not go elsewhere or change his permanent or temporary address within the boundaries of the appropriate settlement without the permission of the preliminary investigator, investigator, prosecutor or court. He shall resort to the police according to the schedule determined by the police and shall register his presence. With a view to supervising his behaviour, the suspect or accused may be summoned by the police at any time. To this end, the relevant police officials shall have the right to come to the house of the suspect or accused, even against his will.

169.3. To implement the prosecuting authority's decision to impose police supervision as a restrictive measure, the decision shall be delivered to the police authorities in the locality where the suspect or accused lives. Within 24 hours of the receipt of the afore-mentioned decision, the police shall summon the suspect or accused, register him and inform the prosecuting authority that the supervision has begun.

## **Article 170. Supervision**

170.1. Supervision as a restrictive measure shall entail making the parents or guardians of an under-age suspect or accused, or the management of the closed children's institution where he is kept, responsible for ensuring that he does not breach the peace, attends as required by the prosecuting authority and performs other procedural duties.

170.2. Before placing the under-age person under supervision, the preliminary investigator, investigator, prosecutor or court shall collect information about the character of the parents or guardians and their relationship with the under-age person and ensure that they have the means to exercise the necessary supervision over the suspect or accused.

170.3. When it has satisfied itself of the possibility of imposing supervision on the suspect or accused as a restrictive measure, the prosecuting authority shall decide

on the appropriate restrictive measure. It shall inform the parents, guardian or representative of the children's institution of the decision and present a copy of the decision to them. The authority shall inform them of the substance of the suspicion or charge, explain their rights and duties and inform them about their responsibility, and this shall be placed on record.

170.4. Parents and guardians shall have the right to request to be released from supervision of the under-age suspect or accused because of illness, deterioration of mutual relations in the family or other reasons which prevent them from guaranteeing the required behaviour by the person concerned.

170.5. Persons required to exercise supervision shall not be entitled to claim that they are unable to supervise the behaviour of the suspect or accused, except in cases where they can prove the influence of forces beyond their control.

170.6. Persons required to exercise supervision of the suspect or accused shall inform the prosecuting authority of inappropriate behaviour by the suspect or accused.

170.7. Persons required to exercise supervision of the accused who do not perform their duties shall be liable under the legislation of the Azerbaijan Republic.

#### **Article 171. Military observation**

171.1. Military observation as a restrictive measure shall entail making the commander of the military unit where the suspect or accused is serving or undergoing officer training, or the head of the military institution concerned, responsible for ensuring that the person does not breach the peace, attends as required by the prosecuting authority and performs other duties.

171.2. After ascertaining the possibility of choosing military observation as a restrictive measure in respect of the suspect or accused, the prosecuting authority shall issue a decision to that effect. The authority shall inform the representative of the military command of the decision on the restrictive measure and present a copy of this decision to him. It shall acquaint him with the substance of the suspicion or charge, explain his rights and duties and inform him about his responsibility, and this shall be placed on record.

171.3. The military command shall have the right to take measures in accordance with the regulations governing all forces to supervise the person subordinate to it and guarantee the required behaviour by him.

171.4. When a restrictive measure of military observations is adopted in respect of the suspect or accused, he may not be detailed for guard or active duty and may not carry arms in peace time; military personnel who are not officers, low-ranking commissioned officers or warrant officers may not be sent outside the confines of the military unit to work on their own and shall not be allowed to leave the confines of the unit.

171.5. Except in cases when the military command exercising supervision can prove the influence of forces beyond its control, it shall not be entitled to claim that it is unable to supervise the behaviour of the suspect or accused.

171.6. The military command supervising the suspect or accused shall inform the prosecuting authority of inappropriate behaviour by the person under its supervision.

171.7. Persons required to exercise military observation who do not fulfil their duties shall be liable under the legislation of the Azerbaijan Republic.

#### **Article 172. Removal from office or position**

172.1. Removal from office or position as a restrictive measure shall entail prohibiting the suspect or accused from exercising his professional responsibilities, doing his work or pursuing his activities.

172.2. If there are sufficient grounds for removing the suspect or accused from office or position as a restrictive measure, the prosecutor in charge of the procedural aspects of the investigation may prohibit him within 3 (three) days from exercising his professional responsibilities, doing his work or continuing his activities, on the basis of a reasoned decision. Simultaneously, the prosecutor in charge of the procedural aspects of the investigation shall send submissions to the court about the decision to remove the suspect or accused from office or position as a restrictive measure.

172.3. A copy of the court decision on removal from office or position as a restrictive measure shall be sent for immediate implementation to the manager of the workplace of the suspect or accused, who from then on shall no longer be entitled to allow him to engage in the prohibited work or activities.

#### **Article 173. Complaints against restrictive measures**

173.1. The suspect or accused, his defence counsel and legal representative, and other interested parties to criminal proceedings may complain against a decision adopting or amending a restrictive measure to the prosecutor in charge of the procedural aspects of the investigation or to the court.

173.2. Complaints against court decisions on restrictive measures, other than at the pre-trial stage, may not be lodged with the court of appeal.

#### **Article 174. Confirmation of restrictive measure**

174.1. The preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation who is responsible for the criminal case shall verify the legality of, and the need to maintain unchanged, restrictive measures previously applied by other persons (excluding judges), and shall make the appropriate decision. (The preliminary investigator or investigator shall not be empowered to verify a decision of the prosecutor).

174.2. The court, after receiving the case on completion of the investigation, may confirm, annul or alter a restrictive measure applied at the pre-trial stage.

#### **Article 175. Alteration, annulment or discontinuation of restrictive measures**

175.1. A restrictive measure may be replaced with a less severe one by the prosecuting authority acting in accordance with its powers, if the need for this is proved, and if it is possible to guarantee the behaviour of the suspect or accused and execution of the judgment in the course of a criminal case.

175.2. If there is no longer any need for a restrictive measure, the prosecuting authority shall annul it in accordance with its powers.

175.3. The restrictive measure of arrest, house arrest or bail decided by a court may be altered or annulled only by the court. The investigator or the prosecutor in charge of the procedural aspects of the investigation may, in the circumstances provided for in Articles 157.8, 163.6 and 164.11 of this Code, discontinue the application of arrest, house arrest or bail decided as a restrictive measure by a court.

175.4. If the prosecuting authority annuls, alters or discontinues the application of arrest as a restrictive measure, it shall inform the head of the remand facility on the same day and send a copy of the relevant decision to him.

175.5. The appropriate restrictive measure shall be regarded as having lapsed after it has been annulled or altered, after prosecution of the suspect or accused has been discontinued or after execution of the punishment imposed has begun.

## **Chapter XVIII**

### **APPLICATION OF OTHER COERCIVE PROCEDURAL**

#### **MEASURES DURING CRIMINAL PROCEEDINGS**

##### **Article 176. Coercive measures applied for the conduct of procedural acts**

In addition to the coercive procedural measures provided for in Articles 147 and 154 of this Code, the prosecuting authority may apply other coercive measures for the conduct of procedural acts if it established circumstances which prevent the collection of evidence. In the circumstances provided for in Article 144.1.4 and 144.2 of this Code, the coercive procedural measures shall be applied in accordance with a court decision.

##### **Article 177. The right to forcibly carry out investigative procedures**

177.1. The prosecuting authority may, by force, carry out investigative procedures to guarantee the normal course of an investigation; it may take measures to make participants wait for the start of these procedures and to prevent them from leaving the place where they are to be held.

177.2. If the person concerned does not consent to the investigative procedure and if a court decision is requested for its compulsory conduct, the prosecutor in charge of the procedural aspects of the investigation shall apply to the court if he agrees with the investigator's reasoned request.

177.3. As a rule, a court decision shall be required in order to conduct the following investigative procedures by force:

177.3.1. examination, search or seizure and other investigative procedures in residential, service or industrial buildings;

177.3.2. the body search of a person other than a detained or arrested person against his will;

177.3.3. the attachment of property;

177.3.4. the confiscation of postal, telegraphic or other messages;

177.3.5. the interception of conversations held by telephone or other means and of information sent via communication media and other technical means;

177.3.6. the obtaining of information about financial transactions, bank accounts or tax payments and private life or family, state, commercial or professional secrets;

177.3.7. exhumation.

177.4. With the exception of examination, search and seizure, other investigative procedures in residential, service or industrial buildings and the investigative procedures provided for in Articles 177.3.6 and 177.3.7 of this Code may be conducted only under by court decision. The investigator may conduct the following procedures by force without a court decision:

177.4.1. on the grounds and under the circumstances provided for in Article 243.3 of this Code, he may conduct inspections, searches and seizures in residential, service or industrial buildings;

177.4.2. he may conduct body searches in the circumstances provided for in Article 238.2 of this Code;

177.4.3. he may seize property in the circumstances provided for in Article 249.5 of this Code;

177.4.4. he may confiscate postal, telegraphic or other messages and intercept conversations held by telephone or other means and information sent via communication media and other technical means if there are circumstances in which evidence of serious or very serious offences against the individual or central government must be established without delay.

177.5. If the investigative procedures for which Articles 177.3.1, 177.3.2, 177.3.4 and 177.3.5 of this Code provide are carried out by reasoned decision of the investigator in circumstances allowing no delay, the investigator shall fulfil the duties laid down in Article 443.2 of this Code.

177.6. No court decision shall be necessary for the investigator to carry out the investigative procedures provided for in Article 177.3.1 of this Code in residential, service or industrial buildings with the permission or by the invitation of the owners of those premises.

#### **Article 178. Forcible appearance before the prosecuting authority**

178.1. Forcible appearance before the prosecuting authority shall entail bringing a person by force to the prosecuting authority and forcibly guaranteeing his participation in investigative or other procedures.

178.2. This measure may be applied to a person participating in criminal proceedings and summoned by the prosecuting authority only in the following circumstances:

178.2.1. if he fails to attend in response to the compulsory summons of the prosecuting authority without good reason;

178.2.2. if he evades receipt of the summons from the prosecuting authority;

178.2.3. if he hides from the prosecuting authority;

178.2.4. if he has no permanent address.

178.3. Children under 14, pregnant women, persons who are seriously ill and victims bringing a private prosecution may not be forcibly brought before the prosecuting authority.

178.4. Forcible appearance before the prosecuting authority shall be based on a reasoned decision by the prosecuting authority or a court decision at the request of the parties to criminal proceedings.

178.5. The decision to forcibly bring a person before the prosecuting authority shall be enforced by the preliminary prosecuting authority or by another authority legally responsible for this duty.

## **SECTION FIVE**

### **PROPERTY MATTERS IN CRIMINAL PROCEEDINGS**

#### **Chapter XIX**

##### **CIVIL CLAIMS IN CRIMINAL PROCEEDINGS**

###### **Article 179. Legislation applied to civil claims**

179.1. A civil claim in criminal proceedings shall be filed, proven and settled in accordance with the provisions of this Code.

179.2. The rules of the Code of Civil Procedure shall be applied if they do not conflict with the principles of criminal proceedings and if the procedural rules governing civil claims are not laid down in this Code.

179.3. Decisions on civil claims shall be made, depending on the subject of the claim, in accordance with civil or other legislation.

179.4. The time limit set in civil law or other spheres of law shall not apply to civil claims made in criminal cases.

###### **Article 180. Significance of a final court judgment or decision on a civil claim**

180.1. A civil claim may not be filed again if there is a final court decision on a civil claim allowed on the same grounds, between the same parties and on a dispute on the same subject, or a final court decision endorsing the civil party's withdrawal of his claim or confirming a friendly settlement, or if there is a final court decision dismissing the claim or allowing it in full or in part.

180.2. If the person has not put forward a civil claim during a criminal proceedings, he shall have the right to claim during the civil proceedings

180.3. A civil claim filed during the criminal proceedings but not heard by the court may be filed later as part of the civil proceedings..

#### **Article 181. Persons entitled to file civil claims**

181.1. An individual or legal entity whose property is damaged shall have the right to file a civil claim during criminal proceedings in the following circumstances:

181.1.1. if the damage was caused directly by an act provided for in criminal law;

181.1.2. if the damage was connected with the commission of an act provided for in criminal law.

181.2. In the event of damage directly caused to an individual or legal entity by an act provided for in criminal law, he/it may apply for the following through a civil claim for compensation:

181.2.1. payment of the value of the lost or damaged property, or if possible, compensation in kind;

181.2.2. reimbursement of the cost of replacing lost property or repairing the quality and restoring the appearance of damaged property;

181.2.3. payment of lost earnings;

181.2.4. compensation for non-pecuniary damage.

181.3. Material damage shall be considered as connected with the commission of an act provided for in criminal law if it gives rise to the following expenditure:

- 181.3.1. for the treatment and care of the victim;
  - 181.3.2. for the funeral of the victim;
  - 181.3.3. for the payment of insurance, grant and pension;
  - 181.3.4. for performance of the contract on protection of property.
- 181.4. A civil claim may be filed during criminal proceedings by the representative of the individual or legal entity.
- 181.5. In the event of the death of any individual who had the right to put forward a civil claim, that right shall be transferred to his heirs. If a legal entity ceases to exist or is reconstituted, its right to file a civil claim shall be transferred to its legal heir.
- 181.6. During criminal proceedings the prosecutor shall file and argue a civil claim in order to protect state property or uphold the rights of an individual entitled to make a civil claim who cannot defend his legal interests personally. A claim for compensation for non-pecuniary damage may be made by the prosecutor only at the request of the victim.
- 181.7. During criminal proceedings the prosecutor shall file and argue a claim against the accused or the person who is liable for his actions in respect of the claim in the following circumstances:
- 181.7.1. to defend the state's interests at the request of a state authority, institution or organisation;
  - 181.7.2. if the individual entitled to file the civil claim lacks legal capacity or has limited legal capacity.

#### **Article 182. Exemption of the civil party from state taxes**

State taxes shall not be collected on civil claims made during criminal proceedings.

#### **Article 183. The filing of civil claims**

183.1. During criminal proceedings, a civil claim may be filed at any time from the beginning of the prosecution to the beginning of the court's examination of the case. A civil claim may be filed simultaneously with an application or complaint concerning an offence committed.

183.2. During criminal proceedings, a civil claim shall be filed against the accused or the person who is financially liable for his actions.

183.3. During criminal proceedings, a civil claim may be put forward only in written form. The claim application shall state the type of prosecution, the names of the parties and the grounds for and amount of the civil claim, and shall include a request for the seizure of a specific sum or of specific property to pay for the damage.

183.4. During criminal proceedings, the individual or legal entity concerned shall be entitled to add appendices and amendments to the civil claim before the parties to the criminal proceedings begin to address the court, if it is necessary to clarify the grounds of the civil claim and the amount of the claim.

#### **Article 184. Refusal to accept a claim application**

If, during criminal proceedings, an individual or legal entity cannot put forward a claim under the provisions of this Code, if the civil claim is not filed in time or to the appropriate person, or if the claim application does not meet the requirements of Article 183.3 of this Code, the prosecuting authority may refuse to accept the claim application.

#### **Article 185. Guarantee of the payment of civil claims**

During criminal proceedings, the preliminary investigator, investigator, prosecutor or court shall take measures to guarantee payment of a civil claim put forward at the request of the civil party or his representative, or on their own initiative, or a civil claim that may be raised in the future.

#### **Article 186. Withdrawal of civil claims**

186.1. During criminal proceedings, a person who has filed a civil claim may withdraw the claim at any stage of the prosecution until the court starts to

deliberate with a view to passing judgment, provided that no other persons' rights and interests are violated. Persons on whose behalf the prosecutor has filed a civil claim shall also have this right.

186.2. Acceptance of the withdrawal of a civil claim by the preliminary investigator, investigator, prosecutor or court shall cause the civil claim process during criminal proceedings to be discontinued, and shall deprive the persons concerned of the right to file a further claim during the criminal proceedings.

#### **Article 187. The court with jurisdiction in civil claims**

187.1. Regardless of the amount of a civil claim, it shall be examined by the court dealing with the criminal case or other prosecution material, in conjunction with that case or material.

187.2. The court shall include its decision on the civil claim in its judgment during the criminal proceedings.

#### **Article 188. Award of compensation for material damage on the initiative of the court**

If the documents and evidence on the criminal case or other prosecution material make it possible, and if, in exceptional cases, the person making a civil claim is unable to defend the claim during the court proceedings, the court shall have the right to decide, on its own initiative, to award him compensation for the damage caused by the act provided for in the criminal law.

### **Chapter XX**

#### **PAYMENT OF COMPENSATION TO VICTIMS**

##### **Article 189. The right of victims to receive compensation**

189.0. The victim shall have the right to receive compensation for the damage caused by an act provided for in criminal law if the commission of this act against him is established:

189.0.1. by a court judgment;

189.0.2. by a concluding decision of the prosecuting authority.

#### **Article 190. Amount of compensation paid to victims**

190.0. A victim shall be entitled to the following amount of compensation for the damage caused to him by an act provided for in criminal law:

190.0.1. the equivalent of three hundred times the minimum wage in the event of a very serious offence against him;

190.0.2. the equivalent of one hundred and fifty times the minimum wage in the event of a serious offence against him;

190.0.3. the equivalent of fifty times the minimum wage in the event of a minor offence against him;

190.0.4. the equivalent of ten times the minimum wage in the event of an offence against him which does not pose a major public threat.

#### **Article 191. Decision on payment of state compensation to victims**

191.1. The question of the payment to a victim of compensation under the state budget of the Azerbaijan Republic for the damage caused by an act provided for in criminal law shall be resolved by a court further to an application by the victim.

191.2. When including the decision to award state compensation to a victim in its judgment convicting the accused, the court shall also state the amount which the convicted person shall contribute to the compensation.

### **Chapter XXI**

#### **PAYMENT FOR WORK AND EXPENSES**

##### **Article 192. Payment, guarantees and compensation in respect of jury service**

192.1. The juror shall be paid for every day of his attendance at court under the circumstances and conditions, and according to the amount, determined by the appropriate executive authority of the Azerbaijan Republic.

192.2. The juror:

192.2.1. shall be paid subsistence expenses according to the conditions and amount determined for judges by the legislation of the Azerbaijan Republic;

192.2.2. shall be paid travel expenses for his return journey to the court in accordance with local rates.

192.3. The duration of the juror's court duties shall be mentioned in his service record.

192.4. The juror shall retain all the guarantees and allowances secured for the employees of the administration, institution or organisation where he works.

192.5. The management of the administration, institution or organisation may not make an employee redundant or transfer him to lower-paid work during his period of jury service.

### **Article 193. Payment for the legal assistance provided by defence counsel**

193.1. The legal assistance provided by defence counsel to the suspect or accused shall be paid for in accordance with the conditions agreed between the defence counsel and the accused, from the resources of the accused.

193.2. If the suspect or accused does not have sufficient means to pay for the services of defence counsel, and if the participation of defence counsel in the criminal proceedings must be guaranteed in accordance with Article 192.3 of this Code, the prosecuting authority shall guarantee the provision of legal assistance under the state budget of the Azerbaijan Republic.

193.3. The court shall make a reasoned decision on whether to exempt the suspect or accused from payment of the legal assistance provided by defence counsel and to pay for it from the state budget of the Azerbaijan Republic, taking into consideration the average monthly earnings, financial, property and family situation of the suspect or accused and other circumstances.

193.4. If the suspect or accused refuses defence counsel and if this refusal is not accepted by the prosecuting authority the legal assistance shall be provided to the

persons concerned free of charge on the basis of the court decision, and defence counsel shall be paid from the state budget of the Azerbaijan Republic.

193.5. In accordance with Articles 193.2 -193.4 of this Code, defence counsel shall be paid on the basis of the bill presented by him for every working hour at the rate set by the appropriate executive authority of the Azerbaijan Republic, via the appropriate local bar association.

**Article 194. Payment by the state for the legal assistance provided by the representative of a victim bringing a private prosecution**

194.1. During court proceedings, if the public prosecutor withdraws a prosecution in the form of semi-public charges, the court shall decide on the conditions governing payment of the legal assistance provided by the victim's representative to enable the victim to pursue the prosecution. If the court gives a judgment convicting the accused, and if the person bringing a private prosecution is not financially able to pay his representative, the court shall make a reasoned decision to pay from the state budget of the Azerbaijan Republic.

194.2. The lawyer's legal assistance to the person bringing a private prosecution shall be paid for as provided for in Article 193.5 of this Code.

**Article 195. Payment for the services of an interpreter, specialist or expert**

195.1. During criminal proceedings, the services of the interpreter, specialist or expert shall be paid for in the following manner:

195.1.1. if performed as part of his normal duties: within the limits of the remuneration received at his workplace;

195.1.2. if carried out at the request of the prosecuting authority: from the state budget of the Azerbaijan Republic, agreed with the prosecuting authority within the limits set by the appropriate executive authority of the Azerbaijan Republic;

195.1.3. if performed on the basis of an agreement with the defence: according to the amount agreed with the defence.

195.2. In the circumstances described in Article 195.1.2 of this Code, payment shall be made by decision of the prosecuting authority after presentation of an invoice by the interpreter, specialist or expert.

**Article 196. Reimbursement of the expenses incurred by those participating in criminal proceedings**

196.1. During criminal proceedings, the victim, the civil party, their legal representatives, the defence counsel who provides legal assistance free of charge to the suspect or accused and circumstantial witnesses, interpreters, specialists, experts and witnesses shall be reimbursed for the following expenses:

196.1.1. travel expenses relating to the summons from the prosecuting authority by rail, car (excluding taxis) or other means of transport, and by air subject to the consent of the prosecuting authority;

196.1.2. subsistence expenses if they are obliged to be absent from their permanent address, at the request of the prosecuting authority, unless these costs are paid by the administration, institution, organisation or employer concerned;

196.1.3. except where they retain their monthly wage from their administration, institution, organisation or employer, the average monthly wage for the whole period of their participation in the criminal proceedings at the request of the prosecuting authority;

196.1.4. expenses for repairs to or replacement of property damaged or lost while they are participating in investigative or other procedures at the request of the prosecuting authority.

196.2. State bodies, administrative departments, institutions and organisations shall hold the average monthly wage payable to the victim, the civil party, their legal representatives and the circumstantial witnesses, interpreters, experts and witnesses for the period of their participation in the criminal proceedings, at the request of the prosecuting authority.

196.3. The cost of chemical reagents and other materials used in connection with the work done by a specialist or expert, as well as the cost of the use of equipment and public facilities, shall be reimbursed.

196.4. The costs incurred during criminal proceedings shall be paid by the prosecuting authority, on the authority's own initiative or by decision of the authority on an application by those persons specified in Article 196.1 of this Code, according to the amount determined by the legislation of the Azerbaijan Republic. The costs concerned shall be paid from the state budget of the Azerbaijan Republic or by the person (persons) found guilty as charged.

## **Chapter XXII**

### **COURT EXPENDITURE**

#### **Article 197. Court expenditure**

197.1. Court expenditure shall comprise:

197.1.1. the sum paid in compensation for the damage caused to the victim by the act provided for in criminal law;

197.1.2. the sum paid to the victim, the civil party, their legal representatives, the suspect or accused, the defence counsel who provides legal assistance free of charge and the interpreter for their attendance and daily expenses;

197.1.3. the sum paid to jurors for their participation in the hearing of the case;

197.1.4. the sum due as a fee to the specialist, expert and interpreter;

197.1.5. the sum due to the defence counsel appointed by the prosecuting authority if legal assistance is provided to the suspect or accused free of charge;

197.1.6. the expenses incurred in holding, transporting and examining the material evidence;

197.1.7. the sum spent in payment for items damaged or destroyed during the conduct of investigative experiments and expert examination in the context of the criminal case and for other expenses of a similar kind;

197.1.8. the sum spent on other measures necessary to the conduct of the criminal case or to proceedings on other prosecution material.

197.2. Unless otherwise provided by this Code, court expenditure shall be paid from the state budget of the Azerbaijan Republic.

#### **Article 198. Collection of court expenditure**

198.1. The court may order a convicted person to pay the expenditure listed in Articles 197.1.1, 197.1.2, 197.1.4, and 197.1.6-197.1.8 of this Code, and the sum concerned may be collected from him by court decision and paid to the state or paid into the account of the individual or legal entity that paid the item of expenditure concerned.

198.2. If a convicted person is not financially able to pay the court expenditure, or if the payment of the court expenditure by the person responsible would cause great damage to his financial position, the court may partially or completely exempt him from collection of the court expenditure.

198.3. If several persons are convicted on prosecution, the court expenditure shall be collected from each of them according to the shares determined by the court, in the light of their degree of guilt, the severity of the sentence imposed on them and their financial position.

198.4. If, when an under-age person is sentenced, his offence is proven to have been committed because of insufficient attention by his legal representatives to his behaviour, the court may order them to pay the expenditure.

198.5. If a person prosecuted under private charges is acquitted, or if the person bringing a private prosecution refuses to uphold the charge in court, the court shall have the right to order the person bringing the private prosecution to pay part or all of the expenditure provided for in Article 198.1 of this Code. If the prosecution is discontinued as a result of a friendly settlement between the person prosecuted

under private charges and the person bringing a private prosecution, the court shall have the right to order the payment of part or all of its expenditure by one or both parties to the criminal proceedings.

198.6. If a convicted person dies before the judgment becomes final, his heirs shall not bear responsibility for paying for the court expenditure.

## **SECTION SIX**

### **CONFIDENTIALITY AND TIME LIMITS DURING CRIMINAL PROCEEDINGS**

#### **Chapter XXIII**

#### **THE PRESERVATION OF CONFIDENTIALITY DURING CRIMINAL PROCEEDINGS**

##### **Article 199. The preservation of personal and family secrets**

199.1. During criminal proceedings, measures shall be taken under this Code and other laws of the Azerbaijan Republic to protect information which constitutes personal and family secrets.

199.2. In the course of procedural activities, it shall be prohibited to unnecessarily collect, disseminate or use information relating to the private life of any person and other information of a personal nature which is intended to be kept secret. At the request of the investigator, prosecutor or court, the participants in investigative and court procedures shall be under an obligation not to disseminate such information and shall give a written undertaking to this effect.

199.3. If the prosecuting authority proposes to any person that he give or submit information concerning his private life in pursuance of the relevant court decision, he shall have the right to refuse to divulge it unless he is sure of the need to collect this information for the purposes of the ongoing criminal case. If the prosecuting authority requests the person to give or submit information concerning his own or another person's private life, on the grounds that it is essential, the authority shall include observations confirming the need for this information in the record of the interview or other investigative procedure.

199.4. Evidence which discloses personal or family secrets shall be examined by the court in camera.

199.5. Damage caused to any person as a result of an infringement of the inviolability of private life or the dissemination of personal or family secrets shall give rise to compensation under the legislation of the Azerbaijan Republic.

#### **Article 200. The preservation of state secrets**

200.1. During criminal proceedings, measures shall be taken under this Code and other laws of the Azerbaijan Republic in order to protect information constituting state secrets.

200.2. If the prosecuting authority proposes to any person that he give or submit information which comprises state secrets in pursuance of the relevant court decision, this person shall be entitled to refuse to divulge it unless he is sure of the need to collect this information for the purposes of the ongoing criminal case. If the prosecuting authority requests the person to give or submit information which contains state secrets on the grounds that it is essential, the authority shall include observations confirming the need for this information in the record of the interview or other investigative procedure.

200.3. If the prosecuting authority does not note that this is prohibited in the record of the interview or other investigative procedure, the state employee concerned shall immediately inform the head of the relevant state body in writing about his testimony concerning the information entrusted to him which constitutes a state secret.

200.4. The conduct of criminal cases connected with information comprising state secrets shall be placed in the hands of investigators, prosecutors or judges who have given written undertakings not to divulge this type of information. Undertakings not to divulge information constituting state secrets shall be given before the start of the court's consideration of a criminal case involving such information, an obligation also extending to jurors. Any juror who refuses to give such an undertaking shall be released from participation in the court's consideration of the criminal case. Evidence which reveals state secrets shall be examined by the court in camera.

200.5. Anyone else who submits or otherwise indicates that he wishes to acquaint himself with information which constitutes a state secret for the purposes of the criminal case, shall give an undertaking in advance not to disseminate this information. If the defence counsel and the other representative, with the exception of the legal representative, refuses to give this undertaking, he shall be deprived of the right to participate in the criminal proceedings, and the remaining persons shall not be given the information constituting a state secret. The obligation not to disseminate state secrets shall not prevent a party to the criminal proceedings from requesting that the information constituting a state secret be examined by the court in camera.

#### **Article 201. The preservation of professional and trade secrets**

201.1. During criminal proceedings measures shall be taken under this Code and other legislation of the Azerbaijan Republic to protect information which constitutes professional and trade secrets.

201.2. During the conduct of procedural activities, information which reveals professional and trade secrets may not be collected, used or disseminated unless this is necessary. At the request of the investigator, prosecutor or court, the participants in investigative and court procedures shall not disseminate this information and shall give an undertaking to this effect.

201.3. If the prosecuting authority proposes to any person that he give or submit information which contains professional and trade secrets in pursuance of the relevant court decision, this person shall be entitled to refuse to divulge it unless he is sure of the need to collect this information for the purposes of the ongoing criminal case.

201.4. If the prosecuting authority requests the person to give or submit information which contains professional and trade secrets on the grounds that it is essential, the authority shall include observations confirming the need for this information in the record of the interview or other investigative procedure.

201.5. If the prosecuting authority does not note that this is prohibited in the record of the interview or other investigative procedure, the state employee concerned or employee of a property-owning institution or organisation shall

immediately inform the management of the relevant body, institution or organisation in writing about his testimony concerning the information entrusted to him which constitutes a professional or trade secret.

201.6. Evidence which reveals professional and trade secrets shall be examined by the court in camera.

## **Chapter XXIV**

### **TIME LIMITS IN CRIMINAL PROCEEDINGS**

#### **Article 202. The calculation of periods and time limits**

202.1. During criminal proceedings the periods and time limits for which this Code provides shall be calculated in terms of hours, days, months and years.

202.2. In calculating periods for the purposes of criminal proceedings, the hour and day marking the start of the period shall not be taken into account.

202.3. During criminal proceedings, when periods are calculated in days, the period shall start at midnight on the first day and end at midnight on the last day. When periods are calculated in months and years, the period shall end on the relevant day of the last month, but if that month does not contain the relevant date, it shall end on the last day of the month. If the last day of the period is not a working day, the first working day thereafter shall be considered to be the last day of the period.

202.4. During criminal proceedings, if a complaint or another document is sent by post, or in the case of an arrested person or a person placed in a medical institution, given to the authority in charge of the remand facility or the medical institution respectively, before the expiry of the set time limit, the time limit shall not be considered to have expired. The date of postage shall be determined by the postmark, and the date of delivery to the authority in charge of the remand facility or medical institution shall be determined by the records of the institution's registry or officials.

202.5. During criminal proceedings, officials' compliance with the set time limits shall be confirmed by appropriate notes in the procedural documents. The receipt of the required documents by persons participating in criminal proceedings shall be

confirmed by their acknowledgement of receipt, which shall be added to the case file.

#### **Article 203. Results of failure to comply with set time limits and rules for the reinstatement of time limits**

203.1. Procedures carried out during criminal proceedings after the expiry of the time limit shall be considered invalid if the time limit is not reinstated.

203.2. If the time limit for lodging a complaint against the prosecuting authority has expired, a stay of execution may be granted on the application or at the request of the person concerned until the matter of the reinstatement of the time limit in question is settled.

203.3. A time limit exceeded during criminal proceedings for good reason shall be reinstated by decision of the prosecuting authority on the application or at the request of the person concerned. Unless otherwise specified in the prosecuting authority's decision, the time limit shall be reinstated only for the person in question, and not for others.

203.4. A complaint against the investigating or preliminary investigation authority's refusal to reinstate the time limit may be submitted to the prosecutor. No complaints against the court's refusal to reinstate the time limit after it has been exceeded may be made to the court of appeal. The court of appeal shall have the right, in accordance with its powers, to reinstate a time limit for appeal which has been exceeded. The prolongation or reinstatement of other procedural time periods shall be resolved in accordance with the provisions of this Code.

## **SPECIAL PART**

### **SECTION SEVEN**

#### **PRE-TRIAL CONDUCT OF THE PROSECUTION**

##### **Chapter XXV**

###### **COMMENCEMENT OF CRIMINAL PROCEEDINGS**

## **Article 204. Reporting by individuals of offences committed or planned**

204.1. Information provided by an individual concerning an offence committed or planned, which is deemed to constitute grounds for instituting criminal proceedings, may be in written or verbal form.

204.2. Verbal information about an offence committed or is being planned, obtained during an investigation or a court hearing, shall be noted in the record of the investigative procedure or the court hearing as the case may be. In other cases, a separate record shall be drawn up. The family name, first name, father□s name, date of birth, home or work address of the informant, his connection with the offence, the source of the information, as well as information about the identity card, passport or other documents presented as confirmation of the informant□s identity shall be noted in the record. If the informant is unable to present an identity card, passport or other documents confirming his or her identity, other measures shall be taken to verify it.

204.3. If the informant is 16 (sixteen) or over, he or she shall be informed in writing about the liability incurred by persons intentionally making false statements and shall sign to acknowledge receipt of this information.

204.4. A statement about the offence committed or planned, and about the circumstances in which it came to the informant□s knowledge, shall be noted in the record in the first person.

204.5. The record shall be signed by the informant and by the official taking his statement.

204.6. Statements which are unsigned or signed with a false signature or recorded on behalf of a fictitious person, or any other anonymous information about an offence committed or planned, may not constitute grounds for instituting criminal proceedings.

204.7. The provisions of paragraphs 204.1, 204.4 and 204.5 of this Code shall also apply in cases where a perpetrator comes forward voluntarily to make a confession.

**Article 205. Reporting by legal entities (or officials) of offences committed or planned**

205.1. Information provided by a legal entity (or official) concerning an offence committed or planned, which is deemed to constitute grounds for instituting criminal proceedings, shall be in the form of a letter, a confirmed telegram, telephone message, radio message, telex or other approved form of communication.

205.2. Documents confirming the commission of the offence shall be attached to the letter sent by the legal entity (or official) in order to report the offence.

205.3. A letter reporting an offence committed or planned shall state the full name of the legal entity, or the family name, first name and father□s name of the official, the official□s work address, his connection with the offence and the source of the information, as well as information about documents attached to the letter.

205.4. Statements which are unsigned or signed with a false signature or recorded on behalf of a fictitious legal entity (or official), or other anonymous information about an offence committed or planned, may not constitute grounds for instituting criminal proceedings.

**Article 206. Media information about offences committed or planned**

206.1. Information held by the media concerning an offence committed or planned, which is deemed to constitute grounds for instituting criminal proceedings, shall be sent to the prosecuting authorities after its disclosure in the press or on radio or television.

206.2. Correspondence addressed to the media about an offence committed or planned, which has not been published, shall be sent by media officials to the prosecuting authorities in accordance with Article 205 of this Code.

206.3. Media officials who have published or sent to the authorities information about an offence committed or planned and authors of such information shall submit the documents in their possession confirming the information to the

preliminary investigator, the investigator, the prosecutor in charge of the procedural aspects of the investigation or the court.

**Article 207. Rules governing examination of information about an offence committed or planned**

207.1. The preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation shall fulfil the following duties:

207.1.1. register immediately and examine any information received from individuals or legal entities about an offence committed or planned, and information within the investigating authority's jurisdiction which has been published in the media and submitted together with confirming documents;

207.1.2. when necessary, within 3 (three) days of receiving the information (excluding information about obvious offences), or in exceptional cases not more than 7 (seven) days, verify that there is sufficient evidence to institute criminal proceedings;

207.1.3. decide whether or not to proceed with the case, depending on the results of the examination (or verification) of the information concerning the offence committed or planned.

207.2. The preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation examining information about offences subject to a semi-public prosecution may carry out the verification if a complaint has been lodged by the victim of the offence. If there is no such complaint, information provided by other persons about an offence subject to a semi-public prosecution shall not be taken into consideration by the preliminary investigator or investigator. The information may be examined by a prosecutor in the cases provided for in Article 37.5 of this Code.

207.3. When examining information about an offence committed or planned, the preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation may not verify the activities of any legal entity. Where it is necessary to carry out such a verification, the preliminary

investigator, investigator or prosecutor in charge of the procedural aspects of the investigation shall:

207.3.1. apply to the appropriate state authority or audit organisation to have it appoint a specialist to verify the activity of the legal entity;

207.3.2. decide whether or not to proceed with the case on the basis of the verification carried out by the specialist appointed by the appropriate state authority or audit organisation.

207.4. On examining information concerning an offence committed or planned, the preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation may request additional documents from the informants and explanations from them and other persons, and examine the scene of the incident. Apart from examination of the scene, performance of other investigative procedures and implementation of coercive procedural measures shall be prohibited before criminal proceedings have commenced.

207.5. In all cases, on receipt of information about an offence committed or planned, the preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation shall take one of the following decisions:

207.5.1. to commence criminal proceedings;

207.5.2. not to proceed with the case;

207.5.3. to send the information to the authority in charge of the investigation;

207.5.4. to send information on an offence subject to a semi-public prosecution to the relevant court.

207.6. Except in the case provided for in Article 207.5.4 of this Code, on receiving information about an offence committed or planned, a court shall immediately send all the information in its possession to the prosecutor in charge of the procedural aspects of the investigation so that he may examine it.

207.7. The rules governing investigation of complaints concerning obvious offences which do not pose a major public threat are laid down in Articles 293-297 of this Code.

**Article 208. Discovery by the prosecuting authority of information about an offence committed or planned**

208.0. Where information about an offence committed or planned is discovered directly by the preliminary investigator, the investigator or the prosecutor, proceedings shall be instituted in the following cases:

208.0.1. where the preliminary investigator, the investigator or the prosecutor detects circumstances showing that an offence has been committed or, immediately after the commission of an offence, discovers evidence and results of the offence;

208.0.2. where a preliminary investigator receives information about an offence from officers of the preliminary investigating authority conducting a search operation or while performing his duties in accordance with Article 86 of this Code during the investigation of another offence;

208.0.3. where an investigator receives information about an offence while performing his duties in accordance with Article 85 of this Code during the investigation of another offence;

208.0.4. where a prosecutor receives information about an offence during the investigation of another offence or during court proceedings, in accordance with Article 84 of this Code or while performing his duties under the legislation of the Azerbaijan Republic;

208.0.5. where a court receives information about an offence while conducting trial proceedings.

**Article 209. Immediate commencement of criminal proceedings**

209.1. Where there are grounds provided for in this Code, the preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation shall in all cases immediately institute criminal proceedings.

209.2. The prosecutor in charge of the procedural aspects of an investigation shall also institute criminal proceedings on the basis of the known facts in the following circumstances:

209.2.1. where a corpse is found with evidence to indicate murder;

209.2.2. on discovery of an unidentified corpse, parts of a human body or their place of burial;

209.2.3. where there are signs of mass death, disease or poisoning;

209.2.4. where a serious explosion or fire has occurred in a public place, on private premises or in a building used by state authorities or organisations;

209.2.5. on discovery of firearms, ammunition, explosives, radioactive materials, or poisons;

209.2.6. where there are signs that a person has been kidnapped or taken hostage; or where there is the suspicion of murder of a missing person but no information;

209.2.7. where a person is deprived of liberty illegally;

209.2.8. where historical or cultural monuments or graves have been desecrated;

209.2.9. in the event of an armed uprising or coup d'Etat;

209.2.10. where there is an open attempt to change the constitutional structure of the Azerbaijan Republic by force;

209.2.11. in the event of mass disorder;

209.2.12. where sabotage or acts of terrorism take place;

209.2.13. where an attempt is made on the life of the President of the Azerbaijan Republic, a member of the Parliament of the Azerbaijan Republic or a member of the Cabinet of the Azerbaijan Republic;

209.2.14. in cases of contempt of court;

209.2.15. where an attempt is made on the life of a judge, prosecutor, investigator, preliminary investigator, counsel or expert, or of a victim or witness in a criminal case under investigation by the investigating or preliminary investigating authority or before a court;

209.2.16. where a person serving a sentence or detained on remand escapes from prison or from detention.

#### **Article 210. Rules governing the commencement of criminal proceedings**

210.1. In the cases specified in Article 209 of this Code the preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation shall decide, in accordance with this powers, to institute criminal proceedings.

210.2. The following shall be stated in the decision to institute criminal proceedings:

210.2.1. the reasons, grounds or facts on which the criminal case is based;

210.2.2. the article of criminal law establishing the offence;

210.2.3. acceptance or transfer of responsibility for conducting the investigation after criminal proceedings have been instituted.

210.3. If the victim of the offence is known when the criminal proceedings are instituted, he shall be recognised as a victim at the commencement of the proceedings, and where a civil claim has been lodged, he shall also be recognised as a civil party in the same decision.

210.4. A copy of the decision to institute criminal proceedings shall be sent by the person who takes this decision, within 24 hours, to any natural or legal entity or official who has given information about the offence as well as to the prosecutor in charge of the procedural aspects of the investigation.

210.5. At the commencement of the proceedings measures shall be taken to prevent the continuation or repetition of offences and to preserve the evidence of the offence and any objects or documents which may be of significance to the case.

210.6. After the commencement of criminal proceedings:

210.6.1. the prosecutor in charge of the procedural aspects of the investigation shall transfer the case-file to the investigator so he may take the case under his jurisdiction and conduct the investigation or shall take the case under his own jurisdiction and conduct the investigation himself;

210.6.2. the investigator informing the prosecutor in charge of the procedural aspects of the investigation of a decision to institute proceedings shall conduct the investigation into the criminal case;

210.6.3. the preliminary investigator informing the prosecutor in charge of the procedural aspects of the investigation of a decision to institute proceedings shall conduct the preliminary investigation into the criminal case.

#### **Article 211. Joinder and division of criminal cases**

211.1. Criminal cases shall be joined in accordance with the provisions of Article 49 of this Code.

211.2. The investigator or the prosecutor in charge of the procedural aspects of the investigation shall separate material concerning another criminal case from the material concerning a criminal case under his jurisdiction with a view to its transfer to another jurisdiction in any of the following cases:

211.2.1. if, when the accused is charged with the offence, another offence is detected, which is unconnected with the first and was committed not by the accused or with his participation, but by other known or unknown persons;

211.2.2. if the initial criminal case has to be suspended in respect of certain offences under investigation;

211.2.3. if the initial criminal case has to be suspended with regard to one group of accused persons, but not in respect of another group of accused persons;

211.2.4. if persons under 16 (sixteen) are among the accused in the initial criminal case (if division of jurisdiction is possible);

211.2.5. if grounds for hearing the case in camera are allowed in respect of one accused person but not another;

211.2.6. if the size of the criminal case is such as to prevent the protection of the rights and legal interests of those participating in the case and unacceptably delay the investigation and the transfer of the case to the court.

211.3. Even where one or more of the conditions set out in Article 211.2 of this Code are fulfilled, if all the circumstances connected with the prosecution cannot be investigated thoroughly, completely, objectively and in time in the event of division of the criminal case, a separate case shall not be created.

211.4. In the decision to divide a criminal case the following shall be stated:

211.4.1. the grounds for the division of the criminal case;

211.4.2. events and persons causing the division of the criminal case;

211.4.3. the article of criminal law establishing the offence giving rise to division of the criminal case;

211.4.4. the decision concerning the conduct of the further investigation of the criminal case and acceptance of responsibility for it.

211.5. A list of the material included in the case-file and copies or originals of the decisions, records, documents and material evidence in the file shall be added to the decision to divide the criminal case.

211.6. The first original of the decision to divide the criminal case and the list of material included in the case-file shall be added to the file on the initial case; the second original shall be added to the file on the divided case. A copy of the decision to divide the criminal case shall be sent to the prosecutor in charge of the procedural aspects of the investigation within 24 hours.

211.7. The defendant in the initial case, his legal representative and counsel and, if their legal interests are affected, the victim, civil party, defendant to the civil claim and their representatives shall be informed of the division of the case and the further steps to be taken.

## **Article 212. Decision not to proceed with a case**

212.1. The preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation shall decide not to proceed with a case if the reasons for doing so are illegal or if there are no grounds to institute criminal proceedings.

212.2. A copy of the decision not to proceed with the criminal case shall be sent to the individual, legal entity or official who gave information about the offence committed or planned.

212.3. A complaint about a decision by a preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation not to proceed with a case may be lodged with the prosecutor in charge of the procedural aspects of the investigation, the senior prosecutor or the court, as appropriate.

212.4. The following action shall be taken in connection with a complaint lodged against a decision by the preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation not to proceed with a criminal case:

212.4.1. the prosecutor in charge of the procedural aspects of the investigation or the senior prosecutor may cancel the decision, decide to institute proceedings and transmit this decision to the investigator with a view to the conduct of the investigation, or may uphold without change the decision not to proceed with the case;

212.4.2. the court exercising judicial supervision may set aside the decision, draw the attention of the prosecutor in charge of the procedural aspects of the investigation to breaches of the requirements of Articles 207, 209 and 210 of this Code, and rule that those requirements must be met, or it may uphold without change the decision not to proceed with the case.

## **Article 213. Transmission of information about an offence to the relevant investigator or court**

213.1. A preliminary investigator or investigator may send information concerning an offence committed or planned to the relevant investigating authority, before the commencement of proceedings, in the following circumstances:

213.1.1. if he has no jurisdiction to investigate the case;

213.1.2. if the offence was committed outside his territorial jurisdiction.

213.2. Before the commencement of proceedings, the prosecutor in charge of the procedural aspects of the investigation may send information concerning an offence committed or planned to the relevant investigating authority only if the offence was committed outside his territorial jurisdiction and, with a view to deciding whether to commence proceedings, it is necessary to make verifications as to the scene of the offence.

213.3. A preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation shall refer complaints by the victims of offences covered by a private prosecution to the relevant court of first instance.

213.4. A preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation who, as the relevant investigating authority, receives information about an offence committed or planned, shall take the measures provided for in Articles 207, 208 and 210 of this Code, in accordance with his powers.

## **Chapter XXVI**

### **GENERAL CONDUCT OF THE INVESTIGATION**

#### **Article 214. Conduct of the preliminary investigation into a criminal case**

214.1. The preliminary investigation, as part of the investigation, shall take the form of:

214.1.1. conduct of investigative procedures which cannot be delayed in criminal cases subject to mandatory investigation;

214.1.2. simplified pre-trial proceedings concerning certain obvious offences which do not pose a major public threat.

214.2. The preliminary investigation of a criminal case shall be conducted by the following investigative authorities and persons:

214.2.1. by preliminary investigators belonging to the relevant executive authorities (investigating authorities) of the Azerbaijan Republic where a criminal case comes within the jurisdiction of the investigators belonging to the same executive authorities of the Azerbaijan Republic;

214.2.2. by commanders of military units, heads of the military administration, governors of prisons and heads of detention facilities, captains of ships at sea and other authorised people exercising the powers of a preliminary investigator, where an offence was committed on the territory of the military unit, military administration, prison or detention facility or on board ship; and in cases which are under the authority of the security bodies of the military units and military departments which carry out counterintelligence activity, by the investigators of the appropriate executive authorities.

214.3. A preliminary investigation in the form of investigative procedures which cannot be delayed shall be carried out with the aim of gathering evidence of the offence and formalising it. When the preliminary investigation is carried out in this form, the preliminary investigator shall in accordance with Articles 147, 148, 153, 207, 209, 210, 226-232, 234, 236, 238-247, 264, 268-270 and 273-276 of this Code:

214.3.1. institute criminal proceedings and inform the prosecutor in charge of the procedural aspects of the investigation without delay;

214.3.2. conduct investigative procedures such as detaining any suspect, questioning suspects, victims, witnesses, civil parties and defendants to civil claims, and conducting search operations, searches of persons (body search), interviews and seizure of property;

214.3.3. not later than 10 (ten) days after the commencement of proceedings, transfer the case to the investigating authority for further investigation;

214.3.4. after 10 (ten) days have elapsed following the commencement of proceedings, conduct specific investigative procedures or search operations on the instructions of the investigator or the prosecutor carrying out the investigation;

214.3.5. if 10 (ten) days after the commencement of proceedings the case remains unsolved, take measures to identify, find, detain and hand over the person who committed the offence to the investigator.

214.4. A preliminary investigation in the form of simplified pre-trial proceedings shall be conducted in respect of obvious offences covered by Articles 127.1, 128-132, 174-176, 177.1, 186.1, 187.1, 187.2, 196.1, 197.1 and 201.1 of the Criminal Code of the Azerbaijan Republic, which do not pose a major public threat.

214.5. The preliminary investigation, in the form of simplified pre-trial proceedings, of offences which do not pose a major public threat shall be carried out in accordance with Articles 293-297 of this Code.

214.6. While carrying out the investigative procedures within his authority, the preliminary investigator, regardless of the form of the preliminary investigation, shall enjoy the rights and perform the duties of investigators, in accordance with the requirements of the articles of this Code governing the conduct of investigative procedures.

#### **Article 215. Conduct of the investigation into a criminal case**

215.1. Investigation shall be obligatory in all cases, except where the preliminary investigation takes the form of simplified pre-trial proceedings in respect of offences which do not pose a major public threat.

215.2. The investigation of a criminal case shall be carried out by the prosecutor's office or the relevant executive authority of the Azerbaijan Republic.

215.3. The investigation shall be carried out by the prosecutor's office in the following cases:

215.3.1. cases involving offences covered by Articles 100-113, 120-125, 126.3, 135-138, 145, 146, 149, 154-164, 165.2, 166.2, 167, 168, 179, 190, 191, 195,

202, 203, 208, 210-212, 222, 223, 262, 268, 286-288, 290-302, 304, 307-315, 317, 321 and 323 of the Criminal Code of the Azerbaijan Republic;

215.3.2. cases involving charges of abuse of authority by the President of the Azerbaijan Republic, members of parliament, the prime minister, judges, employees of the prosecutor's office, employees of the diplomatic service of the Azerbaijan Republic in foreign countries and of foreign countries□ diplomatic representations in the Azerbaijan Republic and employees of the judicial, police, security, tax and customs authorities.

215.4. The investigation of cases concerning war crimes, military service or offences committed by military personnel shall be conducted by the military prosecutor's office (if someone who is not military personnel is an accessory to the offence, the investigation in respect of that person shall also be conducted by the military prosecutor's office).

215.5. The preliminary investigation of criminal cases other than those provided for in Articles 215.3 and 215.4 of this Code shall be conducted by the relevant executive authority of the Azerbaijan Republic.

215.6. If in the course of the pre-trial proceedings it is established that the case concerns several investigative authorities, the following measures shall be taken by reasoned decision of the Principal Public Prosecutor of the Azerbaijan Republic or one of his deputies in order to ensure that the investigation is conducted thoroughly, completely and objectively:

215.6.1. where the criminal case is a matter for the prosecutor's office or the relevant executive authority, a joint investigating team shall be set up under the leadership of the prosecutor or an investigator from the prosecutor's office;

215.6.2. where the criminal case is a matter for several executive authorities of the Azerbaijan Republic, depending on the seriousness of the crime, a joint investigating team involving investigators from those authorities shall be set up, and a head of team shall be appointed.

215.7. Transfer of the case from the investigating authority concerned to another investigating authority, with a view to ensuring that the investigation of the case is

conducted thoroughly, completely and objectively, shall be possible by reasoned decision of the Principal Public Prosecutor of the Azerbaijan Republic in the following exceptional cases:

215.7.1. if it is established that the offence was concealed by the investigating authority concerned (or if the necessary measures were not taken by the head of the appropriate executive authority of the Azerbaijan Republic, including failure to remove the circumstances in question and to charge the accused);

215.7.2. if it is established that during the investigation of the case the accused was arrested unlawfully or tortured by the investigating authority concerned;

215.7.3. if it is established that the accused was denied the right to counsel, as provided for in Article 92.3 of this Code, by the investigating authority concerned;

215.7.4. if the head of the relevant executive authority of the Azerbaijan Republic in charge of investigating the criminal case, or one of his close relatives, is victim, suspect or accused, civil party or defendant to the civil claim in the criminal case.

215.8. If the Principal Public Prosecutor of the Azerbaijan Republic himself or one of his close relatives is victim, suspect or accused, civil party or defendant to the civil claim, the case which the prosecutor's office has jurisdiction to investigate shall be transferred to another investigating authority by reasoned decision of the first Deputy Principal Public Prosecutor of the Azerbaijan Republic.

#### **Article 216. Place where the investigation is conducted**

216.1. The preliminary investigation shall be carried out in the place (administrative territorial unit) where the offence was committed.

216.2. To ensure that the pre-trial proceedings are conducted thoroughly, completely, objectively and in good time, the investigation may also, by decision of the Principal Public Prosecutor of the Azerbaijan Republic, be carried out in the area where the offence became known and where the suspect or accused and the majority of the witnesses are to be found.

216.3. Where it is necessary to conduct particular investigative procedures in another area during the investigation, the investigator shall be entitled:

216.3.1. at his discretion, to commission the conduct of these procedures by a preliminary investigator or investigator in the area where the suspect, the accused or the majority of the witnesses are to be found;

216.3.2. in cases which do not admit delay, to conduct the investigation in the area where the suspect, the accused or the majority of the witnesses are to be found, with the consent of the prosecutor in charge of the procedural aspects of the investigation in that area.

#### **Article 217. The start of the investigation**

217.1. The investigation or the preliminary investigation (including all investigative procedures except examination of the scene of the offence) shall take place only after a decision to commence criminal proceedings has been made.

217.2. After the commencement of criminal proceedings, the preliminary investigator or investigator, by virtue of the powers conferred on him in Articles 85 and 86 of this Code or pursuant to the instructions of the prosecutor in charge of the procedural aspects of the investigation, shall take the case under his jurisdiction and issue the relevant decision to start the investigation of the case. If criminal proceedings are instituted by the preliminary investigator or investigator assuming jurisdiction, he shall issue a single decision to commence proceedings and take the case under his jurisdiction.

217.3. After the decision provided for in Article 217.1 of this Code has been issued, a copy of it shall be sent to the prosecutor in charge of the procedural aspects of the investigation within 24 hours.

#### **Article 218. Time limits for conducting the investigation**

218.1. The preliminary investigation shall in all cases be completed no more than 10 (ten) days after the commencement of criminal proceedings.

218.2. The investigation of a criminal case shall be completed within the following time limits:

218.2.1. in the cases of offences which do not pose a major public threat, no later than 2 (two) months after the commencement of criminal proceedings;

218.2.2. for minor offences, no later than 3 (three) months after the commencement of criminal proceedings;

218.2.3. for serious offences, no later than 3 (three) months after the commencement of criminal proceedings;

218.2.4. for very serious offences, no later than 4 (four) months after the commencement of criminal proceedings.

218.3. The period of the investigation shall be calculated from the date on which proceedings commence to the date on which the case is sent to the court or a decision is made to discontinue it.

218.4. The time necessary for the accused and his defence counsel to take cognisance of the case-file shall not be included in the period of the investigation. If the accused and his defence counsel prolong this period intentionally and without good reason, the prosecutor in charge of the procedural aspects of the investigation may, at the investigator's request, decide to impose a time limit.

218.5. The period of the investigation shall not include time during which the investigation was suspended on the grounds provided for in Article 53.1 of this Code.

218.6. Where justified by complexity of the criminal case, the time limits for conducting the investigation laid down in Article 218.2 of this Code may be prolonged, on a reasoned application by the investigator and on the basis of submissions by the prosecutor in charge of the procedural aspects of the investigation, by decision of the Military Prosecutor of the Azerbaijan Republic, the Prosecutor of Baku, the Prosecutor of the Nakhchivan Autonomous Republic or the Deputy Principal Public Prosecutor of the Azerbaijan Republic as follows:

218.6.1. for no longer than 2 (two) months in the case of offences which do not pose a major public threat;

218.6.2. for no longer than 2 (two) months for minor offences;

218.6.3. for no longer than 3 (three) months for serious offences;

218.6.4. for no longer than 4 (four) months for very serious offences.

218.7. In connection with an especially complex criminal case coming under Article 218.6 of this Code, the prolonged time limit for conducting the investigation decided by a senior prosecutor may be further extended, on a reasoned application by the investigator and on the basis of submissions by the prosecutor in charge of the procedural aspects of the investigation, endorsed by the Military Prosecutor of the Azerbaijan Republic, the Prosecutor of Baku, the Prosecutor of the Nakhchivan Autonomous Republic, by decision of the Deputy Principal Public Prosecutor of the Azerbaijan Republic, as follows:

218.7.1. for no longer than 1 (one) month in the case of offences which do not pose a major public threat;

218.7.2. for no longer than 2 (two) months for minor offences;

218.7.3. for no longer than 3 (three) months for serious offences;

218.7.4. for no longer than 4 (four) months for very serious offences.

218.8. In connection with an exceptionally complex criminal case coming under Article 218.7 of this Code, the prolonged time limit for conducting the investigation decided by a senior prosecutor may be further extended, on a reasoned application by the investigator and on the basis of submissions by the prosecutor in charge of the procedural aspects of the investigation, endorsed by the Military Prosecutor of the Azerbaijan Republic, the Prosecutor of Baku, the Prosecutor of the Nakhchivan Autonomous Republic or the Deputy Principal Public Prosecutor of the Azerbaijan Republic, by decision of the Principal Public Prosecutor of the Azerbaijan Republic, as follows:

218.8.1. for no longer than 1 (one) month in the case of offences which do not pose a major public threat;

218.8.2. for no longer than 2 (two) months for minor offences;

218.8.3. for no longer than 3 (three) months for serious offences;

218.8.4. for no longer than 6 (six) months for very serious offences.

218.9. The reasoned application by the investigator and the submissions by the prosecutor in charge of the procedural aspects of the investigation endorsed by the appropriate prosecutor, seeking an extension of the time limit for completing the investigation, shall be submitted to the senior prosecutor no less than 7 (seven) days before the expiry of the initial time limit for completing the investigation. In examining the application for an extension of the time limit for the investigation, the senior prosecutor shall:

218.9.1. verify the lawfulness and validity of the application lodged by the investigator and the submissions made by the lower prosecutor;

218.9.2. assess the measures taken by the investigator and the prosecutor in charge of the procedural aspects of the investigation to guarantee the thorough, complete, objective and timely conduct of the pre-trial proceedings;

218.9.3. make a reasoned decision whether or not to prolong the time limit for the investigation of the case;

218.9.4. take effective measures in accordance with his powers if he finds that the investigation of the criminal case has been conducted in a dilatory manner or has breached the requirements of this Code.

218.10. The investigation of a criminal case solved in compliance with the provisions of paragraphs 218.3-218.9 of this Code shall in all cases be completed within the following time limits:

218.10.1. in the case of an offence which does not pose a major public threat, no longer than 6 (six) months;

218.10.2. in the case of a minor offence, no longer than 9 (nine) months;

218.10.3. in the case of a serious offence, no longer than 12 (twelve) months.

218.10.4. in the case of a very serious offence, no longer than 18 (eighteen) months.

218.11. The time limit for conducting the investigation into an unsolved criminal case may be extended several times by the Chief Prosecutor of the Azerbaijan

Republic, until the case is solved in accordance with Articles 218.8 and 218.9 of this Code. After the case has been solved, the time limit for the investigation of the case may be extended only once by the Principal Public Prosecutor of the Azerbaijan Republic, in accordance with Articles 218.8 and 218.9 of this Code.

#### **Article 219. The end of the investigation**

219.1. The investigation shall end when it is decided to send the case to court so that the indictment may be drawn up and compulsory measures of a medical nature may be taken, or when it is decided to discontinue the criminal proceedings.

219.2. In criminal cases subject to compulsory investigation, after the performance of investigative procedures which cannot be delayed and in any case within 10 (ten) days of the commencement of criminal proceedings, the preliminary investigator shall transfer the criminal case to the investigator under the terms of the relevant decision. A copy of this decision shall be sent within 24 hours to the prosecutor in charge of the procedural aspects of the investigation. The accused, his legal representative and defence counsel and the victim, civil party, defendant to the civil claim and their representatives who have participated in the initial investigative procedures shall be informed that the case has been transferred to the investigator.

#### **Article 220. Obligation to explain the rights of participants in criminal proceedings and examine their applications**

220.1. During the investigation, the preliminary investigator or the investigator shall explain to the suspect, accused, civil party, defendant to the civil claim and their representatives, and any other persons participating in the investigative procedures, their rights and duties and the consequences of any failure to fulfil the duties imposed on them.

220.2. During the investigation the preliminary investigator or the investigator shall examine all applications filed by participants in the criminal proceedings.

220.3. The preliminary investigator or investigator may not, without good reason, refuse written applications by the suspect, accused, civil party, defendant to the civil claim and their representatives concerning the examination of witnesses, the seeking of an expert opinion and the conduct of other investigative procedures,

where these are important for investigating all the circumstances connected with the criminal prosecution thoroughly, completely and objectively.

220.4. Verbal or written applications shall be examined no later than within 5 (five) days of their receipt by the preliminary investigator or investigator.

220.5. The preliminary investigator or investigator shall give a reasoned decision about whether to grant an application or reject it completely or partially, and shall immediately send the decision to the applicant..

**Article 221. Obligation to detect and remove the circumstances which engendered conditions conducive to the commission of the offence**

221.1. During the investigation, the investigator shall determine the circumstances (reasons and conditions) which facilitated the commission of the offence. On determining these circumstances the investigator shall, if necessary, send a recommendation to the legal entity or official concerned to take steps to eliminate the circumstances which engendered conditions conducive to the commission of the offence.

221.2. It shall be obligatory to examine the investigator's recommendation in order to take steps to eliminate the circumstances which engendered conditions conducive to the commission of the offence; the investigator shall be informed of the outcome in writing within one month.

**Article 222. Non-disclosure of information about the investigation**

222.1. Pre-trial information concerning the investigation of the criminal case may be disseminated only insofar as its disclosure is not counter to the interests of the investigation and does not violate the rights and legal interests of participants in the criminal proceedings.

222.2. Disclosure of information about the investigation shall be possible only with the permission of the person conducting the investigation, the prosecutor in charge of the procedural aspects of the investigation or the court.

222.3. Information about the investigation may be disseminated by participants in the criminal proceedings and journalists only with the permission of the preliminary

investigator, the investigator, the prosecutor in charge of the procedural aspects of the investigation or the court, where the disclosure is not counter to the interests of the investigation and does not violate the rights and legal interests of other participants in the criminal proceedings.

222.4. During the preliminary investigation, with the aim of ensuring compliance with the provisions of Articles 222.1-222.3 of this Code, the preliminary investigator or the investigator shall inform in writing the witnesses, victim, civil party, defendant to the civil claim, their representatives, specialists, experts, interpreters, circumstantial witnesses, counsel for the defence and other persons that they are prohibited from disseminating information about the investigation without his permission.

222.5. If any person has suffered non-material or material damage as a result of a violation of his privacy, the preliminary investigator, the investigator, the prosecutor in charge of the procedural aspects of the investigation, the judge, or any person informed of the ban on disseminating the information about the investigation who committed the breach of privacy shall be held liable under the legislation of the Azerbaijan Republic.

## **Chapter XXVII**

### **CHARGING OF SUSPECTS**

#### **Article 223. Grounds and procedure for charging a suspect**

223.1. The grounds for preferring charges shall be the totality of the *prima facie* evidence that the person concerned has committed an offence.

223.2. Where there is evidence provided for in paragraph 223.1 of this Code, the investigator shall give a reasoned decision to prefer charges against the person concerned.

223.3. In the reasoning of the decision to prefer charges, the following shall be stated:

223.3.1. the family name, first name and father's name of the accused and other information of legal significance concerning his identity;

223.3.2. the place and time of the offence, the method and result of its commission, the degree of guilt, the motive for committing the offence and the nature of the charge with substantiating evidence;

223.3.3. in the case of an attempt to commit an offence or of preparations for an offence, the reasons why the offence was not committed;

223.3.4. if the offence was committed by a group of persons, their degree of involvement;

223.3.5. any aggravating circumstances.

223.4. The decision to charge the suspect and the article of criminal law which establishes his responsibility for the offence committed shall be stated in the conclusions section of the decision.

223.5. If the accused is responsible for having committed several offences under various articles of criminal law, the various offences committed shall be stated in the reasoning, and the articles of criminal law establishing responsibility for each of these offences, in the conclusions part.

223.6. A copy of the decision shall be sent to the prosecutor in charge of the procedural aspects of the investigation by the investigator within 24 hours.

#### **Article 224. Procedure governing the formal announcement of the charges**

224.1. Within 48 hours of the investigator's decision to prefer charges, and, in any case, not later than the day when the accused gives himself up or is forcibly brought before the prosecuting authority, he shall be formally charged.

224.2. After verifying the identity of the accused, the investigator shall inform him of the decision to prefer charges and explain the nature of the charges. The investigator and the accused shall sign the decision as confirmation of the formal announcement of the charges and its date and time. Defence counsel shall be entitled to attend the formal announcement of the charges.

224.3. After announcing the charges, the investigator shall explain to the accused his rights and duties under Article 91 of this Code. The accused shall be given a

copy of the decision to prefer charges and written notification of his rights and duties. The investigator shall draw up a record of the formal announcement of charges, explanation of the accused's rights and duties and transmittal of a copy of the decision. This record shall be signed by the investigator, the accused and defence counsel (if present).

224.4. If the accused or defence counsel refuses to sign the decision or the record, the investigator shall note this in the record, stating the reasons for it, and shall inform the prosecutor in charge of the procedural aspects of the investigation within 24 hours.

#### **Article 225. Altering or adding to the charges**

225.1. If during the investigation it becomes necessary to change or to add to the charges, the investigator shall again formally announce the charges in accordance with Articles 223 and 224 of this Code.

225.2. If during the preliminary investigation any part of the charges preferred is not confirmed, the investigator shall discontinue the proceedings in respect of that part of the charges, inform the accused and transmit a copy of the decision to him.

### **Chapter XXVIII**

#### **Questioning and confrontation**

#### **Article 226. Rules governing summons for questioning**

226.1. Witnesses, victims, suspects, the accused and other persons shall be called to appear before the investigator by a summons served on them in person, or in their absence, transmitted via an adult member of their family, a neighbour, a representative of the relevant housing organisation or their place of work or study. Summons may be issued by telegram, telephone or fax.

226.2. The summons shall state who is called to appear, in which procedural capacity, and where and when (date and time). The summons shall indicate that if the person fails to attend, a warrant for him to be brought in by force shall be issued in accordance with Article 178 of this Code.

226.3. Minors shall as a rule be summoned via their legal representatives.

226.4. A suspect or accused who is detained on remand shall be summoned via the authority in charge of the remand facility where he is held.

#### **Article 227. Questioning of witnesses**

227.1. A witness may be questioned on any matter of significance to the criminal prosecution, including the identity of the suspect, the accused, the victim, and other witnesses. A witness's lawyer or other representative shall be entitled to participate.

227.2. Witnesses shall be questioned at the place where the investigation is conducted and, where necessary, at their home.

227.3. Witnesses shall be questioned separately from other witnesses. Throughout the questioning the investigator shall take measures to prevent witnesses called in the same case from contacting each other.

227.4. Before questioning witnesses, the investigator shall determine their identity, inform them of the case in which they are called and of their duty to give evidence on all the circumstances of the case known to them and warn them of the criminal responsibility incurred for refusing to testify, evading questioning and intentionally giving false testimony. The witness shall be informed that he is not obliged to testify against himself or close relatives. The investigator shall then establish the witness's relations with the suspect, accused and/or victim and begin the interview.

227.5. The interview shall begin with a proposal to the witness to relate all the circumstances connected with the criminal prosecution, following which he may be questioned.

227.6. The investigator shall be entitled to interview the witness using audio, video, film and other recording techniques.

#### **Article 228. Questioning of under-age witnesses**

228.1. If an under-age witness can provide information of significance to the case either verbally or in another form, he may be questioned notwithstanding his age.

228.2. If a witness is under 14 years old, or, at the investigator's discretion, under 16 years old, the interview shall be held with the participation of his teacher or, where necessary, a doctor and the witness's legal representative.

228.3. Before the start of the interview, these persons shall be informed of their right to participate in the interview, to make observations with the agreement of the investigator and to put questions; they shall also be informed of their duties. The investigator may refuse to answer their questions, but shall note them in the record of the interview. All observations made by the witness and those participating in the interview shall be included in the record.

228.4. A witness who is under 16 years old shall merely be informed of his duty to tell the truth. However, he shall not be warned of the criminal responsibility incurred for refusal to testify, evading questioning and intentionally false testimony.

#### **Article 229. Questioning of dumb, deaf or blind witnesses or witnesses who suffer from a serious illness**

229.1. An interview with a dumb, deaf or blind witness shall be held with the participation of a person who understands his signs or who can communicate with him in sign language. This person's participation in the interview shall be noted in the record.

229.2. Where a witness suffers from a mental or other serious illness, the interview shall be held with the permission and the participation of a doctor.

229.3. When a dumb, deaf or blind witness or a witness who suffers from a serious illness is questioned, his representative and legal representative shall be entitled to participate.

#### **Article 230. Records of interviews with witnesses**

230.1. A record of the interview shall be drawn up, indicating the following:

230.1.1. the date, time and place of the interview;

230.1.2. the investigator□s family name, first name, father□s name and title;

230.1.3. the witness□s family name, first name and father□s name and year, month, day and place of birth;

230.1.4. the witness□s nationality, education, workplace, occupation or status, address and place of registration;

230.1.5. information about the witness□s relations with the suspect, the accused and the victim;

230.1.6. a note that the witness has been informed of his rights, duties and responsibilities;

230.1.7. a note about the circumstances of the interview, especially the use of audio, video, film or other recording equipment during questioning of the witness;

230.1.8. the questions put to the witness and his answers to these questions as well as any statement made by the witness concerning the facts of the case.

230.2. The witness□s statements and answers to the questions put shall be recorded in the first person singular and as far as possible verbatim.

230.3. During the interview the witness shall give evidence in the language of the Azerbaijan Republic or in the language he knows. Where the witness does not know the official language or the language in which the preliminary investigation is conducted, an interpreter shall be summoned to participate in the interview. At the witness□s request, his statement shall be translated into the language he knows. The record shall be signed by the witness and the interpreter. The record shall be included in the case-file.

230.4. On request, a witness may be given permission to testify in writing, and an appropriate note shall be made in the record of the interview.

230.5. On completing the interview, the investigator shall show the witness the record. The witness shall be entitled to ask the investigator to make additions and amendments to the record of the interview.

230.6. The record of the interview shall be signed by the investigator and the witness at the end of the document and also, by the witness, on each page. If the interview is conducted with the assistance of an interpreter, the interpreter shall sign the record together with the witness, the interpreter signing first.

230.7. If the witness refuses to sign the record, the investigator shall inquire as to the reason for this refusal and endorse the record with his own signature. If the witness cannot sign the record because of illiteracy or physical disabilities, the investigator shall note these circumstances in the record and endorse the record with his own signature.

230.8. The record of the interview shall be included in the case-file. If audio, video, film or other recording techniques are used during the interview, the relevant documents, tapes or other information devices shall be attached to the record.

#### **Article 231. Questioning of victims**

An interview of a victim shall be conducted in accordance with the rules laid down in Articles 227-230 of this Code for the questioning of witnesses.

#### **Article 232. Questioning of suspects**

232.1. A suspect shall be interviewed immediately after being taken into custody or after pronouncement of the decision concerning any restrictive measure to be applied in his case.

232.2. A suspect who has been taken into custody or an accused who has been arrested shall be entitled to give evidence in the presence of his defence counsel. When questioning suspects, the investigator shall take steps in advance to guarantee the presence of counsel in the circumstances provided for in Article 92.3 of this Code. In the circumstances provided for in Article 92.12 of this Code, the participation of defence counsel in the interview of the suspect shall be compulsory.

232.3. The investigator shall be entitled to question a suspect using audio, video, film or other recording techniques.

232.4. Before questioning the suspect, the investigator shall inform him of the nature of the offence of which he is suspected as well as of his rights, including the right to refuse to testify and to the assistance of defence counsel.

232.5. The investigator shall begin the interview by suggesting to the suspect that he testify about the suspicions against him and any other circumstances which he deems to be of significance to the case.

#### **Article 233. Questioning of an accused**

233.1. The investigator shall interview the accused immediately after preferring charges against him.

233.2. Except in cases which do not admit delay, the interview with the accused may only be held during the daytime.

233.3. The interview with the accused shall be held on the premises where the investigation is being conducted or, if necessary, at the place where the accused is held.

233.4. The accused shall be questioned separately from other persons involved in the case. The investigator shall take measures to prevent the accused from speaking to other persons involved in the case.

233.5. Defence counsel shall be entitled to participate in the interview with the accused. The investigator shall take steps in advance to guarantee the participation of counsel in the circumstances provided for in Article 92.3 of this Code. In the circumstances provided for in Article 92.12 of this Code, the participation of defence counsel in the interview of the accused shall be obligatory.

233.6. Where the accused is a minor or is dumb, deaf, blind or suffers from a serious illness, the interview shall be conducted in accordance with Articles 228.2 and 229 of this Code.

233.7. The accused shall be questioned on the substance of the charge against him as well as on other matters of significance to the case.

233.8. The investigator shall be entitled to question the accused using audio, video, film or other recording techniques.

233.9. Before the start of the interview the investigator shall inform the accused of his rights to the assistance of defence counsel and to refuse to testify.

233.10. Before the interview the investigator shall ascertain whether or not the accused pleads guilty to the charge against him.

233.11. During the interview, the silence of the accused may not be construed as an admission of guilt. The investigator shall suggest to the accused that he testify about the charge against him and any other circumstances which he deems to be of significance to the case.

#### **Article 234. Record of an interview with a suspect or accused**

234.1. A record shall be drawn up of every interview with a suspect or accused and shall state the following:

234.1.1. the date, time and place of the interview;

234.1.2. the investigator's family name, first name, father's name, and title;

234.1.3. the family name, first name and father's name of the suspect or the accused as well as his year, month, day and place of birth, his nationality, education, family status, workplace, occupation or status, address and place of registration;

234.1.4. whether the suspect or the accused has been previously convicted or has received state honours, and other information characterising the suspect or the accused and of significance to the case;

234.1.5. a note that the suspect or the accused has been informed of his rights and duties;

234.1.6. the circumstances of the interview with the suspect or the accused, especially the use of audio, video, film or other recording techniques;

234.1.7. the questions put to the suspect or the accused and his answers to these questions as well as any statement about the circumstances of the case made by the suspect or the accused.

234.2. Statements made by the suspect or the accused and his answers to the questions put shall be recorded in the first person singular and as far as possible verbatim.

234.3. The suspect or the accused shall be given the opportunity to make a statement in handwritten form and the investigator shall note this in the record. After the investigator has taken cognisance of the written statement by the suspect or the accused, he may put additional questions to him. These questions and the answers to them shall be included in the record.

234.4. On completing the interview, the investigator shall show the suspect or the accused the record. The suspect or the accused shall be entitled to request additions and amendments to the record. Their inclusion in the record shall be compulsory.

234.5. The record shall be signed by the suspect or the accused and the investigator. If the record drawn up covers several pages, each page shall be signed separately by the suspect or the accused.

234.6. If audio, video, film or other recording techniques are used during the interview, the relevant documents, tapes and other information devices shall be attached to the record.

### **Article 235. Confrontations**

235.1. If there are important contradictions between testimonies, the investigator shall be entitled to organise a confrontation between two persons previously questioned.

235.2. If the confrontation is held with the participation of the suspect or the accused, the investigator shall take steps to guarantee the participation of defence counsel in advance of the performance of this investigative procedure.

235.3. Before the confrontation, it shall be clarified whether the persons being confronted know each other and what their relations are. Witnesses shall be warned of the criminal responsibility incurred for refusing to testify, evading questioning and intentionally giving false testimony. They shall be informed of their right not to testify against themselves or their close relatives.

235.4. The participants in the confrontation shall be asked to speak in turn to clarify the circumstances of the case. The investigator shall then put questions to them. The participants in the confrontation may ask each other questions with the investigator's permission.

235.5. Reading out of statements made by the participants in the confrontation during previous interviews shall be allowed after they have testified during the confrontation.

235.6. In the circumstances provided for in Articles 228 and 229 of this Code, the teacher, doctor, interpreter, legal representative and/or representative of the person being questioned may participate in the confrontation.

235.7. The investigator shall be entitled to organise the confrontation using video, film or other recording techniques.

235.8. The investigator shall draw up a record of the confrontation including the following information:

235.8.1. the date, time and place of the confrontation;

235.8.2. the investigator's family name, first name, father's name and title;

235.8.3. the family name, first name and father's name of each participant as well as the year, month, day and place of their birth, their nationality, education, family status, workplace, occupation or status, address and place of registration;

235.8.4. a note that the participants in the confrontation have been informed of their rights, duties and responsibilities;

235.8.5. a note about the circumstances of the confrontation, particularly the use of video, film or other recording techniques;

235.8.6. the questions put to the participants in the confrontation and their answers to these questions as well as their statements about the circumstances of the case.

235.9. The investigator shall acquaint the participants in the confrontation with the content of the confrontation record. Those questioned and the other persons participating in the confrontation shall be entitled to request additions and amendments to the record. The confrontation record shall be signed by the investigator and by those questioned and other persons participating in the confrontation. Every person questioned shall sign his testimony and each page of the record.

235.10. Where video, film or other recording techniques are used during the confrontation, the relevant documents, tapes or other information devices shall be attached to the record.

## **Chapter XXIX**

### **EXAMINATION OF PLACES AND OBJECTS, EXHUMATION AND BODY SEARCH**

#### **Article 236. Examination of places and objects**

236.1. The investigator shall examine the scene of the offence, buildings, documents, objects and human and animal corpses, with the aim of uncovering traces of the offence and other potential material evidence and determining the circumstances of the offence and other facts of significance to the case.

236.2. On discovery of an offence, except in circumstances where examination of the scene of the offence cannot be delayed, the examination shall be held in the daytime.

236.3. Where the examination takes place after the commencement of criminal proceedings and there is a suspect or accused, the suspect, the accused and/or any co-suspect or accused may participate in it. The investigator shall take steps in advance to guarantee the participation of co-offenders in the examination. Examination of the scene of the offence shall take place in the presence of at least 2 (two) witnesses.

236.4. The investigator shall conduct the examination of places or objects without violating any citizen's rights. Where necessary, he shall measure the object, make plans, sketches or drawings of it, and, if possible, make a photographic, video or film record.

236.5. During the examination, the investigator shall, independently or with the assistance of a specialist, take prints and impound documents or any other objects which may be significant as evidence in future.

236.6. After completing the examination, the investigator shall draw up a record giving the following information:

236.6.1. the time, date and place of the examination;

236.6.2. the investigator's family name, first name, father's name and title;

236.6.3. the family names, first names and father's names of those participating in the examination as well as the year, month, day and place of their birth, their nationality, education, workplace, occupation or status, address and place of registration;

236.6.4. information about the mutual relations of any circumstantial witness with the suspect, the accused or the victim (only in the event of participation of circumstantial witnesses in the examination of the scene of the offence);

236.6.5. a note to the effect that their rights, duties and responsibilities have been explained to each of the circumstantial witnesses (only in the event of participation of circumstantial witnesses in the examination of the scene of the offence);

236.6.6. a note about the circumstances of the examination, especially the use of photography, video, film or other recording techniques;

236.6.7. the sequence followed in the observation procedure and all the evidence revealed during the examination.

236.7. The record shall be signed by all the participants in the examination, who shall have the right to require that their notes be included in the record, and by the

investigator. If the record comprises several pages, each page shall be signed by all the participants in the examination.

236.8. If, during the examination, photography, video or other recording techniques are used, the relevant photos, tapes or other information devices shall be attached to the record.

236.9. Examination of residential, service or industrial buildings and objects found there shall be conducted where there are grounds and circumstances provided for in Article 243.3 of this Code, in accordance with the requirements of Articles 177.2-177.6 of this Code.

### **Article 237. Exhumation**

237.1. Where it is necessary to exhume a corpse, the investigator shall submit a reasoned request to the prosecutor in charge of the procedural aspects of the investigation for an application to be made to the relevant court. Exhumation may be carried out only on the basis of a court decision.

237.2. The corpse shall be exhumed with the participation of the investigator, a specialist in forensic medicine and, if they so wish, close relatives of the deceased or his legal representatives. After exhumation the corpse may be transferred to the appropriate medical establishment, in the presence of the aforementioned, with a view to conducting further examinations.

237.3. With the investigator's permission or on his instructions, photography, video, film or other recording techniques may be used while the exhumation takes place.

237.4. On completion of the exhumation the investigator shall draw up a record thereof, including the following information:

237.4.1. the time, date and place of the exhumation;

237.4.2. the investigator's family name, first name, father's name and title;

237.4.3. the title, family name, first name and father's name of the specialist in forensic medicine participating in the exhumation;

237.4.4. the family names, first names and father\s names of other persons present at the exhumation; the year, month, day and place of their birth; their nationality, education, workplace, occupation or status, address and place of registration;

237.4.5. where close relatives of the deceased or his legal representatives are present at the exhumation, their family names, first names, father\s names, year, month, day and place of birth, address and place of registration;

237.4.6. a note about the circumstances of the exhumation, especially if photography, video, film or other technical devices were used during the exhumation;

237.4.7. the sequence followed in the observation procedure and all evidence revealed during the exhumation.

237.5. The record of the exhumation shall be signed by all participants, who shall have the right to request the inclusion of their notes in it. If the record comprises several pages, the participants shall sign all the pages.

237.6. If, during the exhumation, photo, video, film or other recording techniques are used, the photos, tapes or other information devices shall be attached to the record.

#### **Article 238. Body search**

238.1. If there is no need for a forensic medical expert's report, the investigator may conduct a body search with the aim of noting evidence of the offence or particular signs on the body of a suspect, accused, victim or witness.

238.2. A decision by a court or the investigator to conduct a body search shall be binding on the person concerned. Except in cases of detention and arrest, a body search may be conducted against the will of the person concerned only by court decision.

238.3. Counsel for a suspect or accused shall be entitled to be present at a body search of the suspect or the accused.

238.4. Where necessary, the body search shall be conducted in the presence of a doctor or specialist in forensic medicine. A body search where the person concerned is required to undress shall be conducted with the participation of persons of the same sex.

238.5. If there is a need for a person of the opposite sex to undress, the investigator and defence counsel for the suspect or the accused may not be present. In this case, the body search shall be conducted by a doctor or a specialist in forensic medicine.

238.6. On completion of the body search the investigator shall draw up a record thereof including the following information:

238.6.1. the time, date and place of the body search;

238.6.2. the investigator's family name, first name, father's name and title;

238.6.3. the title, family name, first name and father's name of the specialist in forensic medicine or doctor participating in the body search;

238.6.4. the family name, first name and father's names of those present at the body search as well as the year, month, day and place of their birth, their education, workplace, occupation or status, address and place of registration;

238.6.5. the sequence followed in the observation procedure and any evidence revealed during the body search.

238.7. The record of the body search shall be signed by all those present, who shall have the right to require the inclusion of their notes in it. If the record comprises several pages, each page shall be signed by those present at the search.

## **Chapter XXX**

### **IDENTIFICATION OF PERSONS AND OBJECTS**

#### **Article 239. Identification of a person**

239.1. Where any person is to be presented for identification purposes to a witness, victim, suspect or accused, the investigator shall first question the person making the identification about the appearance and features of the person to be identified and the circumstances in which the former saw the latter and an appropriate record of the interview shall be drawn up.

239.2. The investigator shall take steps in advance to guarantee the presence of counsel for the suspect or accused at an identification parade concerning the latter.

239.3. On the investigator's instructions or with his permission, photo, video, film and other recording techniques may be used during the identification parade.

239.4. If the person making the identification is a witness or the victim, he shall first be warned of the criminal responsibility incurred for refusing to testify, evading questioning or giving false testimony intentionally. He shall also be informed of his right not to testify against himself or his close relatives.

239.5. The person to be identified shall be presented to the identifying person together with at least 3 (three) other people of the same sex who do not differ greatly in their appearance and clothing from the person to be identified.

239.6. Before the start of the identification parade, the investigator shall ask the person to be identified to take position wherever he wishes in the row of persons on parade.

239.7. At the request of the identifying person, the identification process may be carried out in such a way that the person making the identification is not seen by those taking part in the identification parade.

239.8. If the identifying person is uncertain that he can recognise the person to be identified, the identification parade may not be conducted and any identification made shall not be considered valid. The same person shall not be asked again to identify the person concerned on the basis of the same features.

239.9. If necessary the identification procedure may be conducted using photographs of people who do not differ greatly from each other in their appearance and clothing.

## **Article 240. Identification of objects**

240.1. Where it is necessary to present any object for identification, the investigator shall first question the person who is to identify the object about its characteristics and the circumstances in which he saw it, and shall draw up a record of this interview.

240.2. Counsel for the suspect or the accused shall be entitled to participate in the identification of the object. If counsel for the defence, whom the investigator has informed in advance of the performance of this investigative procedure, expresses a wish to participate in the identification of the object, the investigator shall guarantee this right.

240.3. On the investigator's instructions or with his permission, photography, video, film or other recording techniques may be used during the identification of the object.

240.4. If the identifying person is a witness or the victim, he shall first be warned of the criminal responsibility incurred for refusing to testify, evading questioning or giving false testimony intentionally. He shall also be informed of the right not to testify against himself or his close relatives.

240.5. The object to be identified shall be presented to the identifying person among other objects of the same kind. The identifying person shall be asked to indicate the object which he recognises and to state the reasons for his choice.

240.6. Identification of a corpse, parts thereof or objects of which it is impossible or difficult to find the equivalent shall be conducted on the basis of a single reproduction presented to the identifying person.

240.7. If the person identifying a corpse has seen the person concerned alive, the use of cosmetics shall be allowed on the corpse. When an object is being identified it shall be permissible to clean dirt, rust and other deposits from it.

## **Article 241. Record of the identification**

241.1. After the identification the investigator shall draw up a record including the following:

241.1.1. the place, date and time of the identification;

241.1.2. the investigator's family name, first name, father's name and title;

241.1.3. the family names, first names and father's names of those participating in the identification, the year, month, day and place of their birth, their nationality, education, workplace, occupation or status, address and place of registration;

241.1.4. a note that persons participating in the identification have been informed of their rights, duties and responsibilities;

241.1.5. a note about the circumstances of the identification, including use of photography, video, film and other recording techniques;

241.1.6. the sequence followed in the observation procedure and all the evidence discovered, including a description of the objects presented for identification and their identifying features.

241.2. The identification record shall be signed by all the participants in the investigative procedure, who shall have the right to require the inclusion of their notes in it. If the record comprises several pages, the participants shall sign each page.

241.3. If, during the identification, photography, video, film or other recording techniques are used, the documents, photos, tapes or other information devices shall be attached to the record.

## **Chapter XXX**

### **SEARCH AND SEIZURE**

#### **Article 242. Conduct of a search**

242.1. Where the available evidence or material discovered in a search operation gives rise to a suspicion that a residential, service or industrial building or other place contains, or certain persons are in possession of, objects of potential significance to a case, the investigator may conduct a search.

242.2. A search may be conducted with the aim of finding persons or animals being sought or human or animal remains.

242.3. Objects and documents which may be of significance as evidence may be impounded by the investigator once it has been established on the basis of the evidence collected or the material discovered in a search operation where or in whose possession they are.

#### **Article 243. Grounds for conducting a search and seizure**

243.1. As a rule, searches and seizures shall be conducted by decision of a court. A court may decide to give permission for a search or seizure in response to a reasoned request from the investigator and submissions made by the prosecutor in charge of the procedural aspects of the investigation. The search or seizure shall be conducted in accordance with the requirements of Articles 177.2-177.6 of this Code.

243.2. The decision to authorise the search or seizure shall state the following:

243.2.1. the date, time and place of the decision;

243.2.2. the family name, first name, father\s name and title of the person making the decision;

243.2.3. the objective grounds for conducting the search or seizure;

243.2.4. the family name, first name and father\s name of the person conducting the search or seizure;

243.2.5. the place where the search or seizure is to be carried out (nature of the building, address or location);

243.2.6. in the case of a decision authorising seizure, the objects and documents to be impounded.

243.3. In circumstances which admit no delay, the investigator may conduct a search or seizure without court permission only if there is precise information indicating that:

243.3.1. objects or documents concealed in a residential building constitute proof of the commission of an offence or of preparations for the commission of an offence against a person or the state;

243.3.2. a person who has prepared or committed an offence against a person or the state or a person who has escaped from a remand facility or prison is hiding in a residential building;

243.3.3. there is a human corpse (or parts of a corpse) in the building;

243.3.4. there is a real danger to someone's life or health in the building.

243.4. In the circumstances provided for in Article 243.3 of this Code, the investigator shall give a reasoned decision to conduct a search or seizure. The investigator's decision shall be drawn up in accordance with the requirements of Article 243.2 of this Code and shall give due consideration to the need to conduct the search and seizure without court permission and the reasons why it cannot be delayed.

#### **Article 244. Participants in a search or seizure**

244.1. During a search or seizure the presence of at least 2 (two) circumstantial witnesses shall be obligatory.

244.2. Defence counsel for the suspect or accused shall be entitled to participate in the conduct of a search or seizure concerning them. If defence counsel, having been informed of the conduct of this investigative procedure by the investigator, expresses the wish to participate in the search and seizure, the investigator shall take steps to guarantee this right.

244.3. Where necessary, an interpreter or specialist may participate in the conduct of the search or seizure.

244.4. Steps shall be taken to guarantee the presence of the person concerning whom the search and seizure is being conducted, adult members of his family or those who represent his legal interests. If it is impossible to secure the participation of the above-mentioned people, a representative of the relevant housing organisation or local authority shall be asked to participate.

244.5. A search or seizure operation in an administrative department, institution, organisation or military unit shall be conducted in the presence of a representative of the entity concerned.

244.6. Persons concerned by the search or seizure and circumstantial witnesses, specialists, interpreters, representatives and defence counsel shall have the right to be present throughout the procedures conducted by the investigator and to make observations, which shall be included in the record.

#### **Article 245. Rules governing searches and seizures**

245.1. An investigator shall be entitled to enter a residential or other building on the basis of the court decision concerning the search or seizure.

245.2. Before conducting the search or seizure, the investigator shall acquaint the person concerned with the decision.

245.3. The investigator shall be entitled to conduct the search or seizure using photography, video, film or other recording techniques.

245.4. The investigator shall take measures to prevent the dissemination of information about the circumstances of the search or seizure, its results and any information concerning the private life of the person concerned.

245.5. The investigator may prohibit those present in the place where the search or seizure is conducted from leaving the premises or speaking to each other or with other persons before the end of the search or seizure operation.

245.6. On making a seizure, the investigator shall, after pronouncing the decision, propose that the objects or documents to be seized be surrendered voluntarily and, in the event of refusal, shall impound them by force.

245.7. On conducting a search, the investigator shall, after pronouncing the decision, propose that the objects or documents to be seized be given up voluntarily and that the wanted person's hiding place be revealed. If the objects or documents are surrendered or the person's hiding place is revealed voluntarily, this shall be noted in the record. Failure to surrender the objects or documents

being searched for, in whole or in part, or to reveal the hiding place of the wanted person, shall result in the search being conducted.

245.8. During a search or seizure, all objects and documents shall be presented to the participants in the investigative procedure and their quantity, size, weight, material and other special features shall be specified as part of a detailed description. The objects and documents shall be packed and, if necessary, sealed by the investigator.

245.9. If, during the conduct of a search or seizure, the owners refuse to open closed buildings or store-rooms, the investigator shall have the right to open these.

245.10. During a search or seizure, the following shall be prohibited:

245.10.1. unnecessary damage to doors, locks and other items and creating a disturbance in the building;

245.10.2. use of chemical or psychotropic substances, technical devices or equipment which may be harmful to human health and the environment.

#### **Article 246. Body search and seizure**

246.1. The investigator may, normally by court decision, impound objects and documents of potential significance as evidence which are on the clothing, affairs and body of the person concerning whom an investigative procedure is being conducted.

246.2. In the absence of a court decision, a body search may be conducted in the following circumstances:

246.2.1. if a suspect has been detained and he is in the custody of the police or another law enforcement agency;

246.2.2. if the restrictive measure of arrest is applied to an accused person;

246.2.3. if there are sufficient grounds to suspect that a person in a building where a search or seizure is being conducted is in possession of objects or documents of potential significance as evidence in the criminal prosecution.

246.3. A body search and seizure shall be conducted by the investigator in the presence of a specialist and at least 2 (two) circumstantial witnesses who are of the same sex as the person on whom the body search is being conducted.

**Article 247. Record of the search or seizure**

247.1. After completing a search or seizure the investigator shall draw up a record continuing the following information on the investigative procedures carried out:

247.1.1. the place, date and time of the search or seizure;

247.1.2. the investigator's family name, first name, father's name and title;

247.1.3. the family names, first names and father's names of other persons participating in the search or seizure as well as the year, month, day and place of their birth, their nationality, education, workplace, occupation or status, address and place of registration;

247.1.4. a note that the person in respect of whom the search and seizure was conducted was informed of his rights, duties and responsibilities;

247.1.5. the family names, first names and father's names of the circumstantial witnesses and the year, month, day and place of their birth, their nationality, education, workplace, occupation, address and place of registration;

247.1.6. information concerning relations between each of the circumstantial witnesses and the suspect, accused and victim;

247.1.7. a note that each of the circumstantial witnesses has been informed of his rights, duties and responsibilities;

247.1.8. a note about the circumstances of the search or seizure, including use of photography, video, film or other recording techniques during the conduct of the procedure;

247.1.9. the sequence followed and all the evidence discovered during the search and seizure, whether or not the objects and persons sought were surrendered

voluntarily; any attempts made to hide the objects and documents discovered; and the quantity, size, weight, individual features and other characteristics of the objects seized, as part of a detailed description thereof.

247.2. The record of the search or seizure shall be signed by all the participants, who shall have the right to require the inclusion of their notes in it. If the record consists of several pages, each page shall be signed by the participants.

247.3. If, during the search or seizure, photography, video, film or other recording techniques are used, the relevant documents, photos, tapes or other information devices shall be attached to the record.

247.4. A copy of the record of the search and seizure shall be given to the person concerned by the investigative procedure or to an adult member of his family or his representative; in their absence it shall be given to the representative of the housing organisation in whose area the investigative procedure was conducted.

247.5. If a search or seizure is conducted on the premises of an administration, institution, organisation or military unit, a copy of the record shall be given to its representative.

## **Chapter XXXII**

### **ATTACHMENT OF PROPERTY**

#### **Article 248. Nature of the attachment of property**

248.1. Attachment of property:

248.1.1. shall be carried out with the aim of guaranteeing a civil party's claim and the confiscation of property in circumstances provided for under criminal law;

248.1.2. shall consist in making an inventory of the property, which shall be left with the owner or holder, and where necessary prohibiting its use;

248.1.3. where applied to bank deposits, shall prevent any further transactions on an account.

248.2. Property of the accused and property of other persons who may be held liable with regard to property may be attached, irrespective of what it is or in whose possession it is.

248.3. Attachment shall apply to the joint property of the accused and his or her spouse or to the accused's share of property owned jointly with other persons. If there is sufficient evidence that the property was used in committing an offence or was acquired or enhanced by committing an offence, the whole property or the greater part thereof shall be attached.

248.4. Attachment may not apply to food which is essential to the owner or holder of the property and his family,, fuel of little market value, specialist books and equipment used in carrying on a professional activity, frequently used kitchen utensils and supplies or other essentials.

248.5. Except where part of the property of an administrative department, institution or organisation can be sealed off without damaging the economic activity of the entity concerned, their property may not be attached.

#### **Article 249. Grounds for attachment of property**

249.1. Property may be attached only if evidence collected in the criminal case provides sufficient grounds for doing so.

249.2. As a rule, property shall be attached on the basis of a court decision. The court shall give a decision to attach property in the following circumstances:

249.2.1. in response to a reasoned request by the investigator and appropriate submissions by the prosecutor in charge of the procedural aspects of the investigation;

249.2.2. if persons applying to the court submit sufficient *prima facie* evidence to confirm fulfilment of the requirements of Article 249.1 of this Code and substantiate the need to attach property.

249.3. The court decision to attach the property shall state the following:

249.3.1. the date, time and place of the decision;

249.3.2. the family name, first name, father\s name and title of the judge who gave the decision;

249.3.3. the objective grounds and reasons for attachment of the property;

249.3.4. the family name, first name and father\s name of the person whose property is attached;

249.3.5. the actual property to be attached and the property required to guarantee the civil party\s claim;

249.3.6. the period for which the property is attached.

249.4. Where there is a reasonable suspicion that the property to be attached will not be surrendered voluntarily, the attachment decision shall include authority to conduct a search.

249.5. In cases which admit of no delay, where there is precise information indicating that the person who committed the offence may destroy, damage, spoil, conceal or, to satisfy the civil claim, misappropriate property or unlawfully obtained items, the investigator may attach the property without a court decision if the requirements of Article 177.2-177.5 of this Code are met.

249.6. In the circumstances provided for in Article 249.5 of this Code, the investigator shall make a reasoned decision about the attachment of the property. The investigator\s decision shall be drawn up in accordance with Article 249.3 of this Code and shall substantiate the need to attach the property without delay and without a court decision.

#### **Article 250. Valuation of the property to be attached**

250.1. The value of the property to be attached shall be determined on the basis of its average market price in that area, without applying additional fines.

250.2. The value of property confiscated with a view to satisfying a claim lodged by a civil party or by the prosecutor in charge of the procedural aspects of the investigation shall not exceed the amount of the claim.

250.3. Where several persons are charged with an offence, all or part of the property of each of those arrested shall be attached; where this is not possible, all of the property of any one of them may be attached with a view to satisfying the civil party's claim..

#### **Article 251. Procedure governing attachment of property**

251.1. A decision to attach property shall be executed by the investigator during the preliminary investigation proceedings and by the court bailiff during the trial proceedings.

251.2. The investigator or the court bailiff shall present the decision to attach the property to its owner or holder and request that the property be handed over. In the event of refusal to comply, the attachment of the property shall be enforced. If there is a suspicion that the owner of the property is concealing it, the investigator may conduct a search on the basis of an appropriate decision.

251.3. Counsel for the defence shall have the right to be present during the attachment of the accused's property. If counsel, having been informed of the forthcoming conduct of this investigative procedure by the investigator, expresses the wish to attend the attachment of the property, the investigator or court bailiff shall take steps to guarantee this right.

251.4. An expert may be asked to establish the value of the property being attached.

251.5. With the permission of the investigator or the court bailiff, photography, video, film and other recording techniques may be used during attachment of the property.

251.6. The attachment of the property shall be conducted in accordance with the sequence established by the Code of Civil Procedure of the Azerbaijan Republic. An owner or holder of property who is present at the attachment of the property shall be entitled to determine which items are to be attached first, in order to arrive at the sum indicated in the decision.

251.7. Except for immovable property and large objects, attached property shall, as a rule, be removed, and shall be handled as follows:

251.7.1. precious metals and stones, pearls, money in local and foreign currency, securities (shares, bonds, cheques, treasury notes, loan certificates, lottery tickets etc) shall be given to the State Bank of the Azerbaijan Republic for holding;

251.7.2. other objects removed shall, if possible, be packed, sealed and kept on the premises of the investigating authority or court as the case may be, or handed over for safe-keeping to a representative of the relevant state authority, who shall be warned of his statutory liability.

251.8. Property that is attached but not removed shall be sealed and given to its owner or holder, or adult members of his family, for safe-keeping, in exchange for a commitment not to misappropriate, damage or destroy it, and the person concerned shall be warned of the statutory liability incurred for doing so.

#### **Article 252. Record of the attachment of property**

252.1. The investigator shall draw up a record of the attachment of property, and the court bailiff a record of the inventory of the property, stating the following:

252.1.1. the date, time and place of attachment of the property;

252.1.2. the family name, first name, father□s name and title of the investigator or the court bailiff;

252.1.3. the family name, first name, father□s name and title of the expert;

252.1.4. the family name, first name and father□s name of the person whose property is attached, the year, month, day and place of his birth, his workplace or title, address and place of registration;

252.1.5. a note that the rights and duties of the person whose property is attached have been explained to him;

252.1.6. a note about the circumstances of the attachment of property, especially the use of photography, video, film and other recording techniques during the process;

252.1.7. a list of the attached property giving its designation, quantity, size, weight, age, other individual features and the value established by the expert;

252.1.8. a note of what property was taken and to whom it was given for safe-keeping;

252.1.9. information on any co-owner of the confiscated property.

252.2. The record of the attachment or inventory of the property shall be signed by all participants in the investigative procedure, and they shall have the right to require the inclusion of their observations in it. If the record consists of several pages, the participants shall sign each page separately.

252.3. If, during the attachment of the property, photography, video, film or other recording techniques are used, the relevant documents, photos, tapes or other information devices shall be attached to the record.

252.4. A signed copy of the record shall be given to the owner or holder of the property or, in the event of his absence to an adult member of his family, and to the representative of the state authority responsible for keeping the property. If the attached property was located on the premises of an administration, institution or organisation, a signed copy of the record shall be given to a representative of its head office.

### **Article 253. Complaints of mistaken attachment of property**

253.0. Anyone who considers that property not belonging to the accused has been attached in error shall have the right to request the prosecuting authority to release the property from attachment. If the prosecuting authority refuses the request or fails to respond to the applicant's request within 10 (ten) days of its receipt, the applicant shall be entitled to apply to the civil courts for the release of the property from attachment. The civil court shall decide the issue of the ownership of the property, and its decision concerning the release of the property from attachment

shall be binding on the investigator, the prosecutor in charge of the procedural aspects of the investigation and the court examining the criminal case.

#### **Article 254. Release of property by order of the criminal court**

254.1. Property attached by court order may be released from attachment only on the basis of a court decision, except where the civil claim in the criminal case is withdrawn, the charges against the accused are altered or the criminal prosecution is discontinued.

254.2. The court or the prosecutor in charge of the procedural aspects of the investigation shall be empowered to release property which has been attached unlawfully by the prosecuting authority.

### **Chapter XXXIII**

## **CONFISCATION OF POSTAL, TELEGRAPH AND OTHER MESSAGES; INTERCEPTION OF TELEPHONE CONVERSATIONS AND OTHER COMMUNICATIONS**

#### **Article 255. Messages which can be confiscated**

255.0. The postal, telegraph and other messages which can be confiscated shall include:

255.0.1. all types of letter;

255.0.2. telegrams,

255.0.3. radiograms;

255.0.4. wrappings;

255.0.5. presents;

255.0.6. parcels;

255.0.7. money orders.

#### **Article 256. Grounds for confiscating postal, telegraph and other messages**

256.1. Confiscation of postal, telegraph and other messages shall, as a rule, be decided by a court. Where there are sufficient grounds to presume that postal, telegraph and other messages sent or received by the suspect or accused may be of evidential value in the criminal case, the relevant court shall take a decision to confiscate the postal, telegraph and other messages on the basis of a reasoned application by the investigator and the relevant submissions by the prosecutor in charge of the procedural aspects of the investigation. Confiscation of postal, telegraph and other messages shall be carried out in accordance with Article 177.2-177.5 of this Code.

256.2. The decision concerning the confiscation of postal, telegraph and other messages shall include the following:

256.2.1. the date, time and place of the decision;

256.2.2. the family name, first name, father□s name and title of the person who made the decision;

256.2.3. the objective grounds and reasons for confiscating the postal, telegraph and other messages;

256.2.4. the family name, first name, father□s name and exact address of the person(s) whose postal, telegraph and other messages have been confiscated;

256.2.5. the exact type(s) and location of the postal, telegraph and other messages which have been confiscated;

256.2.6. the name of the communications administration required to hold the postal, telegraph and other messages;

256.2.7. the period for which the postal, telegraph and other messages have been confiscated.

256.3. The confiscated postal, telegraph and other messages shall be examined and removed on the basis of the decision concerning their confiscation.

256.4. Confiscation of postal, telegraph and other messages shall be discontinued in the following cases:

256.4.1. by decision of the court which ordered the confiscation of the postal, telegraph and other messages, or of a higher court, overturning the confiscation decision;

256.4.2. on the expiry of the period for which the postal, telegraph and other messages were confiscated;

256.4.3. on the basis of a decision by the investigator that it is unnecessary to continue the confiscation of the postal, telegraph and other messages, or on the basis of a decision by a court or the prosecutor in charge of the procedural aspects of the investigation ruling that the confiscation decision is unlawful and overturning it.

**Article 257. Rules governing the confiscation, examination and removal of postal, telegraph and other messages**

257.1. The investigator shall send the decision to confiscate the postal, telegraph or other messages to the head of the relevant communications administration.

257.2. The head of the communications administration shall immediately confirm receipt of the decision to the investigator and shall hold the postal, telegraph or other messages specified in the relevant decision.

257.3. The investigator shall take the following measures in connection with the confiscation of the postal, telegraph and other messages:

257.3.1. on receiving conformation from the head of the communications administration that the postal, telegraph and other messages specified in the decision are being held, he shall visit the communications administration and examine the messages together with its employees;

257.3.2. on the basis of the decision to confiscate the postal, telegraph and other messages, he shall inform the head of the communications administration of the part of the decision authorising their removal, shall require him to sign it and shall remove the relevant messages.

257.4. In the event of the discovery of documents and other items that may be of significance to the case among the postal, telegraph and other messages, the

investigator may remove the relevant message or merely make a copy of it. Where there is no information of significance to the case, the investigator shall give instructions to send the message examined to the appropriate address or to keep it for a specified period.

257.5. The investigator shall have the right to use photography, video, film or other recording techniques during the confiscation, examination and removal of postal, telegraph and other messages.

**Article 258. Record of the examination and removal of postal, telegraph and other messages**

258.1. A record of the examination and removal of the postal, telegraph and other messages shall be drawn up, including the following information:

258.1.1. the date, time and place of the examination and removal;

258.1.2. the investigator's family name, first name, father's name and title;

258.1.3. the family name, first name and father's name of the person conducting the examination and removal of the postal, telegraph and other messages, the year, month, day and place of his birth, his workplace or title, address and place of registration;

258.1.4. the family names, first names and father's names of other persons participating in the examination or removal (the head of the communications administration and, if necessary, other employees of that administration), the year, month, day and place of their birth, their workplace or title, address and place of registration;

258.1.5. a note on the circumstances of the examination and removal, on which messages were examined and removed, on the messages to be sent to the addressee and those to be held temporarily, on the copies made of postal, telegraph and other messages, and on the technical devices used;

258.1.6. any evidence revealed during the examination and removal of messages, in the order of its discovery.

258.2. The record of the examination and removal of the postal, telegraph and other messages shall be signed by all the participants in the investigative procedure, who shall have the right to require the inclusion of their observations in it. Where the record consists of several pages, the participants in the investigative procedure shall sign each page separately.

258.3. If, during the confiscation, examination and removal of the postal, telegraph and other messages, photography, video, film or other recording techniques are used, the relevant documents, photos, tapes or other information devices shall be attached to the record.

**Article 259. Interception of conversations held by telephone and other devices, of information sent by communication media and other technical means, and of other information**

259.1. Interception of conversations held by telephone and other devices and of information sent by communication media and other technical means shall as a rule be carried out on the basis of a court decision. Where there are sufficient grounds to suppose that information of significance to the criminal case is included among information sent or received by the suspect or the accused, the court shall, on the basis of a reasoned request by the investigator and appropriate submissions by the prosecutor in charge of the procedural aspects of the investigation, authorise the interception of conversations held by telephone or other devices, information sent by communication media or other technical means, or other information. Interception of such conversations and information shall be carried out in accordance with Article 177.2-177.5 of this Code.

259.2. Interception of conversations held by telephone and other devices or of information sent by communication media or other technical means shall not continue for longer than 6 (six) months.

259.3. Interception of information which comprises personal, family, state, commercial or professional secrets, including information about financial transactions, the situation of bank accounts and the payment of taxes, may be carried out only on the basis of a court decision.

259.4. The decision authorising the interception of conversations held by telephone and other devices, of information sent by communication media or other technical means, or of other information shall state the following:

259.4.1. the date, time and place of the decision;

259.4.2. the family name, first name, father□s name and title of the person who made the decision;

259.4.3. the objective grounds and reasons for intercepting the relevant conversations and information;

259.4.4. the family name, first name, father□s name and exact address of the person(s) whose information or conversations are to be intercepted;

259.4.5. the exact type(s) of conversation or information to be intercepted;

259.4.6. the name of the administration assigned the duty of intercepting the conversations or information;

259.4.7. the period for which interception of the conversations and information is to be carried out.

259.5. Conversations held by telephone and other devices, information sent by communication media or by other technical means and other information shall be intercepted by those authorised to do so, on the basis of the relevant decision. The intercepted conversations and information shall be transcribed on paper or copied on magnetic devices, confirmed by the signature of the person who intercepted them and given to the investigator. A summary record of the interception of the conversations and information related to the case shall be drawn up and added to the case file. Intercepted information not related to the case shall be immediately destroyed.

## **Chapter XXXIV**

### **VERIFICATION OF TESTIMONY ON SITE AND CORROBORATIVE EXPERIMENTS**

#### **Article 260. Verification of testimony on site**

260.1. Verification of testimony on site shall be carried out in order to clarify or establish the accuracy of the evidence given by a witness, victim, suspect or accused in connection with the offence committed, at the exact known location.

260.2. Counsel for the suspect or the accused shall be entitled to participate in the verification of evidence given by the suspect or the accused. If counsel for the suspect or the accused, having been informed of the performance of this investigative procedure in advance, expresses the wish to participate in the verification on site, the investigator shall take steps to guarantee this right.

260.3. Where necessary, at the investigator's invitation, an interpreter, a specialist and the legal representative or representative of the participant in the criminal case whose testimony is being verified, and a teacher, doctor or other persons may also participate in the verification on site.

260.4. The investigator shall visit the site together with the person whose testimony is being verified, and shall propose that he point out (or describe) the circumstances or items about which he previously gave evidence or may now give evidence. The person being questioned shall show the way to the site, point out or describe the circumstances and items about which he previously gave evidence or may now give evidence, and answer the investigator's questions.

260.5. On the investigator's instructions or with his permission, photography, video, film and other recording techniques may be used during the verification.

260.6. If, during the verification on site, objects and documents which may be of evidential value to the case are revealed, they shall be impounded on the basis of a decision under Article 243.1 of this Code. The investigator shall as far as possible pack and seal the objects and documents removed and note their removal in the record of the verification on site.

#### **Article 261. Record of the verification of testimony on site**

261.1. After completing the verification of testimony on site the investigator shall draw up a record containing the following information:

261.1.1. the date, time and place of the verification of testimony on site;

261.1.2. the investigator's family name, first name, father's name and title;

261.1.3. the family names, first names and father's names of others present (defence counsel, interpreters, specialists, legal representatives, representatives, teachers, doctors, etc) the year, month, day and place of their birth, their nationality, education, workplace, occupation or title, address and place of registration;

261.1.4. the family name, first name and father's name of the person whose testimony was verified on site, the year, month, day and place of his birth, his workplace or title, address and place of registration;

261.1.5. a note that the rights and duties of the person whose testimony was verified on site were explained to him;

261.1.6. a note about the circumstances of verification on site, including the use of photography, video, film or other recording techniques;

261.1.7. the evidence given by the person concerned, if possible verbatim;

261.1.8. all evidence discovered during the verification of testimony on site, in the order in which it was observed.

261.1.9. a note about the removal of any objects or documents and their description.

261.2. The record of the verification of testimony on site shall be signed by all the participants in this investigative procedure, who shall have the right to require the inclusion of their observations in it. If the record consists of several pages, each page shall be signed separately by the participants.

261.3. If, during the verification of testimony on site, photography, video, film or other recording techniques are used, the relevant documents, photos, tapes or other information devices shall be attached to the record.

## **Article 262. Corroborative experiments**

262.1. The investigator may conduct a corroborative experiment in order to check and clarify information which may be of importance to the prosecution and may be investigated by experimental and other means.

262.2. Counsel for the suspect or the accused may also participate in a corroborative experiment conducted with the participation of the suspect or the accused. If defence counsel, having been informed in advance about the conduct of this investigative procedure by the investigator, expresses the wish to participate in the conduct of the experiment, the investigator shall take steps to guarantee this right.

262.3. Witnesses, specialists, teachers, doctors or other persons may also participate in the corroborative experiment at the investigator's invitation.

262.4. On the instructions or with the permission of the investigator, photography, video, film or other recording techniques may be used during the conduct of the corroborative experiment.

262.5. The conduct of a corroborative experiment shall be permissible where it does not endanger human life or health, jeopardise a person's reputation or dignity or entail material damage.

#### **Article 263. Record of the corroborative experiment**

263.1. At the end of the corroborative experiment the investigator shall draw up a record containing the following:

263.1.1. the date, time and place of the corroborative experiment;

263.1.2. the investigator's family name, first name, father's name and title;

263.1.3. the family names, first names and father's names of other participants (the suspect, the accused, defence counsel, witnesses, specialists, teachers, doctors, etc) the year, month, day and place of their birth, their workplace or title, address and place of registration;

263.1.4. a note that the rights and duties of the person concerning whom the experiment is conducted have been explained to him;

263.1.5. a note about the circumstances of the corroborative experiment, including which information was verified (clarified) and use of photography, video, film and other recording techniques;

263.1.6. any evidence revealed by the corroborative experiment, in the order of its discovery (the circumstances and results of the experiment shall be given in detail).

263.2. The record of the corroborative experiment shall be signed by all the participants in the investigative procedure, who shall have the right to require the inclusion of their observations in it. If the record consists of several pages, each page shall be signed separately by the participants.

263.3. If, during the conduct of the corroborative experiment, photography, video, film or other recording techniques are used, the relevant documents, photographs, tapes or other information devices shall be attached to the record.

## **Chapter XXXV**

### **EXPERT OPINIONS**

#### **Article 264. Principles governing expert opinions**

264.1. An expert opinion shall be obtained in order to determine facts of significance to the prosecution which require specialist knowledge of science, technology or the arts or of investigative methods.

264.2. The fact that the preliminary investigator, investigator, prosecutor in charge of the procedural aspects of the investigation, specialist or other participants in the criminal proceedings possess specialist knowledge shall not exempt the prosecuting authorities from their obligation to obtain an expert opinion in appropriate cases. To determine the facts provided for in Article 140.0.1-140.0.4 of this Code, it shall be obligatory to seek the relevant expert opinion.

264.3. An expert opinion shall be obtained by decision of the investigator or, in the case of a private prosecution, on a written application by the defence. A decision to obtain an expert opinion shall be binding on the people to whom it relates.

264.4. The decision to obtain an expert opinion shall contain the following:

- 264.4.1. the date, time and place of the decision;
- 264.4.2. the investigator's family name, first name, father's name and title;
- 264.4.3. the objective grounds and reasons for obtaining an expert opinion;
- 264.4.4. the material evidence and other objects sent for expert examination, specifying the place, time and circumstances of their discovery and removal and, if the expert opinion is based on evidence in the case file, the information on which the expert is to base his conclusions;
- 264.4.5. the questions put to the expert;
- 264.4.6. the name of the expert body or the family name of the person from whom the expert opinion was commissioned.
- 264.5. In the event of a private prosecution, in order to determine facts which may serve the interests of the defence, defence counsel shall, on his own initiative, have the right to officially commission one or more experts or expert bodies to prepare an expert report, on condition that the work is paid for on the basis of a contract.
- 265.6. In the event of a private prosecution, where an expert report is commissioned on the initiative of the defence and at its expense, the expert shall be given a list of questions and the items to be examined.
- 264.7. In the event of a private prosecution, the opinions of experts who issued an expert report officially commissioned by the defence shall be included in the case file by the court and assessed together with the other evidence.
- Article 265. Individual experts' reports and reports prepared by committees of experts**
- 265.1. An expert report may be prepared by one or more persons appointed as experts who have specialist knowledge.
- 265.2. An individual expert's report shall be commissioned from a recognised expert or the head of an expert body that will appoint a recognised expert.

265.3. An expert report on a complex subject or a repeat expert report shall be prepared by a committee of experts with the same specialisation. At the request of the parties, their chosen experts may be included in the committee of experts. The experts shall consult among themselves and, on reaching a consensus, issue and sign their opinion. If there is a difference of opinion among the experts, each of them shall give his opinion on the question or questions giving rise to the difference.

265.4. Execution of a decision to commission an expert's report shall be binding on the head of an expert body. Where preparation of an expert report is entrusted to an expert body, the head of that body may set up a committee of experts to prepare the expert report.

#### **Article 266. Complex expert reports**

266.1. A complex expert report shall be obtained where facts of significance to the prosecution can be determined only by conducting several studies in different specialist fields of knowledge or different branches of the same field of knowledge.

266.2. Within the limits of their authority and on the basis of all the factual information established as part of the complex expert report, the experts shall state their conclusions as to the facts to be determined with the aid of the expert report.

266.3. An expert may not sign the part of the complex expert opinion that deals with matters beyond his authority.

266.4. If preparation of the complex expert report is entrusted to an expert body, responsibility for organising the relevant expert studies shall lie with the head of that body.

#### **Article 267. Additional and repeat expert reports**

267.1. If the expert fails to answer the questions put to him completely or if the investigator has additional questions on the items investigated, an additional expert report shall be commissioned from the same or another expert.

267.2. If the expert's opinion is not sufficiently reasoned or gives rise to doubts, if the evidence on which it is based is considered unreliable or if the rules of

procedure governing preparation of an expert report are violated, a repeat expert report shall be commissioned.

267.3. A repeat expert report shall be commissioned from another expert. Experts involved in preparing the previous expert report may participate in and give explanations concerning the preparation of the repeat expert report, but shall not participate in the investigation or in drawing up the opinion.

267.4. Reasons for disagreement with the results of the previous expert report shall be given in the decision to commission the repeat expert report. When the repeat expert report is commissioned, questions may be put to the expert concerning the scientific basis of the means of investigation used to prepare the previous report.

**Article 268. Rights of the suspect or accused with regard to the commissioning and preparation of an expert report**

268.1. Where an expert report is commissioned and drawn up by decision of the investigator, the suspect or the accused shall have the following rights:

268.1.1. to be acquainted with the investigator's decision to appoint an expert, before the preparation of the expert report, and to be given an explanation of his related rights;

268.1.2. to object to the expert;

268.1.3. to request the appointment of an expert from a list of persons he provides;

268.1.4. to commission an alternative expert report on his own initiative and at his expense and to request the inclusion of this opinion in the case file;

268.1.5. to put additional questions to the expert appointed by the investigator;

268.1.6. with the investigator's permission, to participate in the preparation of the expert report, to ask the expert to explain the nature of the investigative methods used and the results obtained, and to give explanations to the expert;

268.1.7. to acquaint himself with the expert's opinion within 10 (ten) days of its receipt by the investigator and to request the preparation of an additional or repeat expert report;

268.1.8. to participate in the questioning of the expert conducted at his request.

268.2. The rights listed shall also apply to persons to whom compulsory medical measure are applied, where their mental condition so permits.

#### **Article 269. Preparation of an expert report by an expert body**

269.1. The investigator shall send the decision to commission an expert report, items to be examined and, where necessary, the case file to the head of the expert body for an opinion. The expert report shall be prepared by an employee of the expert body. If the decision does not state by whom the expert report is to be prepared, the head of the expert body shall designate one or more experts belonging to that body and inform the person who commissioned the expert report.

269.2. Where an expert report is prepared on the initiative and at the expense of the defence, the latter shall send a list of questions and the items for examination to the head of the expert body.

269.3. The head of the expert body shall fulfil the following duties:

269.3.1. explain to the expert his rights and duties under Article 97.4 and 97.6 of this Code;

269.3.2. inform the expert of the criminal responsibility incurred for intentionally giving false opinions and make a note to this effect in the decision on the appointment of the expert, requiring the expert to sign the decision as confirmation of receipt of this warning;

269.3.3. make arrangements for the preparation of the expert report;

269.3.4. provide secure means for the safe-keeping of items to be examined;

269.3.5. determine the time limit for submission of the expert report.

269.4. The head of the expert body shall not have the right to give advance instructions to the expert on the conduct of his investigation and the results expected of it.

**Article 270. Preparation of an expert report not entrusted to an expert body**

270.1. Where an expert report is prepared otherwise than by an expert body, the investigator shall proceed as follows after making the decision to commission an expert report:

270.1.1. summon the person commissioned to prepare the expert report;

270.1.2. ascertain his identity and authority;

270.1.3. determine the expert's relations with the suspect or the accused, the victim and any other participants in the criminal proceedings and verify whether there are grounds for an objection to the expert;

270.1.4. present the decision to commission the expert report to the expert;

270.1.5. explain to the expert his rights and duties under Article 97.4 and 97.6 of this Code;

270.1.6. inform the expert of the criminal responsibility incurred for intentionally giving false opinions;

270.1.7. note the requests and wishes of the expert;

270.1.8. note in the record that the expert has been acquainted with the decision to commission an expert report and that the procedures provided for in Article 270.1.2-270.1.7 of this Code have been carried out;

270.1.9. issue a reasoned decision about satisfaction or refusal of the expert's wishes.

270.2. Where it is necessary to examine the physical or mental condition of the suspect, the accused, the victim or a witness, or where their participation in the

preparation of the expert report is considered necessary, the investigator shall arrange for them to be brought before the expert.

270.3. If the expert report is prepared on the initiative of the defence and at its expense, a contract shall be signed between the expert and the defence. The defence shall pay for the expert report and give a list of questions and the items for examination to the expert.

#### **Article 271. The expert opinion**

271.1. No later than one month after the receipt of the investigator's decision to commission an expert report or the conclusion of the contract between the expert and the defence, the expert shall carry out the necessary investigations, draw up a written opinion, confirm it with his signature and send it immediately to the person who commissioned the expert report or the defence.

271.2. The following information shall be given in the expert opinion:

271.2.1. the date, time and place of preparation of the expert report;

271.2.2. the expert's family name, first name, father's name, education, specialisation, the length of time for which he has been working on the specialist subject, his scientific titles and degrees and his position;

271.2.3. a note confirming that the expert is aware of the criminal responsibility incurred for intentionally giving false opinions;

271.2.4. the grounds for preparing the expert report;

271.2.5. a note about those who participated in the preparation of the expert report (family names, first names, father's names and home addresses);

271.2.6. a note about the circumstances in which the expert report was prepared, including material from the case file used by the expert, material evidence, samples and other items examined, methods applied and their degree of reliability, reasoned answers to the questions put and the facts of significance to the criminal case determined on the expert's initiative.

271.3. The material evidence, samples, other materials and photos, drawings or tables which confirm the expert's conclusions shall be attached to the expert opinion.

271.4. Where it is found that the material presented for examination is insufficient or the expert does not have sufficient knowledge, the expert opinion shall include information on the reasons why the expert is unable to answer all or some of the questions put to him.

271.5. The expert opinion shall be signed by the persons who prepared the expert report (the validity of these signatures shall be confirmed by the head of the expert body).

#### **Article 272. Questioning of the expert**

272.1. If the expert opinion is not sufficiently clear, if there are gaps which do not necessitate additional investigation or if it is necessary to clarify the methods applied or the terms used by the expert, the investigator shall be entitled to question the expert.

272.2. The expert shall be summoned and questioned in accordance with Articles 226, 227 and 230 of this Code.

272.3. It shall not be permissible to question the expert before he submits his opinion.

### **Chapter XXXVI**

#### **TAKING OF SAMPLES FOR EXAMINATION**

#### **Article 273. Conditions for taking samples**

273.1. The investigator may conduct the appropriate investigative procedures in order to have samples taken for examination in the following cases:

273.1.1. where the samples are representative of the properties of a person, animal, corpse, animal carcass, object or material;

- 273.1.2. where samples are of significance to the prosecution.
- 273.2. In order to obtain samples for examination the investigator shall make a reasoned decision to perform the appropriate investigative procedures. The following information shall be given in the decision:
- 273.2.1. the date, time and place of the decision;
  - 273.2.2. the investigator's family name, first name, father's name and title;
  - 273.2.3. the objective grounds and reasons for taking the samples for examination;
  - 273.2.4. the family name, first name and father's name of the person who is to take the sample;
  - 273.2.5. the family name, first name and father's name of the person from whom the samples are to be taken;
  - 273.2.6. the type and quantity of sample which must be taken for examination;
  - 273.2.7. when and to whom the person should come for the samples to be taken for examination;
  - 273.2.8. after the samples have been taken, when and to whom they must be handed over.
- 273.3. Samples for examination may also be taken during examination of premises, search, seizure, attachment of property and confiscation of correspondence, in the circumstances and under the procedure laid down in this Code.
- 273.4. Where necessary, on condition that there is no breach of human rights, samples may also be taken by an expert.
- 273.5. Regardless of the method used to take the samples for examination, it shall be prohibited to take samples in such a way as to cause people suffering or endanger their life, health or physical integrity.

**Article 274. Types of sample taken for examination**

274.0. The following samples may be taken for examination:

274.0.1. blood, sperm, hair, nail clippings, microscopic samples of skin;

274.0.2. saliva, sweat and other bodily secretions;

274.0.3. skin samples, dental impressions and foot and hand prints;

274.0.4. handwriting, knots, handicraft and other materials representative of human skills;

274.0.5. a voice phonogram;

274.0.6. samples of materials, substances, raw materials and manufactured products;

274.0.7. tools, bullets and cartridge cases;

274.0.8. other substances and objects.

**Article 275. Taking of samples on the basis of the investigator's decision**

275.1. In order to have samples taken for examination, the investigator shall summon the person from whom the samples are to be taken to his office, or shall go to the place where that person is to be found.

275.2. Counsel for an accused or suspect from whom samples are to be taken shall have the right to be present. If defence counsel, having been informed of the conduct of this investigative procedure by the investigator in advance, expresses the wish to participate in the taking of samples, the investigator shall guarantee this right.

275.3. At the invitation of the investigator a specialist, teacher, doctor or other person may also participate in the taking of samples for examination.

275.4. Before samples are taken for examination, the investigator shall acquaint all those present with the relevant decision, which they shall sign, and shall explain their rights and duties.

275.5. The investigator shall have the right to use photography, video, film and other recording techniques while samples are taken for examination.

275.6. The investigator, or another person acting under his instructions, shall perform the necessary acts, except in cases where people of the opposite sex are required to undress, and in the presence of other persons participating in this investigative procedure, shall take the samples for examination. Samples taken for examination, with the exception of documents, shall be packed and sealed.

#### **Article 276. Record of the taking of samples**

276.1. After taking the samples, the investigator shall draw up a record containing the following information:

276.1.1. the date, time and place of the taking of samples;

276.1.2. the investigator's family name, first name, father's name and title;

276.1.3. the titles, family names, first names and father's names of those participating in the taking of samples for examination, the year, month, day and place of their birth, their workplace, address and place of registration;

276.1.4. a note that those participating in the taking of samples for examination have been given an explanation of their rights and duties;

276.1.5. a note about the circumstances of the taking of samples for examination, including the nature of the samples and the means whereby they were taken, and a note about use of photography, video, film or other recording techniques;

276.1.6. a description of the measures performed in the order followed, the scientific and technical methods and means utilised and the samples themselves;

276.1.7. all the information revealed during the taking of samples, in the order of its discovery (detailing the circumstances and results of the taking of samples).

276.2. The record of the taking of samples for examination shall be signed by all the participants in the investigative procedure, who shall have the right to require

the inclusion of their observations in it. If the record consists of several pages, each page shall be signed separately by all the participants.

276.3. The samples taken for examination shall be attached to the record. If, during the taking of samples for examination, photography, video, film or other recording techniques are used, the relevant documents, photos, tapes or other information devices shall be attached to the record.

## **Chapter XXXVII**

### **SUSPENSION AND DISCONTINUATION OF CRIMINAL PROCEEDINGS**

#### **Article 277. Rules governing suspension of criminal proceedings**

277.1. Criminal proceedings shall be suspended by a reasoned decision of the investigator in the circumstances provided for in Article 53.1 of this Code.

277.2. The decision to suspend the criminal proceedings shall contain the following information:

277.2.1. the date, time and place of the decision;

277.2.2. the investigator's family name, first name, father's name and title;

277.2.3. when and by whom the criminal proceedings were commenced;

277.2.4. the circumstances constituting grounds for the commencement of proceedings;

277.2.5. the facts determined during the investigation;

277.2.6. the reasons for suspending the criminal proceedings;

277.2.7. the grounds for the investigator's decision to suspend the proceedings, indicating one or more of the circumstances mentioned in Article 53.1 of this Code;

277.2.8. the family name, first name and father's name of the person against whom proceedings are suspended;

277.2.9. the measures to be taken in connection with the suspension of the criminal proceedings.

277.3. A copy of the investigator's decision to suspend the criminal proceedings shall be sent within 24 hours to the prosecutor in charge of the procedural aspects of the investigation.

277.4. The investigator shall inform the victim, his representative, the civil party, the defendant to the civil claim and their representatives in writing of the decision to suspend the criminal proceedings and of their right to challenge the decision to suspend the proceedings under the procedure laid down in Article 122 of this Code. In the event of suspension of the criminal proceedings on the grounds provided for in Article 53.1.4-53.1.6 of this Code, the accused and his counsel shall also be duly informed.

277.5. After suspending the criminal proceedings, the investigator shall take the following measures himself or via the preliminary investigating authority:

277.5.1. in the circumstances provided for in Article 53.1.1 of this Code, take steps to identify the person to be charged with the offence;

277.5.2. in the circumstances provided for in Article 53.1.2 of this Code, take steps to trace the accused;

277.5.3. in the circumstances provided for in Article 53.1.3 of this Code, take steps to search for an accused person who has gone into hiding.

277.6. No investigative procedures may be conducted in respect of a criminal case which has been suspended.

#### **Article 278. Search for the accused**

278.1. A warrant to search for the accused may be issued by the investigator concurrently with the conduct of the investigation or with a suspension of the criminal proceedings.

278.2. If the location of the accused is unknown, or if the accused has gone into hiding, the investigator shall issue a search warrant to the relevant preliminary investigating authority.

278.3. The search for the accused shall consist in taking steps to determine his whereabouts, apprehend him and place him at the disposal of the prosecuting authority.

278.4. The following measures may be applied to an accused who has been traced and detained in accordance with the provisions of this Code:

278.4.1. the court exercising judicial supervision may choose arrest or an alternative restrictive measure, or alter that decision;

278.4.2. the investigator in charge of the case may choose a restrictive measure other than arrest or the alternatives to it, or alter that decision.

#### **Article 279. Resumption of suspended criminal proceedings**

279.1. Suspended criminal proceedings shall be resumed in the following cases by decision of the investigator:

279.1.1. where the circumstances provided for in Article 53.1 of this Code, justifying a suspension of the proceedings, no longer exist;

279.1.2. where it is necessary to carry out procedural measures which can be performed without the participation of the accused.

279.2. A copy of the investigator's decision to resume the criminal proceedings shall be sent to the prosecutor in charge of the procedural aspects of the investigation within 24 hours at the latest.

279.3. The criminal proceedings may be resumed on the basis of a decision by the prosecutor in charge of the procedural aspects of the investigation or the court exercising judicial supervision to set aside the investigator's decision to suspend the proceedings.

279.4. The investigator shall inform the accused and defence counsel as well as the victim, his representative, the civil party, the defendant to the civil claim and their representatives of the resumption of proceedings.

**Article 280. Discontinuation of criminal proceedings during the investigation**

280.1. Criminal proceedings shall be discontinued on the basis of a reasoned decision by the investigator in the circumstances provided for in Articles 39-41 and 46.5 of this Code.

280.2. The decision to discontinue the criminal proceedings shall contain the following information:

280.2.1. the date, time and place of the decision;

280.2.2. the investigator's family name, first name, father's name and title;

280.2.3. when and by whom the criminal proceedings were commenced;

280.2.4. the circumstances constituting grounds for the commencement of proceedings;

280.2.5. the facts determined during the investigation;

280.2.6. the circumstances which make it mandatory to discontinue the criminal proceedings;

280.2.7. the grounds for the decision to discontinue the proceedings, referring to one or more provisions of Articles 39-41 and 46.5 of this Code;

280.2.8. a note about the action taken on any restrictive measure adopted in the criminal case, on the attachment of property and on the material evidence.

280.3. If the grounds for discontinuing the proceedings concern separate criminal cases or separate persons, the proceedings shall be discontinued only insofar as they relate to them.

280.4. In the event of discontinuation of criminal proceedings in the circumstances provided for in Article 39.1.1, 39.1.2, 39.1.11 and 39.2 of this Code, it shall be prohibited to include in the decision provisions casting doubt on the innocence of the person against whom proceedings were discontinued.

280.5. Within 24 hours of the decision to discontinue the criminal proceedings, a copy thereof shall be sent to the prosecutor in charge of the procedural aspects of the investigation.

#### **Article 281. Measures taken by the investigator after discontinuing criminal proceedings**

281.1. The investigation shall send copies of the decision to discontinue criminal proceedings to the suspect or the accused, his defence counsel, the victim, the civil party, the defendant to the civil claim and their representatives.

281.2. The persons mentioned in Article 281.1 of this Code shall be informed of their right to take cognisance of the case file and of the procedure for lodging a complaint against the decision to discontinue criminal proceedings.

281.3. The right of the persons mentioned in Article 281.1 of this Code to take cognisance of the case file shall be secured in accordance with Articles 284-286 of this Code.

#### **Article 282. Complaint against the decision to discontinue criminal proceedings**

282.1. A complaint against the decision to discontinue criminal proceedings may be lodged by the accused, his defence counsel, the victim, the civil party, the defendant to the civil claim or their representatives, within 10 (ten) days of receipt of the copy of the decision, with the prosecutor in charge of the procedural aspects of the investigation or the court exercising judicial supervision.

282.2. A complaint against a refusal by the prosecutor in charge of the procedural aspects of the investigation to act upon a complaint concerning discontinuation of the criminal proceedings may be lodged with the court exercising judicial supervision.

#### **Article 283. Resumption of discontinued criminal proceedings**

283.1. Proceedings shall be resumed only if the decision to discontinue them is overturned and if the time limit for bringing a prosecution has not expired.

283.2. The suspect or the accused, his defence counsel, the victim, the civil party, the defendant to the civil claim or their representatives shall be informed of the resumption of the proceedings in writing.

## **Chapter XXXVIII**

### **DRAWING UP OF THE INDICTMENT AND TRANSFER OF THE CASE TO THE COURT**

#### **Article 284. Presentation of the case file before the drawing up of the indictment**

284.1. When the investigator deems that there is sufficient evidence to draw up the indictment and transfer the case to the prosecutor in charge of the procedural aspects of the investigation, he shall:

284.1.1. inform the accused, his defence counsel, the victim, the civil party, the defendant to the civil claim or their representatives of the end of the investigation;

284.1.2 specify a place and time for the parties to the criminal proceedings to take cognisance of the case file.

284.2. The investigator shall make arrangements for the victim, civil party, defendant to the civil claim or their representatives to take cognisance of the case file, on request, and for the accused and defence counsel to be able to do so without having to make a request.

284.3. If counsel for the accused or the representatives of the victim, civil party or defendant to the civil claim cannot attend at the appointed time, the investigator shall extend the arrangements for taking cognisance of the case file for 5 (five) days. If defence counsel or the representative fails to attend within this period, the accused shall be offered the opportunity to appoint, or reach an agreement with, another defence counsel, and the victim, civil party or defendant to the civil claim shall be given the opportunity to appoint another representative.

#### **Article 285. Procedure for taking cognisance of the case file**

285.1. In order to permit participants to take cognisance of the case file, the investigator shall present it in one or more volumes with numbered pages, each volume containing a list of the documents therein. Material evidence kept with the case file and attachments to the records of investigative procedures shall also be presented. Where the case file consists of several volumes, all the volumes shall be presented at the same time.

285.2. When acquainting the parties to the criminal proceedings with the case file, the investigator shall, at their request, show them any documents, photos, tapes or other information devices attached to the records, using the relevant technical apparatus.

285.3. The accused and his defence counsel shall take cognisance of the case file before the other parties to the criminal proceedings and shall have the right to do so together or separately. The victim, civil party and defendant to the civil claim shall have the right to take cognisance of the case file together with their representatives.

285.4. The investigator may not impose a time limit for taking cognisance of the case file. However, if parties to the criminal proceedings prolong this process unnecessarily the investigator may lay down a schedule for taking cognisance of the case file, bearing in mind the volume of the file and the time required to take cognisance of it.

285.5. Those acquainting themselves with the case file shall have the right to transcribe extracts from the requisite documents in the file, to make copies and to take photos.

285.6. The investigator shall not allow those acquainting themselves with the case file to transcribe extracts, make copies or take photos of documents concerning private, family, state, professional or commercial secrets.

#### **Article 286. Record of the presentation of the case file**

286.1. The investigator shall draw up a record of the presentation of the case file, stating the date, time and place of the presentation, his family name, first name, father□s name and title, the family names and first names of those taking

cognisance the case file, and the documents confirming the authority of defence counsel and the representatives of the victim, civil party and defendant to the civil claim.

286.2. A separate record of the presentation of the case file to each participant in the criminal proceedings shall be drawn up. Where defence counsel or representatives take cognisance of the file together with the person whom they represent, a single record of the presentation of the case file to them shall be drawn up.

286.3. The record of the presentation of the case file shall indicate the volumes presented and the number of pages in each volume, as well as any material evidence and attachments to the records of the investigative procedures.

286.4. The date, hour and minute of the start and end of the presentation for each day concerned shall be given in the record.

286.5. Oral requests made after the presentation of the case file shall be included in the record.

#### **Article 287. Filing of applications after the presentation of the case file**

287.1. After the presentation of the case file the investigator shall ascertain whether the accused, defence counsel, the victim, the civil party, the defendant to the civil claim or their representatives wish to file applications concerning the conduct of additional investigative procedures or the taking of new procedural decisions. At their request, parties to the criminal proceedings may be allowed 48 hours to prepare and file a written application.

287.2. The investigator shall make a reasoned decision as to the complete or partial refusal of an application and, within 48 hours of the filing of the application, transmit a copy of the decision to the applicant. The case file may not be transferred to the prosecutor in charge of the procedural aspects of the investigation before a decision has been taken on any application.

287.3. Within 48 hours of transmission of the copy of the decision refusing an application to conduct additional investigative procedures or take new procedural

decisions, a complaint against this decision may be lodged with the prosecutor in charge of the procedural aspects of the investigation.

287.4. If the prosecutor in charge of the procedural aspects of the investigation dismisses a complaint against refusal of an application concerning a case sent to court, this shall not prevent the application from being brought before the court.

#### **Article 288. Presentation of the case file after allowing an application**

Regardless of the applicant and of whose interests are concerned, after an application has been allowed the investigator shall permit the accused, defence counsel, the victim, the civil party, the defendant to the civil claim and their representatives to take cognisance of the part of the case file relevant to the application.

#### **Article 289. Indictment**

289.1. After fulfilling the requirements of Articles 284-288 of this Code, the investigator shall draw up the indictment.

289.2. The following shall be stated in the introductory part of the indictment:

289.2.1. the date, time and place at which the indictment was drawn up;

289.2.2. the family name, first name, father\s name and title of the investigator drawing up the indictment;

289.2.3. general information on the criminal case in which the indictment is drawn up (when, on which grounds and by whom the proceedings were initiated; when, by whom and against whom charges were brought; when, by whom, concerning whom and which restrictive measures were chosen in the case; when, by whom and on which grounds the proceedings were suspended, discontinued and resumed).

289.3. The following shall be stated in the part of the indictment setting out the facts and reasons:

289.3.1. the place, time, means, motives, results and other important particulars of the offence;

- 289.3.2. evidence proving the guilt of the accused;
  - 289.3.3. arguments raised by the accused in his defence and collected during verification of those arguments;
  - 289.3.4. the circumstances of the accused;
  - 289.3.5. the circumstances of the victim;
  - 289.3.6. aggravating or mitigating circumstances.
- 289.4. The final part of the indictment, giving information about the accused and the relevant articles of criminal law, shall contain a statement of the charges.
- 289.5. The indictment shall contain references to the material collected in the criminal case and to the pages of the case file.
- 289.6. The investigator shall sign the indictment, stating the place and time.
- 289.7. A list of persons who, in the investigator's opinion, should be summoned to appear at the court hearing shall be added to the indictment. In this list the investigator shall note the locations of those summoned and the case file documents containing their testimony or opinions.
- 289.8. The following information shall be added to the indictment:
- 289.8.1. the period for which the accused is detained on remand;
  - 289.8.2. any material evidence and the place where it is kept;
  - 289.8.3. measures taken to satisfy the civil party's claim and any confiscation of property;
  - 289.8.4. court expenses.

#### **Article 290. Examination of the indictment by the prosecutor**

- 290.1. After signing the indictment the investigator shall send it to the prosecutor in charge of the procedural aspects of the investigation on the same day.

290.2. The prosecutor in charge of the procedural aspects of the investigation shall examine the case file received with the indictment to verify the following:

290.2.1. proof of the commission of the offence charged, and the fact that it constitutes a criminal offence;

290.2.2. proof of the accused's guilt;

290.2.3. inclusion of all offences committed by the accused in the counts of the indictment;

290.2.4. inclusion in the proceedings of all known participants in the offence;

290.2.5. the existence of any grounds for discontinuing the criminal proceedings;

290.2.6. the correct classification of the offences committed by the accused;

290.2.7. the correctness of the investigator's choice of restrictive measure;

290.2.8. that measures have been taken to secure the civil claim and any possible confiscation of property;

290.2.9. that measures have been taken to detect conditions conducive to commission of the offence and eliminate these;

290.2.10. the thorough, full and objective investigation of the circumstances of the offence;

290.2.11. the conformity of the indictment drawn up by the investigator with the requirements of Article 289 of this Code;

290.2.12. that the investigation has been conducted in accordance with the provisions of this Code.

290.3. Within 5 (five) days of receiving the case file with the indictment, the prosecutor in charge of the procedural aspects of the investigation shall take one of the following decisions:

290.3.1. deem that there is sufficient evidence to send the criminal case to court and confirm the indictment;

290.3.2. on his own responsibility, exclude individual counts from the indictment, alter the classification of the offence to a less serious one in accordance with criminal law, and confirm the indictment with these changes;

290.3.3. return the case file to the investigator with instructions to conduct an additional investigation or revise the indictment;

290.3.4. suspend the criminal proceedings;

290.3.5. discontinue the criminal proceedings.

290.4. Where there are grounds for making additions to the indictment, or for replacing the charge with a significantly different or more serious one in the light of the facts, the prosecutor in charge of the procedural aspects of the investigation shall return the case file to the investigator so that he may announce the additional or amended charge to the accused.

290.5. The prosecutor in charge of the procedural aspects of the investigation of the criminal case on which the file was received with the indictment shall be entitled to take the following measures on his own initiative:

290.5.1. to cancel or change the restrictive measure chosen by the investigator;

290.5.2. if necessary, where a restrictive measure has not been chosen by the investigator, to choose one of these measures or to make submissions to the court concerning the choice of arrest as a restrictive measure.

#### **Article 291. Changes made by the prosecutor to the list of persons to be summoned to attend the court hearing**

291.0. The prosecutor in charge of the procedural aspects of the investigation:

291.0.1. before sending the case to the court, may delete names from or add names to the list of persons to be summoned to attend the court hearing drawn up by the investigator;

291.0.2. may not exclude from this list the accused, his defence counsel or his legal representative, the victim if he possesses legal capacity, the civil party, the defendant to the civil claim or their representatives and legal representatives.

**Article 292. Transfer of the criminal case to the court**

292.1. After confirming the indictment, the prosecutor in charge of the procedural aspects of the investigation shall send the criminal case file without delay to the relevant court, adding sufficient copies of the indictment for the parties to the criminal proceedings.

292.2. The prosecutor in charge of the procedural aspects of the investigation shall immediately inform the accused and his legal representative, the victim, the civil party, the defendant to the civil claim and their representatives and legal representatives that the case has been referred to the court and that they are henceforth entitled to submit any application or complaint to the court.

292.3. The prosecutor in charge of the procedural aspects of the investigation shall also ensure that the accused and defence counsel are provided with certified copies of the indictment and additions. If changes were made to the indictment and its additions, only the last version of the indictment shall be provided.

292.2. If the accused and defence counsel do not know the language in which the criminal proceedings are held, they shall be given translations of the certified copies of the indictment and additions to it, signed by the translator, together with the copies of these documents in the language in which the trial is to be held.

**Chapter XXXIX**

**SIMPLIFIED PRE-TRIAL PROCEEDINGS CONCERNING OBVIOUS OFFENCES**

**which do not pose A MAJOR public threat**

**Article 293. Lodging of a complaint about an obvious offence which does not pose a major public threat**

293.1. A complaint about an obvious offence which does not pose a major public threat shall be lodged in written or verbal form, in respect of the offences provided

for in Article 214.4 of this Code, with the preliminary investigator, the investigator or the prosecutor in charge of the procedural aspects of the investigation, by the victim or his representative or legal representative.

293.2. If a complaint about an obvious offence which does not pose a major public threat is lodged in verbal form with the preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation, a record of the fact shall be drawn up and signed by the person lodging the complaint and the person drawing up the record.

293.3. A written complaint about an obvious offence which does not pose a major public threat and the record of a verbal complaint shall state the following:

293.3.1. information about the person lodging the complaint (family name, first name, father□s name, year of birth, address and occupation or title);

293.3.2. information about the offence committed (which particular offence under criminal law was committed, where, when and how it was committed, and any damage caused at the time, including the amount of pecuniary damage assessed);

293.3.3. by whom the offence under criminal law was committed (family name, first name, father□s name and address) and how it is ascertained that the offence was committed by this person;

293.3.4. statements by witnesses and other persons willing to testify (family name, first name, father□s name and address of the persons concerned), documents and other evidence of the circumstances of the offence referred to in the complaint;

293.3.5. a request that the person who committed the offence be charged;

293.3.6. the date (year, month and day) and place at which the complaint is lodged;

293.3.7. the signature of the person lodging the complaint.

293.4. A person lodging a complaint about an obvious offence which does not pose a major public threat shall be warned of the criminal responsibility incurred for intentionally making false statements, which shall be noted in the complaint. If the

complaint is made verbally, the warning shall be noted in the record and shall be signed by the person lodging the complaint and the person drawing up the record.

**Article 294. Decisions concerning a complaint about an offence which does not pose a major public threat**

294.1. The preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation shall take the following measures:

294.1.1. immediately register and examine the complaint about an obvious offence which does not pose a major public threat;

294.1.2. on coming to the conclusion that there are grounds to bring a prosecution in accordance with Article 38 of this Code, initiate simplified pre-trial proceedings within 24 hours of the receipt of the complaint, annotating the written complaint or the record of the verbal complaint accordingly;

294.1.3. on coming to the conclusion that there are no grounds to bring a prosecution in accordance with Article 38 of this Code, decide not to initiate simplified pre-trial proceedings within 24 hours of the receipt of the complaint, giving the reasons for his decision;

294.1.4. on coming to the conclusion that the complaint should be sent to the relevant court or the relevant investigating authority, carry out investigative procedures which cannot be delayed in order to record evidence of the offence (examination of the scene of the offence, removal and examination of objects discovered during this procedure) and interview witnesses to the offence, within 24 hours of the receipt of the complaint, and on his own initiative send the complaint together with all the material collected to the court or the investigating authority, as the case may be.

294.2. A preliminary investigation taking the form of simplified pre-trial proceedings concerning an obvious offence which does not pose a major public threat shall be carried out in accordance with the rules laid down in Articles 214 and 215 of this Code.

294.3. On examining a complaint about an obvious offence which does not pose a major public threat, or during the preliminary investigation of such an offence in the form of simplified pre-trial proceedings, where it is necessary to perform investigative measures which cannot be carried out under the simplified pre-trial procedure, the prosecutor in charge of the procedural aspects of the investigation may, at the request of the preliminary investigator or investigator or on his own initiative, decide to open a criminal case and entrust the conduct of the investigation to the appropriate investigating authority.

294.4. The preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation shall:

294.4.1. inform in writing the person who lodged the complaint about an obvious offence which does not pose a major public threat, of the opening of simplified pre-trial proceedings concerning his complaint;

294.4.2. on deciding not to open simplified pre-trial proceedings concerning a complaint about an obvious offence which does not pose a major public threat, ensure that a copy of the decision is presented or sent by post, within 3 (three) days, to the person who lodged the complaint.

**Article 295. Rules governing simplified pre-trial proceedings concerning obvious offences which do not pose a major public threat**

295.1. An investigation in the form of simplified pre-trial proceedings shall be conducted within 10 (ten) days of the receipt of a complaint about an obvious offence which does not pose a major public threat by the preliminary investigator, investigator or prosecutor in charge of the procedural aspects of the investigation.

295.2. During simplified pre-trial proceedings concerning obvious offences which do not pose a major public threat, in order to ensure that the court examines the case thoroughly, fully and objectively, the preliminary investigator shall determine the circumstances of the offence, the identity of the culprit and other necessary facts by questioning the victim, the person who committed the offence under criminal law, witnesses and others, and by seeking the necessary information.,

295.3. If the measures stipulated in Article 295.2 are not sufficient for the case to be brought to trial, the preliminary investigator may, during the simplified pre-trial proceedings, conduct investigative procedures such as searches, seizures, body searches, examination of places and corroborative experiments in order to collect the necessary evidence.

295.4. The procedures provided for in Article 295.3 of this Code may be performed by the preliminary investigator in the following circumstances:

295.4.1. if they themselves are unable to adduce the necessary evidence or give information about it, at the request of the person lodging a complaint, his representative or legal representatives, the person who committed the offence under criminal law or his defence counsel;

295.4.2. on instructions from the prosecutor in charge of the procedural aspects of the investigation.

295.5. During simplified pre-trial proceedings concerning obvious offences which do not pose a major public threat, while conducting investigative procedures, the preliminary investigator shall comply with the articles of this Code laying down the rules governing conduct of those investigative procedures.

**Article 296. Final record of the results of simplified pre-trial proceedings concerning obvious offences which do not pose a major public threat**

296.1. The investigator shall draw up a final record of the results of simplified pre-trial proceedings concerning an obvious offence which does not pose a major public threat.

296.2. The final record of the results of the pre-trial proceedings shall state the following:

296.2.1. the date, time and place of the record;

296.2.2. the family name, first name, father's name and title of the preliminary investigator drawing up the record;

296.2.3. the family name, first name and father\s name, year, month, day and place of birth, family status, workplace and title, place of registration and address of the person who lodged the complaint;

296.2.4. the family name, first name and father\s name, year, month, day and place of birth, family status, workplace and title, place of registration and address of the person who committed the offence under criminal law;

296.2.5. the place where the offence was committed, the time, means used and motive, the outcome and information on other important facts;

296.2.6. evidence proving the guilt of the person who committed the offence under criminal law;

296.2.7. classification of the acts performed by the person who committed the offence, with reference to the relevant articles of criminal law;

296.2.8. the list of persons to be summoned to the court hearing.

296.3. After the final record of the results of the pre-trial proceedings has been signed, the preliminary investigator shall take the following steps:

296.3.1. allow the person who committed the offence under criminal law, his defence counsel or legal representative, the victim, the civil party, the defendant to the civil claim and their representatives to take cognisance of the file on the simplified pre-trial proceedings;

293.3.2. send all the material on the simplified pre-trial proceedings to the prosecutor in charge of the procedural aspects of the investigation.

**Article 297. Measures taken by the prosecutor based on the results of a preliminary investigation in the form of simplified pre-trial proceedings concerning an obvious offence which does not pose a major public threat**

297.0. After receiving the file on the simplified pre-trial proceedings, the prosecutor in charge of the procedural aspects of the investigation shall take the following measures:

297.0.1. immediately examine the material received and verify the lawfulness of and grounds for the measures taken by the preliminary investigator during examination of the complaint concerning an obvious offence which does not pose a major public threat and the simplified pre-trial proceedings relating to the same complaint;

297.0.2. if the evidence collected and circumstances researched during the preliminary investigation enable charges to be brought, confirm the bringing of charges on the final record drawn up by the preliminary investigator concerning the results of the simplified pre-trial proceedings and send all the material to the court;

297.0.3. if the evidence collected is not sufficient to bring charges, decide whether to open a criminal case on the basis of the file on the simplified pre-trial proceedings and order the conduct of an investigation by the relevant investigating authority;

297.0.4. if there are circumstances which rule out a prosecution, decide to discontinue the prosecution of the person who committed an offence under criminal law;

297.0.5. inform those who took cognisance of the file on the simplified pre-trial proceedings about the decision he takes.

## **SECTION EIGHT**

### **PROCEEDINGS IN THE COURT OF FIRST INSTANCE**

#### **Chapter XL**

##### **INITIAL EXAMINATION OF CRIMINAL CASES, FILES ON SIMPLIFIED PRE-TRIAL PROCEEDINGS AND COMPLAINTS WITH A VIEW TO PRIVATE PROSECUTIONS**

**Article 298. Initial steps to be taken by the court on receipt of a criminal case file, a file on simplified pre-trial proceedings or a complaint with a view to a private prosecution**

298.1. The criminal case file, file on simplified pre-trial proceedings or complaint with a view to a private prosecution shall be assigned to the judge or judges in accordance with the rule of equal division of cases among judges. In accordance with the rules, all the criminal case files or other prosecution material received by the court shall be divided among the judges taking into account the volume and quantity of cases and other matters assigned to them.

298.2. The preparatory hearing of the court shall be held:

298.2.1. within 15 (fifteen) days of the court's receipt of the criminal case file;

298.2.2. within 7 (seven) days of the court's receipt of the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution.

298.3. The court shall inform the accused, defence counsel, the public prosecutor (in the event of a public or semi-public prosecution), the victim, the victim bringing a private prosecution (in the event of a private prosecution), the civil party, the defendant to the civil claim or their representatives of the receipt of the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution, as the case may be, and about the holding of the preparatory hearing of the court, according to the following rules:

289.3.1. in respect of a criminal case, at least 7 (seven) days before the preparatory hearing of the court;

298.3.2. in respect of simplified pre-trial proceedings or a complaint with a view to a private prosecution, at least 3 (three) days before the preparatory hearing of the court.

298.4. When fulfilling the requirements of Article 298.3 of this Code, the court shall send to the aforementioned persons a copy of the indictment, the final record of the results of the simplified pre-trial proceedings or the complaint with a view to a private prosecution, as the case may be, together with notification of the following:

298.4.1. the receipt of the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution, as the case may be (giving the family name, first name and father's name of the accused, the

substance of the charge against him as well as the family names and titles of the judges making up the court);

298.4.2. an explanation of the rights and duties of the person to whom the notification is sent, including an explanation of the rules and time-limits for submitting petitions and applications to the court;

298.4.3. the appointed time to come to the court to attend its preparatory hearing.

298.5. Before conducting the preparatory hearing of the court, the judges who have been assigned the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution shall study the documents received, including any additional documents, applications and petitions submitted by the parties to the proceedings.

#### **Article 299. Preparatory hearing by the court**

299.1. The preparatory hearing of the court shall consist of initial questioning to verify the possibility of scheduling the court's examination of the substance of the charge brought in the criminal case, the simplified pre-trial proceedings or the complaint with a view to a private prosecution, with the participation of the parties.

299.2. The order of business of the preparatory hearing shall be determined by the court. The court may consider proposals from the parties regarding the order of the business of its preparatory hearing.

299.3. In all cases, during the preparatory hearing of the court with the participation of the parties to the proceedings, the following matters shall be examined:

299.3.1. whether the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution received by the court are within its jurisdiction or not;

299.3.2. whether the requirements of this Code were violated during the investigation;

299.3.3. whether the content of the complaint with a view to a private prosecution complies with the provisions of Article 293.3.1-293.3.7 of this Code;

299.3.4. whether there are grounds for suspending or discontinuing the criminal proceedings;

299.3.5. whether there are grounds for choosing, altering or cancelling a restrictive measure in respect of the criminal case;

299.3.6. whether there are grounds for the court's examination of the criminal case concerning a serious or very serious offence to be conducted with the participation of a jury.

299.4. During the preparatory hearing decisions shall also be taken on the following matters:

299.4.1. whether to allow or dismiss any requests or objections submitted;

299.4.2. the list of evidence to be presented by the prosecution and the defence during the court's examination of the case;

299.4.3. the exclusion of material which is inadmissible as evidence from the court's examination of the case;

299.4.4. further action on the criminal case, the simplified pre-trial proceedings or the complaint with a view to a private prosecution.

299.5. During the consideration of any written or oral applications and objections, regardless of which party's request is being examined, the parties to the proceedings shall have the right to express their opinions. If the court dismisses a request, it may be submitted again during the court's examination of the case.

299.6. During the preparatory hearing of the court the relevant steps shall be taken in the following order:

299.6.1. during the court examination the public prosecutor or the victim bringing a private prosecution shall present a list of evidence concerning the criminal case, the

simplified pre-trial proceedings or the complaint with a view to a private prosecution which they intend to examine during the court's hearing of the case;

299.6.2. defence counsel (or if his services are refused, the accused himself) and the victim, the civil party and the defendant to the civil claim, either themselves or with the assistance of their representatives, shall present a list of evidence relevant to the defence of their legal interests, shall submit requests for the summons of any persons to the court hearing (stating the family name, first name, father's name and address) and their questioning as witnesses, and shall explain with what aim the evidence they indicate is to be examined by the court and which circumstances can be determined with the aid of this evidence during the court's examination of the case.

299.7. During the preparatory hearing:

299.7.1. the court shall have the right to dismiss requests connected with the submission of evidence only if it is not relevant to the case or is considered inadmissible;

299.7.2. if the evidence is admissible from a formal point of view, but is considered irrelevant to the case by the court, the defence may present it to the court on its own account.

299.8. If the victim bringing a private prosecution repeatedly fails to attend the preparatory hearing of the court without informing the court in advance of good reasons for doing so, this shall be deemed equivalent to withdrawal of the charges and shall be considered by the court as grounds for declining jurisdiction in the complaint with a view to a private prosecution.

299.9. The preparatory hearing may be conducted without the accused being present in the following circumstances:

299.9.1. if the accused repeatedly refuses to come to the court or avoids doing so;

299.9.2. if, at the request of the accused, it is deemed legally admissible to examine the case in his absence.

299.10. The participation of defence counsel in the court's preparatory hearing shall be obligatory (if the person whom he represents does not refuse his assistance or if there is a circumstance which makes his participation in the proceedings obligatory).

299.11. If the parties to the proceedings have been informed in time about the court's preparatory hearing, their failure to attend the preparatory hearing, bearing in mind the provisions of Article 299.8 and 299.9 of this Code, shall not preclude the holding of this hearing and the taking of the appropriate decision.

**Article 300. Types of decision taken as a result of the court's preparatory hearing**

**300.1. One of the following decisions shall be taken as a result of the court's preparatory hearing:**

300.1.1. to commit the accused for trial and set down the case for a hearing;

300.1.2. to agree to deal with the complaint lodged with a view to a private prosecution and set down the case for a hearing;

100.1.3. to refuse to deal with the complaint lodged with a view to a private prosecution;

300.1.4. to send the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution to the relevant court;

300.1.5. to discontinue examination of the criminal case file or the file on simplified pre-trial proceedings and return them to the prosecutor in charge of the procedural aspects of the investigation;

300.1.6. to suspend the conduct of the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

300.1.7. to discontinue the conduct of the criminal case or the simplified pre-trial proceedings.

300.2. As well as taking the decisions provided by Article 300.1.1, 300.1.5 and 300.1.6 of this Code, the court shall take the following steps:

300.2.1. consider the grounds for applying a restrictive measure to the accused or not;

300.2.2. in the event of a restrictive measure being chosen, consider whether or not there are grounds for the particular type of restrictive measure adopted;

300.2.3. give a decision on the matter of the restrictive measure.

300.3. As well as taking the decision provided for in Article 300.1.5 of this Code, the court may take a special decision in respect of persons who seriously violated the provisions of Articles 303.3 of this Code during the pre-trial proceedings.

300.4. Copies of the decisions taken at the court's preparatory hearing shall be given (or sent by post) to the following persons within 3 (three) days:

300.4.1. to the accused, defence counsel, the public prosecutor, the victim (or victim bringing a private prosecution), the civil party, the defendant to the civil claim or their representatives, in the case of the decisions provided for in Article 300.1.1, 300.1.3 and 300.1.5 of this Code;

300.4.2. to the victim bringing a private prosecution, the person in respect of whom the complaint was made and their representatives in the case of the decision provided for in Article 300.1.2 and 300.1.3.

300.5. Complaints or appeals against the decisions provided for in Article 300.1.3, 300.1.6-300.1.8 may be lodged in accordance with the provisions of Articles 381, 383 and 384 of this Code.

### **Article 301. Setting the case down for hearing**

301.1. The case shall be set down for hearing in the court's decision on the results of its preparatory hearing in the following circumstances:

301.1.1. if there are no circumstances in the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution which render the court examination impossible;

301.1.2. where the procedural form of the indictment, the final record of the results of the simplified pre-trial proceedings or the complaint with a view to a private prosecution is complied with;

301.1.3. where the pre-trial proceedings are conducted without any of the serious violations provided for in Article 303.3 of this Code.

301.2. The decision to commit the accused for trial and set the case down for hearing shall state the following:

301.2.1. the name of the court and the members of the court (first name, family name and father\s name of each judge);

301.2.3. family name, first name and father\s name of the accused;

301.2.4. classification of the offence with which the accused is charged under the relevant article of criminal law;

301.2.5. a decision on adopting, maintaining, annulling or altering a restrictive measure and taking steps to secure compensation for the damage caused;

301.2.6. decisions on any objections, requests and other applications submitted by the parties to the proceedings;

301.2.7. the members of the court and, where appropriate, the number of jurors to be summoned to participate in the selection of the jury;

301.2.8. allowing the person chosen by the accused to act as defence counsel or appointing defence counsel for the accused;

301.2.9. the list of persons to be summoned before the court for its examination of the case;

301.2.10. where it is legally admissible to examine the case in the absence of the accused, the grounds for doing so without the participation of the accused;

301.2.11. information on the place and time of the court\s examination of the case;

301.2.12. the grounds for hearing the case in camera in the circumstances provided for in this Code;

301.2.13. the choice of language of the conduct of the criminal proceedings.

301.3. The decision to deal with the complaint lodged with a view to a private prosecution and set the case down for hearing shall indicate the relative provisions of Article 301.2-301.2.4, 301.2.6-301.2.12 of this Code.

301.4. The case shall be set down for hearing within the following time-limits:

301.4.1. for the hearing of a criminal case, within 15 (fifteen) days of the court□s preparatory hearing;

301.4.2. for the examination of the file on simplified pre-trial proceedings or a complaint with a view to a private prosecution, within 7 (seven) days of the court□s preparatory hearing.

301.5. After the case has been set down for hearing, the court president shall give the necessary instructions to the registry to take measures relating to the organisation of the hearing. Those persons whose participation in the court□s examination of the case is provided for shall be summoned to the hearing in accordance with the rules laid down in Article 226 of this Code.

#### **Article 302. Refusal by the court to examine a complaint with a view to a private prosecution**

302.1. The court shall refuse to examine a complaint lodged with a view to a private prosecution,, on the basis of the results of the preparatory hearing, in the following circumstances:

302.1.1. if the complaint does not fall within the court□s jurisdiction;

302.1.2. if the complaint is lodged by a person who has no right to bring a private prosecution ;

302.1.3. if the substance of the complaint fails to meet the requirements of Article 293.3.1-293.3.7 of this Code;

- 302.1.4. if the time limit for bringing criminal charges has expired;
  - 302.1.5. if the act in respect of which the complaint was lodged has to be the subject of a public or semi-public prosecution;
  - 302.1.6. if the criminal act or the act in respect of which the complaint was lodged does not have the ingredients of a criminal offence;
  - 302.1.7. if the complaint is groundless and if the evidence does not support the complainant's allegations;
  - 302.1.8. if the complainant withdraws the complaint and reaches a friendly settlement with the accused, or if he repeatedly fails to attend the preparatory hearing of the court without good reason.
- 302.2. A court refusing to examine a complaint lodged with a view to a private prosecution on the basis of the results of the preparatory hearing shall take decisions on the following:
- 302.2.1. referring the complaint to the relevant court in the circumstances provided for in Article 302.1.1 of this Code;
  - 302.2.2. sending the complaint for examination to the relevant investigating authority in the circumstances provided for in Article 302.1.5 of this Code.
  - 302.2.3. refusing to deal with the complaint in the circumstances provided for in Article 302.1.2-302.1.4, 302.1.6-302.1.8 of this Code.
- 302.3. If at the preparatory hearing it is determined that the criminal case lies outside the jurisdiction of the court, the court shall decide to refer the criminal case to the relevant court, giving the legal grounds for its decision and naming the court.

**Article 303. Discontinuing the examination of a criminal case file or a file on simplified pre-trial proceedings and returning it to the prosecutor**

- 303.1. If at the preparatory hearing it is established that serious violations concerning the substance of the criminal case or the file on simplified pre-trial proceedings which have not been remedied and cannot be lawfully, were committed

during the pre-trial proceedings, the court shall discontinue its examination of the criminal case file or the file on simplified pre-trial proceedings and return it to the prosecutor in charge of the procedural aspects of the investigation.

303.2. The court shall discontinue its examination of the criminal case file or the file on simplified pre-trial proceedings and return it to the prosecutor in charge of the procedural aspects of the investigation on the basis of a reasoned decision.

303.3. The decision to discontinue examination of the criminal case file or the file on simplified pre-trial proceedings and return the file to the prosecutor in charge of the procedural aspects of the investigation shall be made if the following serious violations take place:

303.3.1. violation of the defence rights of the accused;

303.3.2. violation of the right of the accused to use his mother tongue or to use the assistance of an interpreter if he does not know the language in which the criminal proceedings are conducted;

303.3.3. conduct of the pre-trial proceedings by a person who should be objected to or should request to withdraw;

303.3.4. if the indictment on the criminal case or the final record of the results of the simplified pre-trial proceedings are not included among the material presented to the court;

303.3.5. if the indictment on the criminal case or the charge brought in the final record of the results of the simplified pre-trial proceedings is not confirmed by the prosecutor in charge of the procedural aspects of the investigation;

303.3.6. if the indictment on the criminal case or the final record of the results of the simplified pre-trial proceedings does not comply with, respectively, Articles 289 and 290.3.2 or 296.2 of this Code;

303.3.7. if the accused does not know the language in which the criminal proceedings are conducted and has not been given a copy of the indictment translated into his mother tongue;

303.3.8. if the requirements of, respectively, Articles 284-286, and 288 or 296.3.1 relating to the duty to ensure acquaintance with the file on the pre-trial proceedings are violated;

303.3.9. if the pre-trial proceedings are conducted in the form of a preliminary investigation as simplified pre-trial proceedings, in spite of the fact that there are circumstances indicating the need to conduct them in the form of an investigation.

303.4. The decision to discontinue examination of the criminal case file or the file on simplified pre-trial proceedings and return it to the prosecutor in charge of the procedural aspects of the investigation shall state the grounds for the decision.

303.5. If examination of the criminal case file or the file on simplified pre-trial proceedings is discontinued and the case is returned to the prosecutor in charge of the procedural aspects of the investigation, the investigation period shall be calculated from the moment the file is received by the prosecutor's office and shall be added to the period calculated for the pre-trial proceedings conducted previously.

**Article 304. Suspension of proceedings in a criminal case, simplified pre-trial proceedings or proceedings on a complaint with a view to a private prosecution**

304.1. At the preparatory hearing, if the following circumstances are established, the court shall give a reasoned decision on the suspension of the proceedings in the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution:

304.1.1. if the accused goes into hiding and his whereabouts are unknown;

304.1.2. if the accused falls seriously ill, precluding his participation in the court's examination of the case;

304.1.3. if a question connected with verification of the constitutionality of the legal instrument applied during the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution is raised before the Constitutional court of the Azerbaijan Republic.

304.2. The court proceedings may be suspended in respect of one or more accused persons on condition that this does not infringe the rights of the defence. In the circumstances provided for in Article 304.1 of this Code, if the proceedings in the case concerning one of the accused are suspended, the proceedings concerning another accused who is under arrest shall not be prolonged and in any case shall be renewed within 30 (thirty) days at the latest.

**Article 305. Discontinuation of proceedings in a criminal case or simplified pre-trial proceedings**

305.1. At the preparatory hearing, if the circumstances provided for in Article 39 of this Code are established, the court shall give a reasoned decision to discontinue the proceedings in the criminal case or the simplified pre-trial proceedings. If the circumstances which preclude prosecution relate to one part of the charges, the proceedings in the criminal case shall be discontinued only in respect of that part.

305.2. Any decision to annul restrictive measures decided during the investigation, measures to secure payment of compensation for damage and other coercive procedural measures shall be added to the decision to discontinue the proceedings in the criminal case, which shall also include a decision on the future of the material evidence.

**Article 306. Decisions on matters connected with restrictive measures**

306.1. In addition to giving the decisions provided for in Article 300.1.1, 300.1.5 and 300.1.6 of this Code on the results of the preparatory hearing, the court shall give decisions on the following:

306.1.1. the grounds for applying a restrictive measure to the accused or not;

306.1.2. if a restrictive measure is adopted, the grounds for adopting that particular type of restrictive measure;

306.1.3. maintaining, altering or annulling the restrictive measure applied to the accused.

306.2. After announcing the decision to discontinue examination of the criminal case and return it to the prosecutor in charge of the procedural aspects of the

investigation, the court shall consider the question of extending the period of detention on remand of the accused in accordance with the provisions of this Code, under the following circumstances:

306.2.1. if the period of detention on remand of the accused, as a restrictive measure adopted during the preliminary investigation, expires within 7 (seven) days of the decision to discontinue examination of the criminal case and return it to the prosecutor in charge of the procedural aspects of the investigation;

306.2.2. if the public prosecutor in the criminal case applies to the court to extend the period of detention on remand of the accused.

#### **Article 307. Special decisions on the results of the court's preparatory hearing**

307.1. In connection with the results of the preparatory hearing, the court may, in addition to the decision to discontinue examination of the criminal case or the file on simplified pre-trial proceedings and return it to the prosecutor in charge of the procedural aspects of the investigation, give a special decision on persons who seriously violated the requirements of this Code during the pre-trial proceedings.

307.2. The special decision of the court shall indicate in respect of which criminal case or simplified pre-trial proceedings, and by whom, the special decision is given. It shall state in detail the nature of the case and exactly which of the serious violations provided for in Article 303.3 of this Code was committed and by whom.

307.3. The special decision given by the court shall be sent to the following persons in order for enforcement measures to be taken:

307.3.1. as regards an investigator, preliminary investigator or employee of the preliminary investigating authority: to the head of the relevant central government body of the Azerbaijan Republic;

307.3.2. as regards the prosecutor in charge of the procedural aspects of the investigation and the prosecutor's office investigator: to the Principal Public Prosecutor;

307.3.3. as regards the judges of the court of first instance: to the President of the Supreme Court of the Azerbaijan Republic.

307.4. The officials who receive the decision of the court shall take the following steps within 30 days of receiving it:

307.4.1. decide on the responsibility of those who have committed serious violations of the legislation of the Azerbaijan Republic;

307.4.2. inform the court of the measures taken.

## **Chapter XLI**

### **GENERAL CONDITIONS GOVERNING COURT HEARINGS**

#### **Article 308. Prohibition of changes in the membership of the court during its examination of a case**

308.1. The criminal case, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution shall be examined by the same body of judges.

308.2. If one of the judges is unable to continue to participate in the court's examination of the case, he shall be replaced by another judge and the examination of the criminal case, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution shall start again at the beginning, save in the circumstances provided for in Article 309 of this Code.

#### **Article 309. The reserve judge**

309.1. If a criminal case is examined by a bench of three judges and its examination is likely to last a long time, a reserve judge may be called upon to participate on the basis of a decision made at the court's preparatory hearing. The participation of the reserve judge shall also be allowed on the basis of a decision made by the court at the beginning of its examination of the case, immediately after the opening of the hearing.

309.2. The reserve judge shall participate in the court's examination of the case from the time the hearing is opened or the decision on his participation is made. If one of the judges withdraws, the reserve judge shall begin to enjoy the rights of a judge from the time of his inclusion among the members of the court.

309.3. A reserve judge participating in the case in place of a judge who has withdrawn shall have the right to request the renewal of any court procedure.

309.4. If the reserve judge taking part in place of a judge who has withdrawn does not request the renewal of court procedures, or once those procedures have been repeated at his request, the court shall continue its examination of the case.

#### **Article 310. Keeping order in court**

310.1. At the hearing, before the judges enter the courtroom, the court supervisor shall announce, "The court convenes". Immediately after this, all those participating in the hearing shall stand and only after the judges have taken their places may they be seated.

310.2. All those participating in the court's examination of the case or present in the courtroom shall abide by the following rules to maintain order:

310.2.1. comply with all the instructions of the court president and the requests of the court supervisor based thereon;

310.2.2. remain silent and observe the rules of cleanliness during the court hearing;

310.2.3. remain seated and not walk around the courtroom;

310.2.4. use photography, film, audio, video, computer and other recording techniques only with the permission of the court president;

310.2.5. speak, make requests and raise objections only with the permission of the court president;

310.2.6. stand up when the court president so requests and sit down only with his permission;

310.2.7. address the court with the words "Ladies and Gentlemen" and the judge with the words: "Your Honour";

310.2.8. not interrupt those making speeches at the hearing, provide explanations or make comments;

310.2.9. refrain from insulting and improper statements and actions as well as from asking leading questions during the questioning of the accused, the victim, the witnesses or other parties to the proceedings.

310.3. Persons wishing to participate in a public hearing of the court shall be allowed to enter the courtroom before the hearing or during the intervals between sittings if there are seats free in the room. Persons under 16 who are neither parties nor witnesses shall not be allowed to enter the courtroom. In order to ensure security during the hearing, the identity papers and effects of those admitted to the courtroom may be checked on the instructions of the court president.

310.4. Keeping order in court shall be the responsibility of the court supervisor. The court supervisor shall ensure that the rules set out in Article 310.2.1-310.2.9 are derogated from only with the permission of the court president, and shall act to prevent possible breaches.

310.5. Contempt of court during the conduct of the hearing in the circumstances determined by the legislation of the Azerbaijan Republic shall constitute grounds for criminal responsibility.

310.6. The following steps may be taken by court decision against those who commit serious breaches of order during court hearings, after prior warning, with the exception of public prosecutors and defence counsel:

310.6.1. a fine equivalent to 50 times the minimum wage;

310.6.2. detention for a period of 3 to 48 hours;

310.6.3. expulsion from the courtroom for the whole or part of the court's examination of the case.

310.7. A party to the proceedings who is permitted to return to the hearing by court decision shall have the right to become acquainted with the procedural measures that have taken place in his absence.

**Article 311. Participation of the accused in the court□s examination of the case and consequences of non-attendance**

311.1. During the court□s examination of the case, the accused shall participate in all the hearings of the court and shall enjoy the rights provided for in Article 91.5 and 91.6 of this Code.

311.2. A court may examine a case without the participation of the accused only in the following exceptional circumstances:

311.2.1. if the accused is outside the territory of the Azerbaijan Republic and intentionally avoids attendance at court;

311.2.2. if a person charged with an offence which does not pose a major public threat applies for the charges against him to be examined without his participation, on condition that this does not preclude a thorough, full and objective examination of all the circumstances connected with the criminal prosecution.

311.3. If the court examines the case without the participation of the accused, the participation of his defence counsel in the hearing shall be compulsory.

311.4. Save in the circumstances provided for in Article 311.2 of this Code, if the accused fails to attend the hearing, the court□s examination of the case shall be postponed and the hearing shall be conducted at another time.

311.5. If the accused fails to attend the hearing without good reason, he may be forcibly brought to the hearing by court decision, and if there are grounds for it under this Code, a restrictive measure may be applied to him or an existing restrictive measure may be altered to a more serious one.

**Article 312. Participation of defence counsel in the court□s examination of the case and consequences of non-attendance**

312.1. At the request of the accused or in the circumstances provided for in Article 92.3.2-92.3.13 of this Code, defence counsel shall participate in all the hearings of the court during the latter□s examination of the case, and shall exercise the rights and fulfil the duties provided for in Article 92.9 and 92.11 of this Code.

312.2. A defence counsel who fails to attend the hearing may be replaced with the consent of the accused.

312.3. A defence counsel who fails to attend the hearing, but with good reason, shall inform the court of this before the start of the hearing. If defence counsel fails to attend the hearing, with good reason, the court's examination of the case shall be postponed and the hearing shall be conducted at another time.

312.4. If the participation of the defence counsel appointed by the accused is not possible for a long period (in any case no longer than 10 (ten) days) with good reason, the court may postpone its examination of the case, suggest that the accused choose another defence counsel and, in the event of his refusal, appoint a new defence counsel with the assistance of the relevant branch of the bar association. In postponing its examination of the case and deciding the replacement of defence counsel, the court shall take into consideration the expediency of such a decision (the time already spent on the court's examination of the case, the complexity of the proceedings. the time which will therefore be required by the new defence counsel to become acquainted with the file and other circumstances). The court shall provide sufficient time for the new defence counsel to become acquainted with the whole file. A defence counsel newly involved in a criminal case may apply for any procedures already conducted during the court's examination of the case before his involvement to be repeated.

312.5. If defence counsel fails to attend without good reason and without informing the court in advance and if his replacement at this hearing is impossible, the examination of the criminal case shall be postponed and the hearing conducted at another time.

312.6. If defence counsel repeatedly fails to attend the hearings and if his replacement at this hearing is impossible, the examination of the criminal case shall be postponed and the hearing conducted at another time. In this case, the court, in deciding the replacement of defence counsel under the provisions of Article 312.4 of this Code may raise the matter of the lawyer's disciplinary liability before the Bar Association of the Azerbaijan Republic.

**Article 313. Participation of the defendant to the civil claim in the court's examination of the case and consequences of non-attendance**

313.1. The defendant to the civil claim shall enjoy the rights provided for in Article 93.4 of this Code and shall participate in the hearings during the court's examination of the case in order to defend his rights and legal interests in connection with the claim.

313.2. If the defendant to the civil claim or his representative fails to attend the hearing, this shall not preclude the continuation of the court's examination of the case and the examination of the civil claim.

**Article 314. Participation of the public prosecutor in the court's examination of the case and consequences of non-attendance**

314.1. The public prosecutor shall participate in all the hearings during the court's examination of public or semi-public charges and shall exercise the rights and fulfil the duties provided for in Article 84.6 and 84.7 of this Code in order to uphold the charge brought in court.

314.2. During the court's examination of the case, the public prosecutor shall be guided by the requirements of the law and by his own conscience on the basis of the evidence examined by the court. If the charge brought against the accused during the pre-trial proceedings is not proved during the court's examination of the case, the prosecutor shall have the right to withdraw the charge. If the public prosecutor and the victim bringing a private prosecution withdraw the charges during the court's examination of the case (before the judges retire to the deliberation room of the court to give their final decision), the court shall discontinue the criminal prosecution in accordance with Article 43.1 of this Code.

314.3. If it is impossible for the public prosecutor to attend a hearing during the court's examination of the public or semi-public charges, with good reason, he shall inform the court of the fact before the start of the hearing. If the public prosecutor fails to attend the hearing, with good reason, and if it is impossible to replace him with another public prosecutor, the court's examination of the case shall be postponed and conducted at another time. The newly appointed public prosecutor shall be given time to prepare the defence of the charge in court.

314.4. If, during the court's examination of public or semi-public charges, the public prosecutor repeatedly fails to attend the hearing without informing the court

in advance and without having good reason, and if his replacement at this hearing is impossible, the court shall have the right to raise the matter of the public prosecutor's disciplinary liability before the Principal Public Prosecutor of the Azerbaijan Republic.

**Article 315. Participation of the victim (or victim bringing a private prosecution) in the court's examination of the case and consequences of non-attendance**

315.1. The victim (or victim bringing a private prosecution) shall enjoy the rights provided for in Article 87.6 of this Code and shall have the right to participate in all court hearings during the court's examination of the case. In this case, he, as victim bringing a private prosecution shall also enjoy the rights provided for in Article 88.4 of this Code.

315.2. If the victim (or victim bringing a private prosecution) fails to attend a hearing on the criminal prosecution to be conducted in respect of public or semi-public charges, the court, after hearing the opinions of the parties to the proceedings, shall decide on the possibility of investigating all the circumstances connected with the criminal prosecution thoroughly, fully and objectively and making a reasoned final court decision without his participation. Where necessary, the court's examination of the case shall be postponed and the hearing conducted at another time.

315.3. If the victim (or victim bringing a private prosecution) repeatedly fails to attend a hearing during the court's examination of public or semi-public charges, then, at the request of one of the parties to the proceedings, the court's examination of the case shall be postponed again and the court hearing shall be conducted at another time. However, in such cases, if the victim (or victim bringing a private prosecution) fails to inform the court of his inability to attend the court hearing, with good reason, before the start of the hearing, the court may decide to have him brought before it by force.

315.4. If it is impossible for the victim bringing a private prosecution to attend a hearing, with good reason, during the court's examination of a complaint lodged with a view to a private prosecution, he shall inform the court of this before the start of the hearing. If the court considers the reason for his failure to attend to be

valid, its examination of the criminal case shall be postponed and the hearing shall be conducted at another time.

315.5. If the victim bringing a private prosecution repeatedly fails to attend the court hearings, without good reason, during the court's examination of a complaint lodged with a view to a private prosecution, the proceedings shall be discontinued by decision of the court.

**Article 316. Participation of the civil party in the court's examination of the case and consequences of non-attendance**

316.1. In order to defend the claim he has filed, the civil party may exercise the rights provided for in Article 89.4 of this Code and participate in all the hearings during the court's examination of the case.

316.2. If the civil party or his representative fails to attend the hearing, the civil claim may be left unexamined. This shall not deprive the person claiming damages of the right to make the claim before the civil courts.

316.3. As regards the civil claim, the court shall:

316.3.1. examine the claim at the request of the civil party or his representative without the participation of the civil party or his representative during its examination of the case.,.

316.3.2. examine the civil claim during its examination of the case, whether or not the civil party or his representative attends the hearing, if the civil claim is defended by the public prosecutor in accordance with the Article 181.7 of this Code.

**Article 317. Decision as to the possibility of continuing the court's examination of the case without the participation of a witness, expert or specialist who fails to attend a court hearing**

317.1. If a witness, expert or specialist summoned to a court hearing in accordance with Article 226.1-226.3 of this Code fails to attend, the court shall give a decision on whether to continue or postpone its examination of the case, after hearing the opinions of each of the parties to the proceedings in turn. If the absence of any of the persons mentioned does not preclude a thorough, full and objective

investigation of all the circumstances connected with the criminal prosecution, the court's examination of the case may continue.

317.2. If the court decides to postpone its examination on the grounds of the non-attendance of those mentioned in Article 317.1 of this Code, it shall have the right to question the witnesses, experts, specialists, victim, civil party, defendant to the civil claim or their representatives who have attended. In this case, the witnesses, experts and specialists questioned after the postponement, during the court's examination of the criminal case, the file on simplified pre-trial proceedings or the complaint lodged with a view to a private prosecution may be called again if necessary, bearing in mind the opinion of the parties to the proceedings.

#### **Article 318. Limits of the court's examination of a case**

318.1. During the court's examination of a case, the criminal case file, the file on simplified pre-trial proceedings or the complaint lodged with a view to a private prosecution may be examined only within the limits of the charge laid against the accused or brought before the court. As a result of its examination, the court shall have the right to classify the act committed by the accused as a less serious offence and to remove specific points from the charge brought.

318.2. During the court's examination of the case, if the ingredients of a more serious offence are determined in the acts of the accused, the court shall suspend its examination of the charges at the request of the public prosecutor. In this event, the court shall give a reasoned decision on returning the criminal case or the file on simplified pre-trial proceedings, as the case may be, to the prosecutor in charge of the procedural aspects of the investigation in order to consider the matter of bringing another charge against the accused within 10 (ten) days. If, after that, a new charge is brought against the accused by the prosecutor in charge of the procedural aspects of the investigation, the court shall resume its examination of the case when this charge is read out at the hearing and shall continue it in the usual way.

318.3. In the circumstances provided in Article 318.2 of this Code, the court may simultaneously give a special decision on the investigator conducting the investigation and the prosecutor in charge of the procedural aspects of the investigation. This decision shall be sent to the head of the relevant government

body of the Azerbaijan Republic and the Principal Public Prosecutor of the Azerbaijan Republic for the appropriate measures to be taken.

**Article 319. Postponement of the court's examination of the case and suspension of the court proceedings**

319.1. If any of those summoned to the hearing fail to attend, or if it is impossible for the court to examine the case because it needs to request fresh evidence on its own initiative or on an application by the parties to the proceedings, the court shall:

319.1.1. postpone its examination of the case, specifying the duration of the postponement;

319.1.2. take the necessary measures for the attendance of the person at the hearing or for a request for fresh evidence.

319.2. If the accused goes into hiding or becomes chronically or seriously ill and therefore cannot attend the hearing, the court shall suspend the criminal case, the simplified pre-trial proceedings or the proceedings concerning the complaint with a view to a private prosecution until the accused is found or recovers, and if possible, shall continue the hearing of other accused persons. If the separate conduct of its examination of the case prevents all the circumstances connected with the criminal prosecution from being investigated thoroughly, fully and objectively, the court shall suspend all the proceedings concerning the criminal case, the simplified pre-trial proceedings or the complaint with a view to a private prosecution, taking account of Article 304.2 of this Code.

319.3. Under the circumstances and rules provided for in Article 53.1.3 and 53.3.2 of this Code, the court shall order a search for an accused who is in hiding and shall send the decision made on this matter to the prosecutor in charge of the procedural aspects of the investigation so that he may supervise its execution.

**Article 320. Decisions on matters regarding restrictive measures**

During its examination of a case, the court may alter or annul any restrictive measure applied to the accused after hearing the submissions of the accused and

his representative and the opinions of the public prosecutor and the victim (or victim bringing a private prosecution)

**Article 321. Rules governing decision-making during the court's examination of a case**

321.1. During the court's examination of a case, decisions shall be given on all matters to be decided by the court.

321.2. The following decisions, separately drawn up in the form of documents and signed by the whole court, shall be made in the deliberation room (or by the judge if the criminal case is examined by him alone):

321.2.1. on the discontinuation or suspension of the criminal case, the simplified pre-trial proceedings or the proceedings concerning the complaint with a view to a private prosecution;

321.2.2. on the choice, alteration or annulment of restrictive measures;

321.2.3. on any objections;

321.2.4. on the ordering or expert reports.

321.3. All other decisions given by the court during its examination of the case may be made on site after discussion among the judges and shall be included in the record of the hearing.

321.4. The decisions given by the court during its examination of the case shall be read out immediately. Save where otherwise provided for under this Code, these decisions shall become final as soon as they are read out.

**Chapter XLII**

**OPENING OF THE COURT'S EXAMINATION OF A CASE**

**Article 322. Initial actions of the court on opening its examination of a case**

322.1. The members of the court (or the judge, if the criminal case is examined by a single judge) shall enter the courtroom at the time appointed for the hearing and the judges shall take their places. After this, the following steps shall be taken in succession at the hearing:

322.1.1. the court president shall open the court's examination of the case and announce which criminal case, simplified pre-trial proceedings or complaint with a view to a private prosecution are to be examined;

322.1.2. on the instructions of the president, the court clerk shall inform the court of the presence of the parties to the proceedings and the witnesses, experts, specialists and interpreter at the hearing and state the reasons for absence given by absentees;

322.1.3. the president shall instruct the court supervisors to accompany the witnesses to the witnesses' room, to prevent them from talking among themselves or with others and to ensure decent conditions in the witnesses' room;

322.1.4. the president shall check who is participating in the hearing as an interpreter and explain to him his duties, rights and responsibilities under Article 99.4-99.6 of this Code;

322.1.5. the president shall explain to the parties to the proceedings attending the hearing their right to object to the interpreter and the grounds for objecting to the interpreter provided for in Article 117 of this Code;

322.1.6. in the event of an objection to the interpreter, the court shall decide whether or not to uphold this objection (to make the decision, the court shall retire to the deliberation room; on returning, it shall read out the decision and, after taking steps to ensure its execution, resume the hearing);

322.1.7. the president shall introduce the members of the court and the court clerk and explain the right to object to the judge, judges or the whole court, as well as to the court clerk, and the grounds for objection provided for in Articles 109 and 116 of this Code (these rules shall also be applied to the reserve judge if he participates in the hearing);

322.1.8. in the event of an objection to the judge, judges or the whole court, the president shall postpone the court hearing; the objection shall be examined on the grounds provided for in Article 109.3 - 109.6 of this Code; the decision on whether or not to uphold the objection shall be taken; the reasoned decision shall be read out by the president (if the objection is not upheld, the court shall continue its examination of the case; if the objection is upheld, the hearing shall be declared closed and the court's examination shall be postponed and resumed from the start only after the judge or the court has been replaced); in the event of an objection to the court clerk, the court shall retire to the deliberation room, decide whether or not to uphold the objection and, on returning, read out its reasoned decision (if the objection is upheld, the court clerk shall be replaced by another and the hearing shall continue);

322.1.9. the president shall establish the identity (family name, first name, father's name, year, month, day and place of birth and family status) of the accused (or of each accused in turn);

322.1.10. the president shall ascertain whether the accused has been given a copy of the indictment, the final record of the results of the simplified pre-trial proceedings or the complaint with a view to a private prosecution (if the identity of the accused is not established or if it is not established whether the said documents have been given to him, the court's examination of the case shall be postponed and resumed from the start only after these documents have been given to the accused);

322.1.11. the president shall explain to each accused his rights and duties under Article 91 of this Code;

322.1.12. the president shall introduce the victim, the civil party and the defendant to the civil claim (their family name, first name, father's name, year, month, day and place of birth, family status);

322.1.13. the president shall explain to each victim (or victim bringing a private prosecution), civil party and defendant to the civil claim their rights and duties under Articles 87-89 and 93 of this Code;

322.1.14. the president shall announce who (family name, first name, father\s name, specialisation, title) is defending the public charges and shall explain the right of the parties to the proceedings to object to the public prosecutor and the grounds provided for in Article 112 of this Code for making such objections;

322.1.15. in the event of an objection to the public prosecutor, before retiring to the deliberation room, the court shall consult the public prosecutor and the accused and his defence counsel on this matter; it shall then retire to the deliberation room and decide whether or not to uphold the objection and, on returning, shall announce its reasoned decision (if the objection is upheld, the court\s examination of the case shall be postponed and resumed only after the public prosecutor newly involved in the case has been given the opportunity to become acquainted with the file);

322.1.16. the president shall introduce defence counsel for the accused or defence counsels for the accused persons in turn (family name, first name, father\s name, bar association and local branch in which they work);

322.1.17. the president shall explain to the parties to the proceedings the circumstances provided for in Article 114 of this Code which preclude the participation of defence counsel in the proceedings and shall determine whether or not there are any objections to defence counsel;

322.1.18. in the event of an objection to defence counsel, before retiring to the deliberation room, the court shall consult the parties to the criminal proceedings on this matter; it shall then retire to the deliberation room and decide whether or not to uphold the objection and, on returning, shall announce its reasoned decision (if the objection is upheld, the court\s examination of the case shall be postponed and resumed only after the defence counsel newly involved in the case has been given the opportunity to become acquainted with the file);

322.1.19. the president shall introduce the legal representative as well as the representative of the victim (or the victim bringing a private prosecution), the civil party and the defendant to the civil claim and explain to the parties to the proceedings their right to object to the representative of the victim (or victim bringing a private prosecution), the civil party or the defendant to the civil claim under Article 114 of this Code and the grounds for such objections;

322.1.20. in the event of an objection to the representative of the victim (or victim bringing a private prosecution), the civil party or the defendant to the civil claim, the court, before retiring to the deliberation room, shall consult the parties to the proceedings, starting with the public prosecutor, the accused and defence counsel, on this matter; it shall then retire to the deliberation room and decide whether or not to uphold the objection and, on returning, shall announce its reasoned decision (if an objection to the representative of the victim (or victim bringing a private prosecution), the civil party or the defendant to the civil claim is upheld, the court□s examination of the case shall be postponed and resumed only after the representative of the relevant person newly involved in the case has been given the opportunity to become acquainted with the file);

322.1.21. the president shall introduce in turn the specialist and the expert (family name, first name, father□s name, education, scientific degree, title) assigned to the criminal case, the simplified pre-trial proceedings or the complaint with a view to a private prosecution;

322.1.22. the president shall explain to the parties to the proceedings the right to object to the specialist or expert and the relevant grounds for such objections provided for in Articles 117 and 118 of this Code;

322.1.23. in the event of an objection to the specialist or expert, the court, before retiring to the deliberation room, shall consult the parties to the proceedings, starting with the public prosecutor, the accused and defence counsel, on this matter; it shall then retire to the deliberation room and decide whether or not to uphold the objection and, on returning, shall announce its reasoned decision (if an objection to the expert is upheld, the court□s examination of the case shall be postponed, and the court, taking into consideration the opinions of the parties to the proceedings, shall decide on the appointment of another expert; in the event of an objection to an expert who drew up an expert report during the investigation or an expert invited to the court to submit expert evidence on behalf of the defence, the president shall ask that party whether or not it wishes to appoint another expert at its own expense and, in the case of an affirmative answer, shall allot that party the time necessary to appoint a new expert; the court□s examination of the case shall be resumed after the new expert has been given the opportunity to become acquainted with the necessary material and prepare his report; however,

this period may not be longer than 15 (fifteen) days from the time the expert is appointed. After the resumption of the court's examination of the case, any objections to the newly invited expert shall be decided in the usual way; the above-mentioned provisions relating to objections to experts shall also be applied in the case of objections to specialists);

322.1.24. the president shall explain to the expert and specialist their rights and duties under Articles 96 and 97 of this Code respectively.

322.2. Upon completion of the initial actions in opening its examination of the case, the court shall begin to examine the parties' applications submitted before the court's investigation of the case.

**Article 323. Submission of applications by the parties and decisions thereon before the start of the court's investigation of the case**

323.1. Before the start of the court's investigation of the case, the president shall determine whether or not each of the parties to the proceedings in turn has any applications to make on the following matters:

323.1.1. on the requesting of fresh evidence and its addition to the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution;

323.1.2. on the summoning of additional witnesses, experts or specialists;

323.1.3. on the ordering of expert reports;

323.1.4. on the production of material evidence and documents.

323.2. The person submitting the application shall specify the reasons for which the additional evidence is necessary.

323.3. The president shall determine whether or not the parties to the proceedings have any applications to make concerning the exclusion from the court's examination of the case of any documents which are inadmissible as evidence.

323.4. Applications submitted by any party to the proceedings shall be discussed after the other parties' opinions have been heard.

323.5. The court shall allow applications submitted under Article 323.1 of this Code in the following circumstances:

323.5.1. if the purpose of the application is the examination of all circumstances that may be of significance for a thorough, full and objective investigation of all matters connected with the criminal prosecution;

323.5.2. if information and documents whose evidential value is in dispute were obtained by significantly violating requirements of this Code and other laws of the Azerbaijan Republic.

323.6. If the court dismisses an application, it shall give a reasoned decision on this matter. Applications that have been dismissed may be resubmitted depending on the further examination of the case.

323.7. The court shall have the right, on its own initiative, to give decisions on summoning witnesses to the hearing, ordering expert reports, requesting other evidence and excluding inadmissible documents from its examination of the case.

## **Chapter XLIII**

### **THE COURT'S INVESTIGATION OF THE CASE**

#### **Article 324. Start of the court's investigation of the case**

324.1. Upon completion of all the initial actions at the opening of the hearing and after examination of any objections or applications submitted under Articles 322 and 323 of this Code, the president shall announce the start of the court's investigation of the case.

324.2. The court's investigation of the case shall start with the following steps:

324.2.1. in connection with the examination of the criminal case file or the file on simplified pre-trial proceedings, the announcement by the public prosecutor of the

concluding part of the indictment or the part of the final record of the results of the simplified pre-trial proceedings which concerns the bringing of charges:

324.2.2. in connection with the examination of the complaint lodged with a view to a private prosecution, the announcement of the complaint by the victim bringing a private prosecution or his representative.

324.3. After this, the president shall explain the following to the accused:

324.3.1. the substance of every charge brought against him;

324.3.2. the legal classification of the acts with which he is charged and the penalty that these acts carry under criminal law;

324.3.3. the grounds for and amount of the civil claim brought against the accused;

324.3.4. that the accused is not bound by his acknowledgement or denial of guilt during the pre-trial proceedings;

324.3.5. that the accused is not obliged to answer questions asked at the court hearing;

324.3.6. that the refusal of the accused to answer questions will not be held against him;

324.3.7. that the accused has the right to justify his answers.

324.4. The president shall then put the following questions to each of the accused:

324.4.1. whether he pleads guilty or not, if so whether completely or partially, and of which offence;

324.4.2. whether he accepts the civil claim brought against him, and if so, whether completely or partially.

324.5. After this, with the permission of the president, the parties to the proceedings shall have the right to clarify the answers of the accused to the questions asked under Article 324.4 of this Code.

**Article 325. Sequence for examining evidence during the court's investigation of the case**

325.1. After ascertaining whether the accused pleads guilty or not, the president shall explain to the parties the order in which evidence is to be taken during the court's investigation of the case (the order in which the accused, victim, witnesses and experts are to be questioned and other procedures are to be conducted).

325.2. During the court's investigation, the following order shall be observed in the taking of evidence:

325.2.1. the evidence presented by the prosecution shall be given in turn by the public prosecutor, the victim bringing a private prosecution or the victim, his representative, the civil party and his representative;

325.2.2. the evidence presented by the defence shall be given in turn by the accused, his defence counsel or legal representative, the defendant to the civil claim and his representative;

325.2.3. evidence requested on the initiative of the court shall be given in the above-mentioned order by the representatives of the prosecution, then of the defence.

325.3. The parties to the proceedings shall give evidence in the order provided for in Article 325.2 of this Code. The order for examining each item of evidence presented by the parties to the proceedings shall be determined by the person presenting it.

325.4. The order for examining each item of evidence requested on the initiative of the court shall be determined by the court after hearing the opinions of the parties to the proceedings.

325.5. The defence and then the court shall participate in the examination of the evidence presented by the prosecution; the prosecution and then the court shall participate in the examination of the evidence presented by the defence. Evidence ordered by the court shall be examined first by the prosecution and then by the defence. The court shall in all cases participate last in the examination of evidence.

325.6. In the case of cross-examination, the questions to the person called for examination shall first be put by the person who took the initiative to call him.

#### **Article 326. Questioning of the accused**

326.1. When starting the questioning, the president shall propose that the accused give evidence on the charge brought against him and on other circumstances of significance for the thorough, full and objective examination of the charge.

326.2. After testifying freely, the accused shall be questioned by the public prosecutor and if necessary, with the permission of the president, by the victim (or victim bringing a private prosecution), the civil party and his representative, then by his own defence counsel, and if necessary, with the permission of the president, by other accused persons and their defence counsels, the defendant to the civil claim and his representative.

326.3. After being questioned by the persons mentioned in Article 326.2 of this Code, the accused shall be questioned by the judges. Defence counsel for the accused shall have the right to put the last questions.

326.4. Questions irrelevant to the case shall be dismissed by the president.

326.5. The accused shall have the right to testify with the permission of the president at any time during the court's examination of any evidence.

326.6. During questioning the accused may use written notes and documents.

326.7. If notes and documents that relate to his testimony are read out by the accused, they shall, at the request of the court, be presented to the court for examination and added to the file on the proceedings. At the request of the parties to the proceedings, notes and documents from the accused which are added to the file shall also be presented to them for examination.

326.8. During the questioning of the accused:

326.8.1. the parties to the proceedings may present items and documents in their possession and the court may present items and documents added to the file on the proceedings;

326.8.2. the parties to the proceedings may apply to inspect these documents and have them added to the file;

326.8.3. the parties to the proceedings and the court may put questions to the accused concerning the items and documents presented to him (it shall be stated in the record of the hearing only which items and documents were presented during the questioning of the accused and by whom).

326.9. By reasoned decision of the court, where necessary for a thorough, full and objective investigation of the circumstances connected with the criminal prosecution, the accused may be questioned in the absence of another accused person. On the return of the latter to the courtroom:

326.9.1. the testimony of other accused persons questioned in his absence which has been included in the record of the hearing shall be read out;

326.9.2. he shall be given the opportunity to give any necessary evidence and to put questions to the accused questioned in his absence.

#### **Article 327. Making public the testimony of the accused**

327.1. Testimony given by the accused during the pre-trial proceedings, or during the pending court proceedings at an earlier hearing or at the current hearing, and audio, video or film recording of this testimony, may be made public or shown only in the following circumstances:

327.1.1. if the accused refused to testify on the substance of the charge during the pre-trial proceedings;

327.1.2. if the court is examining the case without the participation of the accused;

327.1.3 if there are significant discrepancies between the testimony given earlier by the accused and that given during the current examination of the case (in this case the testimony of the accused may be made public only after he has testified freely and answered the questions put to him).

327.2. Before the testimony included in the record of the questioning of the accused or the record of the court hearing is made public, it shall not be possible to play an audio recording or show a video or film recording of testimony given earlier.

#### **Article 328. Questioning of witnesses**

328.1. At the hearing, witnesses shall be questioned separately and in the absence of those witnesses yet to be questioned.

328.2. Before questioning the witness, the president shall establish his identity and explain the following to him:

328.2.1. the right to refuse to testify against himself or his close relatives;

328.2.2. that the duty of witnesses testifying in court is to disclose truthfully all the circumstances known to them and related to the charge under consideration;

328.2.3. the criminal responsibility incurred for refusing to testify or for intentionally giving false testimony.

328.3. Witnesses shall acknowledge in writing the explanations given to them in accordance with the requirements of Article 328.2 of this Code. This acknowledgment by witnesses shall be added to the record of the hearing.

328.4. Before a witness testifies, he shall take an oath, repeating the following words after the court clerk:

I swear to tell the court the truth and all the circumstances known to me in connection with the criminal prosecution A note about the oath taking shall be made in the record of the hearing. A witness under 16 (sixteen) years old shall instead undertake verbally to tell only the truth and not to hide anything, and a note to this effect shall be made in the record of the hearing.

328.5. The president shall ascertain the relationship of witnesses to the accused, the victim, the civil party, the defendant to the civil claim and others participating in the proceedings and shall propose that they testify on the facts known to them in connection with the charge under consideration. The court shall not allow anyone to interrupt the free testimony of a witness.

328.6. Witnesses summoned to the hearing at the request of one of the parties to the proceedings shall be questioned in the following order:

328.6.1. by the person who made the request;

328.6.2. by other persons belonging to that party;

328.6.3. by persons belonging to the opposite party;

328.6.4. by the court.

328.7. Witnesses summoned on the initiative of the court shall be questioned first by the prosecution, then by the defence, and after that by the court.

328.8. A witness under 16 (sixteen) may be questioned, without the accused being present at the hearing, if this is necessary for a full, thorough and objective investigation of all the circumstances connected with the criminal prosecution, at the request of one of the parties to the proceedings or on the initiative of the court, and only by reasoned decision of the court. In all cases the testimony of a witness under 16 (sixteen) shall be read out to the accused, who shall be allowed to put questions to the witness through defence counsel. After returning to the courtroom, the accused shall have the right to give his own evidence on the information given by the under-age witness.

328.9. Save when the presence of the under-age witness in the courtroom is deemed necessary by the court, either at the request of the parties to the proceedings or on its own initiative, the witness shall leave the courtroom after being questioned.

#### **Article 329. Making public the testimony of witnesses**

329.1. Testimony given by witnesses during the pre-trial proceedings or during the pending court proceedings at an earlier hearing or at the current hearing may be made public in the absence of the witness, and an audio recording or a video or film recording of this testimony may be played or shown, only for the reasons which rule out the attendance of the witness at the court's examination of the case, and in other circumstances provided for in Article 311.2 of this Code.

329.2. The audio recording of the testimony of a witness may only be listened to, and the video recording shown, after the record of his questioning or the part of the record of the hearing containing the testimony of the witness has been made public.

#### **Article 330. Questioning of the victim**

330.1. The victim shall be questioned under the rules laid down in Article 328 of this Code relating to the questioning of witnesses.

330.2. At the court hearing, the victim shall be questioned before the questioning of witnesses and the examination of other evidence. Only the questioning of the accused may be an exception to this rule.

330.3. The victim arguing the charge shall be questioned first by the prosecution, then the defence, and after that by the court.

330.4. If the parties to the proceedings agree, the court may allow the victim to leave the courtroom after he has been questioned, at his request.

#### **Article 331. Expert reports during the court's examination of the case**

331.1. If an expert report was submitted during the pre-trial proceedings, the expert opinion given at that stage shall be examined during the court's investigation of the case.

331.2. The expert who gave his opinion during the pre-trial proceedings shall have the following rights:

331.2.1. to participate in the court's examination of the case and in the study of the evidence relating to the subject of the expert report;

331.2.2. to participate in the questioning of the accused, the victim and witnesses, in the examination of the material evidence and in the conduct of other investigative procedures.

331.3. After examining the expert's opinion, and after hearing the opinions of each of the parties to the proceedings, the court shall have the right to order a

revised expert report or further expert reports at the request of the parties to the proceedings or on its own initiative.

331.4. If no expert report was ordered during the investigation, the parties to the proceedings may apply to the court to order an expert report during its examination of the case.

331.5. The parties to the proceedings shall state the following in their written application:

331.5.1. the questions on which the expert is to give his opinion;

331.5.2. the circumstances to be investigated;

331.5.3. suggestions as to the choice of expert.

331.6. Each party to the proceedings shall have the right:

331.6.1. to be acquainted with any application by the opposite party concerning the ordering of an expert report;

331.6.2. to give opinions regarding the matters provided for in Article 331.5 of this Code.

331.7. If during the investigation no expert report was drawn up to determine the circumstances provided for in Article 140.0.1 □140.0.4 of this Code, the court shall ensure that an expert report is produced. If, in this or other cases, an expert report is ordered, the court president shall propose that the parties to the proceedings put questions to the expert and express their views concerning the person from whom the report is to be commissioned and the matters to be investigated. At the request of any one of the parties to the proceedings, the court shall announce adjournments in the hearing to give the parties an opportunity to express their views and put questions.

331.8. The parties to the proceedings shall have the right to present items and documents as the subject of an expert report. Items may only be excluded from the list by reasoned decision of the court.

331.9. The final ordering of an expert report during the court's examination of the case shall be presented in a court decision.

331.10. The person appointed as an expert shall be given a copy of the decision ordering an expert report and the expert's rights and duties shall be explained to him.

331.11. Where necessary for purposes of investigation, the court, after hearing the opinions of the parties of the proceedings, may postpone the hearing.

331.12. The expert's opinion shall be presented to the court in writing and shall be delivered at the hearing on the instructions of the president.

### **Article 332. Questioning of experts**

332.1. Experts summoned to a court hearing shall be questioned in the following order:

332.1.1. by the person at whose request the expert report was prepared;

332.1.2. by others belonging to that party;

332.1.3. by persons belonging to the opposite party;

332.1.4. by the court.

332.2. If the expert report is prepared at the request of the parties to the proceedings or on the initiative of the court, the expert shall be questioned by the prosecution, the defence and the court in turn.

### **Article 333. Examination of material evidence**

333.1. The material evidence that is before the court and any items presented by the parties to the proceedings and accepted as material evidence by the court shall be examined by the prosecution, the defence and the court in turn. If an item accepted as material evidence by the court is presented by one of the parties to the proceedings, that party shall examine it first. While being examined, the material evidence may be presented to witnesses, experts and specialists by the court

president. In order for the charge to be investigated thoroughly, fully and objectively, these persons shall direct the court's attention to any significant facts detected in examining the material evidence.

333.2. The examination of material evidence that cannot be presented at the hearing shall be conducted in accordance with the rules laid down in Article 333.1 of this Code.

#### **Article 334. Making documents public**

If the documents added to the file on the pre-trial proceedings, presented to the court by the parties to the proceedings or requested by the court on its own initiative, disclose or confirm facts of significance for a full, thorough and objective investigation of the charge, those documents shall be made public at the hearing.

#### **Article 335. Examination of the location and premises**

335.1. After hearing the opinions of the parties to the proceedings, the court shall conduct an examination of the location or premises during its examination of the case, in the following circumstances:

335.1.1. if the record of the examination of the location or premises during the pre-trial proceedings fails to give the court satisfaction;

335.1.2. if the examination of the location or premises was not conducted earlier.

335.2. The examination of the location or premises shall be conducted by the prosecution, the defence and the court in turn.

335.3 If necessary, it shall be conducted with the participation of witnesses, experts and specialists.

335.4. Taking into account the circumstances connected with the criminal prosecution, and with the consent of the parties to the proceedings, the court shall have the right to instruct the court of first instance in the place where the items requiring examination are situated to examine the location and premises. In this case, the examination shall take place with the participation of the circumstantial

witnesses and the record drawn up in accordance with the requirements of Article 236.6.1-236.6.7 of this Code shall be read out at the hearing.

**Article 336. Presentation for identification, conduct of investigative experiments and taking of samples for examination**

336.1. During the court's examination of the case, presentation for identification, investigative experiments and the taking of the samples for examination shall be conducted with the participation of the parties to the proceedings in accordance with the rules provided for in this Code for the pre-trial conduct of the appropriate investigative procedures.

336.2. In the circumstances provided for in this Code, presentation for identification, investigative experiments and the taking of the samples for examination may be conducted at a closed court hearing.

336.3. If it is impossible to conduct the presentation for identification, investigative experiment or taking of the samples for examination in accordance with the rules of court, the court, with the consent of the parties of the proceedings, may order these procedures to be carried out within a certain time by the prosecutor who was in charge of the procedural aspects of the investigation during the pre-trial proceedings.

336.4. The record of the presentation for identification, the record of the investigative experiment and the record of the taking of the samples for expert examination shall be read out at the hearing.

**Article 337. Restricting the examination of evidence**

337.1. If the public prosecutor considers that the evidence examined is sufficient to support the charge, he may request that the examination of the evidence presented by the prosecution be restricted to be evidence already examined. The court shall have the right to take the following steps after hearing each of the parties to the proceedings:

337.1.1. it may grant the request;

337.1.2. if it considers that evidence not yet examined is important for a full, thorough and objective investigation of the charge in court, it may turn down the request.

337.2. The defence shall have the right to refuse the examination of evidence added to the criminal case file by the person who started the proceedings, or presented to the court at the request of the accused, his defence counsel or his legal representative, or at the request of the defendant to the civil claim or his representative, but not yet examined in court. This refusal shall be accepted by the court in all cases.

#### **Article 338. End of the court□s investigation of the case**

338.1. After examination of all the evidence presented at the hearing, the court president shall take the following steps with regard to the parties to the proceedings:

338.1.1 inform them that the court is ready to commence the oral submissions;

338.1.2. inform them that when giving its judgment the court will take account only of the evidence examined during it investigation of the case;

338.1.3. ascertain whether they have any applications to make concerning which evidence to examine in order to complete the court□s investigation of the case and which facts of the case this evidence is needed to establish.

338.2. In deciding an application for completion of the court□s investigation of the case, the court shall be guided by the requirement of a full, thorough and objective investigation of the facts which are of importance to the criminal prosecution.

338.3. If the application for completion of the court□s investigation of the case is granted by reasoned decision, the president shall declare the court□s investigation completed. If the application is not granted, the court shall continue its investigation of the case.

#### **Chapter XLIV**

#### **ORAL SUBMISSIONS AND FINAL STATEMENT BY THE ACCUSED**

### **Article 339. Start of oral submissions**

339.1. At the end of the court's investigation of the case, the president shall announce the start of the oral submissions.

339.2. If any of those participating in the oral submissions asks for time to prepare them, the president shall adjourn the hearing for a specified duration.

### **Article 340. The parties' submissions**

340.1. Oral submissions shall consist of speeches made by the public prosecutor, the victim (or victim bringing a private prosecution) or his representative, the civil party or his representative, the accused (only if defence counsel is not participating in the proceedings) or his defence counsel and the defendant to the civil claim or his representative, in turn.

340.2. If the public charge is argued by several public prosecutors, if there are several victims (or victims bringing private prosecutions), civil parties and their representatives, accused persons and defence counsels, and defendants to the civil claim and their representatives, the president shall give them time to determine the order of their submissions. If necessary, an interruption of the hearing may be announced for the purpose. If those mentioned cannot come to an agreement about the order of their submissions, the court shall give the appropriate decision after hearing their views.

340.3. The parties to the proceedings may not refer in their oral submissions to evidence which was not examined during the court's investigation of the case. If a party to the proceedings needs to use new evidence in order to justify the conclusion it has reached, it shall submit an application for renewal of the court's investigation of the case, indicating which facts require further investigation and on which grounds. After hearing the opinion of the other party to the proceedings, the court shall decide whether or not to grant the application.

340.4. The court may not place a time limit on the oral submissions. However, if those making oral submissions touch on circumstances irrelevant to the charge examined, the president shall have the right to interrupt their submissions.

### **Article 341. Replies**

After the oral submissions of all those participating in the court's examination of the case have been made, the public prosecutor, the victim (or victim bringing a private prosecution), the accused and defence counsel shall have the right to submit brief objections and observations in response to the submissions made by the representatives of the parties to the proceedings.

### **Article 342. Final statement by the accused**

342.1. After the oral submissions and the replies, the accused shall be allowed a final statement. Questions may not be put to the accused while he is making his final statement.

342.2. The court may not set a time limit for the final statement of the accused. If the accused touches on circumstances that clearly do not relate to the charge examined in the court, the president shall have the right to interrupt him.

342.3. If the accused, in his final statement, discloses circumstances which are of importance for the full, thorough and objective examination of the charge, the court shall renew its investigation of the case.

### **Article 343. Proposals by the parties to the proceedings on the substance of the charge**

343.1. After the final statement by the accused, before the court retires to the deliberation room, the parties to the proceedings may submit a draft of the court's final decision to the court on the basis of the results of the court's examination of the case.

343.2. If one of the parties to the proceedings makes a proposal concerning the draft of the final court decision, he shall also give this draft to the other party to the proceedings.

## **Chapter XLV**

### **FINAL COURT DECISION**

#### **Article 344. Court's retirement to the deliberation room**

344.0. After the end of the oral submissions and the final statement by the accused, and after the parties to the proceedings have been given the opportunity to make proposals on the draft of the final decision, the following steps shall be taken:

344.0.1. the president shall declare the court's examination of the case closed;

344.0.2. the court shall retire to the deliberation room to give a final decision on the results of its examination of the case.

#### **Article 345. Secrecy of the judges' deliberations**

345.1. Matters connected with the adoption of the final court decision on the results of the court's examination of the case shall be discussed by the court (or examined by the judge) in the deliberation room.

345.2. In the deliberation room, there may only be judges who were among the members of the court during its examination of the criminal case, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution. While the final court decision is being discussed by the court (or examined by the judge) and adopted, it shall be absolutely prohibited for other persons to be in the deliberation room.

345.3. The judges may arrange adjournments in the following cases:

345.3.1. for meal breaks;

345.3.2. when the working day is over;

345.3.3. on public holidays and days off.

345.4. While discussing and adopting the final decision on the results of the court's examination of the case, the judges may not disclose the views put forward.

#### **Article 346. Matters discussed by the court in the deliberation room**

346.1. The following matters relating to the results of the court's examination of the case shall be discussed by the court (or examined by the judge) in the deliberation room:

346.1.1. whether the criminal act is proved;

346.1.2. whether it is proved that the act committed by the accused has a criminal content;

346.1.3. whether it is proved that the accused was connected with the commission of the offence;

346.1.4. whether the accused is proved guilty of committing the offence;

346.1.5. whether the act committed by the accused corresponds to the ingredients of the offence with which the accused is charged under the relevant provision of criminal law;

346.1.6. whether there are circumstances that preclude the act being an offence;

346.1.7. whether there are circumstances aggravating or mitigating the criminal responsibility of the accused;

346.1.8. whether there are grounds for exonerating the accused from criminal responsibility;

346.1.9. whether the accused should be punished for the act committed;

346.1.10. whether there are grounds for punishing the accused for reoffending;

346.1.11. which punishment to impose on the accused (including consideration of previous offences, the total number of offences, the total length of sentences, the combination of penalties, calculation of the length of sentences, an alternative penalty, reduction of sentence, the jurors' recommendation of a lighter sentence instead of the statutory penalty provided for in respect of this offence, and the possibility of imposing a conditional sentence);

346.1.12. whether the accused should serve the sentence;

346.1.13. if the accused is sentenced to deprivation of liberty, to which penal or corrective institution he should be committed;

346.1.14. whether it is necessary to impose additional penalties on the person found guilty of the offence, and if so, which penalty;

346.1.15. whether it is possible to apply compulsory corrective training measures to an under-age accused and, if so, which measures;

346.1.16. whether it is possible to apply compulsory measures of a medical nature to the accused and, if so, which measures;

346.1.17. in whose interest and for what amount the civil claim should be secured;

346.1.18. whether the attachment of property, either for the purpose of confiscation or to pay for the damage caused by the offence, should be rescinded;

346.1.19. how to decide the matter of the material evidence;

346.1.20. whether to annul, modify or adopt a restrictive measure (and if so, which measure), including how to resolve the matter of bail;

346.1.21. whom to charge with the court expenses, and their amount;

346.1.22. when the sentence is to start;

346.1.23. whether there are grounds for giving a special decision; if so, about whom it will be given and what its content will be.

346.2. If the question of the ability of the accused to understand or control his actions during and after the commission of the offence was raised during the pre-trial proceedings or the court's examination of the case, and if in this connection it was necessary to commission a forensic psychiatry report, the question of the understanding of the accused shall be discussed once more by the court.

#### **Article 347. Rules governing the adoption of the final court decision**

347.1. The final decision (judgment or other decision) on the results of the court's examination of the case shall be adopted only after the points set out in Article 346.1 of this Code have been discussed by the judges (or examined by the judge) in the deliberation room.

347.2. The president shall present all the points for discussion by the judges (or the judge shall examine them) in the order provided for in Article 346.1 of this Code.

347.3. A final decision shall be taken on every point discussed. Each judge shall give a positive or negative answer on each point. No judge participating in the voting shall remain neutral. In all cases, the president shall vote last.

347.4. All points shall be decided by a simple majority of the votes. A decision on life imprisonment may be adopted only unanimously by the judges.

347.5. The decision proposed by the president on each point discussed in the deliberation room shall be put to the vote first. If one of the judges votes for the acquittal of the accused, and if the decisions of the other two judges on the classification of the offence and the penalty do not coincide, the vote of the judge proposing the acquittal shall be added to the vote of the judge proposing the most favourable decision for the accused.

347.6. Any judge giving a separate opinion during the adoption of the decision shall have the right to disclose this opinion in writing within 3 (three days) of the delivery of the final decision. The separate opinion shall be presented to the president, who shall add it to the file on the court proceedings in a sealed envelope which may be opened only during proceedings before the court of appeal or the Supreme Court.

347.7. The president shall draw up a record certifying the fulfilment of the requirements of Article 347.1-347.6 of this Code and shall state in this record the family names of the judges, the points discussed in the deliberation room and the number of votes given by the judges in deciding each point. This record shall be added to the file on the court proceedings in a sealed envelope which may be opened only during proceedings before the court of appeal or the Supreme Court.

**Article 348. Characteristics of the adoption of the final court decision on certain matters**

348.1. If the court comes to the conclusion, on the grounds of the results of its examination of the case, that a person under 18 years old who has committed an offence that does not pose a major public threat, or a minor offence for the first time, could be reformed without being charged, it may adopt a decision on the application of one of the compulsory corrective training measures.

348.2. In the following cases, on the basis of the results of its examination of the case, the court shall decide to apply one of the compulsory medical measures provided for by criminal law:

348.2.1. if the accused was unaware of what he was doing during the commission of the offence;

348.2.2 if, after committing the offence, the accused falls ill with a mental disorder that precludes imposing or enforcing a criminal penalty;

348.2.3. if the accused committed the offence and is suffering from a mental disorder which does not preclude his having been unaware of what he was doing;

348.2.4. if the accused committed the offence and is in need of treatment for alcoholism or drug abuse.

348.3. In deciding on acquittal the court shall decide the matter of compensation for any damage caused to the acquitted person by unlawful acts on the part of the prosecuting authorities.

348.4. If a person is charged with several offences, the court shall separately decide on the matters set out in Article 346.1.1-346.1.12, 346.1.14-346.1.16 of this Code in respect of each offence.

348.5. If several persons are charged with an offence, all the matters set out in Article 348.1 of this Code shall be separately decided in respect of each accused person.

348.6. When sentencing a person to probation, the court shall decide the following matters:

348.6.1. the length of the probation period and the practical duties imposed on the person sentenced;

348.6.2. who is to be responsible for supervising the person sentenced to probation.

#### **Article 349. General requirements governing court judgments**

349.1. The court judgment shall be given on behalf of the Azerbaijan Republic.

349.2. The court judgment may be either a conviction or an acquittal.

349.3. The court judgment shall be lawful and well-founded.

349.4. The court judgment shall be considered lawful if it fulfils the requirements of the Constitution of the Azerbaijan Republic, this Code and the criminal and other legislation of the Azerbaijan Republic.

349.5. In the following cases the court judgment shall be considered well-founded:

349.5.1. if the conclusions at which the court arrives are based only on the evidence examined during the court's investigation of the case;

349.5.2. if the evidence is sufficient to assess the charge;

349.5.3. if the facts established by the court are consistent with the evidence investigated.

#### **Article 350. Acquittal**

350.1. Acquittal by the court represents the final decision on the results of the court's examination of the case, to the effect that the accused is not guilty of the charge brought against him in court.

350.2. In any of the circumstances provided for in Article 42.1 of this Code, the court shall give an acquittal on the basis of the results of its examination of the case.

350.3. An acquittal verdict may not include statements that cast doubt on the innocence of the person acquitted.

350.4. If, when an acquittal is given, the person who committed the offence remains unknown, the court shall refer the criminal case file or the file on simplified pre-trial proceedings to the public prosecutor, once the judgment has become final, to decide the question of the criminal prosecution of that person in accordance with the provisions of this Code.

#### **Article 351. Conviction**

351.1. A conviction by the court represents the final decision on the results of the court's examination of the case, finding the accused guilty of the offence committed and imposing a penalty (or in the circumstances directly provided for by criminal law, not imposing a penalty or releasing him from punishment).

351.2. A conviction by the court may not be based on assumptions and shall be handed down only where guilt of the accused is proved during the court's examination of the case.

351.3. If the court gives an affirmative answer on the matters set out in Article 346.1.1-346.1.6 of this Code, the guilt of the accused may be regarded as proven, as follows:

351.3.1. bearing in mind the presumption of innocence;

351.3.2. on the basis of the results of the court's examination of the charge in accordance with the rules set out in this Code;

351.3.3. on the basis of the reliable and admissible evidence examined during the court's investigation of the case;

351.3.4. interpreting in his favour any doubts as to the guilt of the accused which cannot be removed.

#### **Article 352. Drawing up of the court judgment**

352.1. After deciding all the necessary matters, the court shall begin to draw up the court judgment.

352.2. The court judgment shall be drawn up in the language of the court proceedings and in clear, understandable terms.

352.3. The court judgment shall consist of an introduction, a statement of the facts and reasons and a conclusion.

352.4. The court judgment shall be prepared by one of the judges, writing it by hand or using a typewriter or computer.

352.5. Each page of the court judgment shall be signed by the judges who voted in favour of it. Any judge disagreeing with this judgment shall add his dissenting opinion, signed by him on each page and placed in a sealed envelope, to the file on the court proceedings.

352.6. Any amendments to the court judgment shall be made in the deliberation room before the judgment is delivered and shall be confirmed by the signatures of the judges who voted for it.

### **Article 353. Content of the court judgment**

353.1. The introduction to the court judgment shall state the following:

353.1.1. that the court judgment is adopted on behalf of the Azerbaijan Republic;

353.1.2. the date, time and place of its adoption;

353.1.3. the name of the court that adopted the judgment;

353.1.4. the members of the court (family name, first name, father□s name of each judge);

353.1.5. the court clerk (family name, first name and father□s name);

353.1.6. the public prosecutor (family name, first name, father□s name and title);

353.1.7. the victim bringing a private prosecution (family name, first name, father□s name);

353.1.8. defence counsel (family name, first name, father□s name, the bar association to which he is affiliated);

353.1.9. the victim, the civil party, the defendant to the civil claim and their representatives (family name, first name and father□s name of each one of them);

353.1.10. the accused (family name, first name, father□s name, year, month, day and place of birth, marital status, citizenship, workplace, occupation, education and other information about his identity);

353.1.11. the article of criminal law under which the accused was brought before the court.

353.2. The statement of the facts and reasons in a judgment convicting the accused shall include the following:

353.2.1. a description of the criminal act considered by the court to be proven, stating the place, time and method of commission of the offence, the nature of the charge, the motives and the results of the offence committed;

353.2.2. the evidence on the basis of which the court came to its conclusions, and its reasons for not accepting other evidence;

353.2.3. any circumstances which aggravate or mitigate the responsibility of the accused;

353.2.4. if a part of the charge is considered groundless, the reasons for this;

353.2.5. if the classification of the acts of the accused is changed by the court, the reasons for this;

353.2.6. the legal rules on which the court bases its decisions;

353.2.7. the reasons for the conclusions reached by the court in settling the matters provided for in Article 346.1.11 □346.1.14 of this Code;

353.2.8. the reasons for any decision on imposing an additional type of penalty;

353.2.9. the reasons for the decision on the settlement of the civil claim and the payment of court expenses.

353.3. The statement of the facts and reasons in a judgment acquitting the accused shall include the following:

353.3.1. the substance of the charge brought against the accused;

353.3.2. the facts determined by the court during its examination of the case;

353.3.3. the grounds for acquittal of the accused indicating the evidence on which the court bases its conclusions and the reasons for its rejection of the evidence presented in support of the charge;

353.3.4. the matter of compensation for damage caused to the acquitted person by any unlawful acts of the prosecuting authorities, the payment of court expenses and the reasons for the decision on the civil claim.

353.4. The conclusion of a judgment convicting the accused shall state the following:

353.4.1. the family name, first name and father's name of the accused and his guilt of the offence provided for in a specific article of criminal law;

353.4.2. the type and length of the sentence imposed for each offence proved to have been committed by the accused;

353.4.3. the final sentence to be served;

353.4.4. the type of prison or corrective institution in which the sentence involving deprivation of liberty is to be served;

353.4.5. the date from which the sentence is to be served;

353.4.6. in the case of probation, the length of the probation period, the duties of the person on probation and the body or institution to which supervision of the person sentenced to probation is entrusted;

353.4.7. if a decision is made to this effect, exemption of the accused from serving the sentence on the grounds provided for by criminal law;

353.4.8. if the accused is detained on remand, the inclusion of the period of pre-trial detention in the term of the sentence;

353.4.9. the imposition of an additional type of penalty in the cases provided for by criminal law;

353.4.10. the settlement of the civil claim and the payment of court expenses (by whom and how much);

353.4.11. the steps to be taken regarding material evidence;

353.4.12. the adoption of a restrictive measure concerning the sentenced person until the court judgment becomes final;

353.4.13. how the court judgment becomes final, and an explanation of the appeal procedure.

353.5. The conclusion of a judgment acquitting the accused shall state the following:

353.5.1. the family name, first name and father□s name of the accused and the decision to acquit him;

353.5.2. where a restrictive measure was applied to the acquitted person until judgment was passed, its immediate annulment;

353.5.3. if any measures were taken to secure the civil claim or confiscate property before judgment was passed, the annulment of the measures taken;

353.5.4. the settlement of the civil claim and the payment of court expenses (by whom and how much);

353.5.5. the steps to be taken regarding material evidence;

353.5.6. how the court judgment becomes final, and an explanation of the appeal procedure.

353.6. If the court's examination of the case concerns several accused persons, the points set out in Article 353.2.3 - 353.2.9, 353.3-353.5 of this Code shall be recorded separately in respect of each accused person in the court judgment.

#### **Article 354. Settlement of the civil claim in the court judgment**

354.1. Depending on the grounds for the civil claim and proof of its amount, one of the following decisions shall be presented in the court judgment:

354.1.1. the partial or full upholding of the claim;

354.1.2. the rejection of the claim;

354.1.3. leaving the claim unexamined.

354.2. If the civil claim is upheld, and if the measures for its settlement have not been taken before the judgment becomes final, the court shall have the right to take these measures.

#### **Article 355. Special decision on the results of the court's examination of the case**

355.1. If the following facts are ascertained on the basis of the results of the court's examination of the case, the court may adopt a special decision:

355.1.1. that acts or omissions by individuals which do not entail criminal responsibility, or errors or deficiencies of officials of state bodies in the performance of their duties, caused the commission of the offence or created the conditions for it;

355.1.2. breaches of the requirements of this Code regarding the pre-trial proceedings.

355.2. A special decision of the court shall state in respect of which criminal case, pre-trial proceedings or complaint with a view to a private prosecution it is given and by whom, the substance of the charge, the grounds for giving a special decision, in respect of which and whose specific act (or omission) it is given and the breaches of the law caused by this act.

355.3. The special decision given by the court shall be sent to the following persons for appropriate measures to be taken:

355.3.1. in the case of officials of state bodies, to the head of the relevant state body;

355.3.2. in the case of the investigator, preliminary investigator and employees of the investigating authorities, to the head of the relevant central government body of the Azerbaijan Republic.

355.3.3. in the case of prosecutors and prosecutor□s office investigators, to the Principal Public Prosecutor of the Azerbaijan Republic.

355.4. The officials to whom the special decision is addressed shall take the following measures within 30 (thirty) days of receipt of this decision:

355.4.1. decide on the responsibility of those who have committed violations or shown deficiencies or errors in the performance of their duties, in accordance with the legislation of the Azerbaijan Republic;

355.4.2. inform the court of the measures taken.

#### **Article 356. Delivery of the court□s final decision**

356.1. After the court□s final decision on the results of its examination of the case has been signed, the court shall return to the courtroom and the decision shall be delivered by the court president or, if it is long, by the other members of the court in turn.

356.2. When members of the the court enter, those present in the courtroom shall stand up to listen to the final court decision.

356.3. If the final court decision on the results of the court's examination of the case is drawn up in a language unknown to the accused, as soon as it has been delivered, it shall be read out to the accused by the interpreter in his mother tongue or another language known to him.

356.4. The president shall explain to the accused and to the representatives of the parties the procedure and time-limit for appealing against the final court decision.

356.5. The right of an acquitted person to receive compensation for the damage caused as a result of his unlawful detention, his being charged, the application of restrictive measures and his unlawful appearance before the court, and the procedure for the exercise of this right, shall be explained to him.

356.6. If the accused is sentenced to life imprisonment, the right to apply for a pardon shall be explained to him.

356.7. After delivering and explaining its final decision, the court shall also deliver any special decision made.

**Article 357. Release of the person from detention after delivery of the court judgment**

357.0. In the following circumstances, the person shall immediately be released from detention in the courtroom after the court judgment has been delivered:

357.0.1. if he is acquitted by the court;

357.0.2. if he is convicted but exempted from punishment;

357.0.3. if he is convicted but sentenced to probation;

357.0.4. if he is convicted but given a penalty not involving deprivation of liberty;

357.0.5. if he is convicted but sentenced to deprivation of liberty for a period not exceeding that of his actual detention under a restrictive measure.

**Article 358. Issuing of a copy of the final court decision and its entry into force**

358.1. Within 3 (three) days of the delivery of the final court decision, the following measures shall be taken:

358.1.1. The court shall give the copy of its judgment to the convicted or acquitted person, his defence counsel and legal representative, the victim (or victim bringing a private prosecution) and his representative;

358.1.2. The court shall give the parties to the proceedings another copy of its decision at their request.

358.2. The court's final decision on the results of its examination of the case shall become final on the day following the end of the period provided for in Article of 384.1 this Code, if no appeal or complaint has been lodged with the appeal court.

## **Chapter XLVI**

### **PROCEEDINGS IN THE COURT OF FIRST INSTANCE**

#### **WITH THE PARTICIPATION OF A JURY**

##### **Article 359. Circumstances in which the court examines the case with the participation of a jury**

359.0. At the hearing on the results of the court's preparatory hearing, the president shall order a court examination of the case with the participation of a jury in the following cases:

359.0.1. if the criminal law provision (or penalty) governing the offence for which the accused is brought before the court provides for the possibility of imposing life imprisonment as a punishment;

359.0.2. if at least one of the accused brought before the court for a very serious offence expresses his wish to have the charge against him examined with the participation of a jury.

##### **Article 360. Selection of jurors**

360.0. The jurors participating in the court's examination of the case shall be selected in the following way, in the sequence indicated:

360.0.1. the list of jurors who are candidates for the jury shall be drawn up by the court, taking into account the general list of jurors drawn up in accordance with the requirements of Sections 115-121 of the Courts and Judges Law of the Azerbaijan Republic;

360.0.2. a special court hearing shall be held.

#### **Article 361. Drawing up of the list of jurors who are candidates for the jury**

361.1. In the cases provided for in the first part of this Code, after the end of the preparatory court hearing, the court president shall give immediate instructions to the court registry for the random preliminary selection of jurors from the general list of jurors within 7 (seven) days, in order to draw up a list of jurors who are candidates for the jury.

361.2. After the random selection of jurors by the court registry, the list of jurors who are candidates for the jury shall contain as many persons as are necessary to fulfil the requirements of Articles 363-365 of this Code, taking into account the characteristics of the specific criminal case.

#### **Article 362. Conduct of the hearing for the selection of jurors**

362.1. Within 7 (seven) days of the receipt of the list of candidates for the jury, the president shall set a date for the hearing for the selection of jurors. The jurors included on the list of candidates, the public prosecutor, the victim (or victim bringing a private prosecution), the accused and defence counsel shall be informed of the time and place of the court hearing according to the established procedure.

362.2. The hearing for the selection of jurors shall consist of the following:

362.2.1. investigation of any circumstances which preclude the participation of the jurors in the hearing;

362.2.2. settlement of any objections to the jurors and jurors' requests to withdraw;

362.2.3. random selection of the jury;

362.2.4. swearing-in of the jurors.

**Article 363. Initial court procedures during the hearing for the selection of jurors**

363.1. The hearing for the selection of jurors shall be opened by the president, who shall introduce himself to the participants and briefly explain to them the purpose of the hearing.

363.2. After this, the court clerk, on the instruction of the president, shall announce the presence of:

363.2.1. the jurors included on the list of candidates for the jury;

363.2.2. the public prosecutor, the victim (or victim bringing a private prosecution), the accused and defence counsel.

363.3Failure of jurors to attend the hearing shall not prevent the hearing from being held if the number of those attending is sufficient to satisfy the requirements of Articles 363.4.7, 364 and 365 of this Code, taking into account the characteristics of the specific criminal case.

363.4Continuing the court hearing, the president shall elucidate any circumstances which prevent jurors from participating in the court□s examination of the case and shall accordingly take the following steps in the sequence indicated:

363.4.1 in a brief introductory address, he shall provide the jurors with information on the criminal case before the court and on the duties of jurors and the conditions governing their participation in the court□s examination of the case in accordance with the law;

363.4.2. he shall ascertain whether the jurors have any information about the circumstances of the criminal case which is to be examined by the court;

363.4.3. on learning that a juror has information about the circumstances of the criminal case, he shall decide the matter of his exemption from the court□s examination of the case;

363.4.4. he shall ask the jurors whether they have good reason for being exempted from the court's examination of the case;

363.4.5. he shall explain to each juror attending the hearing his right to give good reasons for being unable to fulfil his duties as a juror and his right to request to withdraw;

363.4.6. with a view to taking an objective decision on the exemption of a juror from the court's examination of the case, he shall ask the juror the questions put to him in writing by the public prosecutor, the victim (or victim bringing a private prosecution), the accused and defence counsel, and any other questions he considers appropriate;

363.4.7. he shall exempt jurors from the court's examination of the case in accordance with the provisions of Article 111 of this Code.

363.5. If the jurors summoned attend in insufficient number, the president shall postpone the court hearing, instruct the court registry to make additions to the list of jurors who are candidates for the jury and take the steps provided for in Article 363.4 of this Code at the next court hearing.

#### **Article 364. Settlement of any objections made to the jurors**

364.1. After the steps provided for in Article 363.4 of this Code have been taken, the president shall give the public prosecutor, the victim (or victim bringing a private prosecution), the accused and defence counsel the opportunity, if they so wish, to make objections to the jurors on the grounds provided for in Article 111 of this Code.

364.2. All matters connected with objections made to the jurors shall be decided by the president without retiring to the deliberation room.

364.3. If, after some jurors have been dismissed by the president and objections made to them have been upheld, the number of jurors remaining on the list of the candidates for the jury is fewer than 22, the president shall postpone the hearing, instruct the court registry to make additions to the list of jurors who are candidates for the jury and take the steps provided for in Article 363.4 of this Code.

364.4. After any objections made to the jurors have been settled, the court clerk, on the instructions of the president, shall give the list of candidates left on the jury to the public prosecutor, the accused and defence counsel in order to secure their right to object to jurors without stating reasons.

364.5. The right to object to jurors without stating reasons shall incorporate the following:

364.5.1. after the objections have been made, and before the court's random selection of jurors, there shall be no fewer than 18 persons left on the list of candidates for the jury;

364.5.2. the public prosecutor, the accused and defence counsel shall exercise their right to object to jurors without stating reasons or giving any explanation by deleting the family names of jurors from the list;

364.5.3. the public prosecutor shall have the right to object to no more than 2 jurors and shall make his objections first;

364.5.4. the accused and defence counsel shall also have the right to object to 2 jurors and shall make their objection after the public prosecutor;

364.5.5. the accused shall have the right to direct his defence counsel to object to jurors independently;

364.5.6. if the accused relinquishes his right to object to jurors, defence counsel shall not have the right to object to jurors independently without his consent;

364.5.7. if several accused persons take part in the hearing, their objections to jurors shall be made by mutual consent;

364.5.8. if there is no such agreement among the accused, the objections to jurors shall be made by a certain number of them selected at random;

364.5.9. the refusal of an accused to object to jurors shall not entail a limitation of the right of other accused persons to object to the jurors.

#### **Article 365. Procedure for the random selection of the jury**

365.1. After ruling on the objections made to jurors without stating reasons, the president shall carry out the random selection of the jury.

365.2. The jury shall comprise 12 main jurors and 2 reserve jurors who shall be present in the courtroom throughout the court's examination of the case.

365.3. During the random selection of the jury, the president shall put cards bearing the family names of jurors to whom no objections have been made into a box, mix them and take out fourteen cards, one by one, announcing the family names of the jurors written on the cards for inclusion in the jury. The first twelve jurors selected at random shall be considered the main jurors and the last two shall be considered reserve jurors.

#### **Article 366. Validation of the selection of jurors**

366.1. After the random selection of the jury, the president, taking into account the opinions of the public prosecutor, the victim (or victim bringing a private prosecution), the accused and defence counsel, shall declare the selection of the jury to be valid or invalid.

366.2. The selection of jurors shall be deemed valid in the following circumstances:

366.2.1. if during the hearing on the selection of the jury, there is no violation of the provisions of Articles 363-365 of this Code;

366.2.2. if the number of cards taken out of the box and cards that remain in the box is equal to the total number of jurors to whom there are no objections.

366.3. If the president declares the selection of jurors to be invalid, the jury shall be selected again, wholly or partially, in accordance with the provisions of this Code.

366.4. The family names of the jurors selected shall be recorded by the court clerk for inclusion in the jury to participate in the court's examination of the case, in the order in which the respective cards were removed from the box. The list of jury members shall be signed by the president and by the court clerk. The cards on which family names of the selected jurors are written shall be added to the file on the first instance court proceedings.

**Article 367. Swearing-in of the jurors and explanation of their rights and responsibilities**

367.1. After the members of the jury who will participate in the court's examination of the case have been named by the president, the court clerk shall ask those present in the courtroom to stand.

367.2. The president shall ask the jurors selected at random to take the following oath: □I swear to fulfil my duties conscientiously and impartially, without acquitting a guilty person or convicting an innocent one□.

367.3. After this, the president shall announce the family name of each juror and they shall answer with the words □I swear□. A note on the taking of the oath shall be made in the record of the hearing.

367.4. After the jurors have been sworn in, the president shall:

367.4.1. ask the jurors to take the seats set aside for them, which shall be separate from those of the other people in the courtroom and, as a rule, opposite the seats of the accused;

367.4.2. explain to the jurors the rights and duties provided for in Articles 82 and 83 of this Code and inform them of the consequences of any violation of these duties;

367.4.3. inform the reserve jurors that they may be included on the list of main jurors if any of the main jurors is prevented from participating in the court's examination of the case before the verdict is delivered. Main jurors who leave the hearing shall be replaced by reserve jurors in the order in which the cards bearing the family names of jurors were taken out of the box at random.

**Article 368. Characteristics of the court's examination of the case with the participation of the jury**

368.1. After selecting the jury, the president shall open the court's examination of the case with the participation of this jury.

368.2. The court hearings involving the participation of the jury shall be conducted in accordance with the following rules:

368.2.1. due account shall be taken of the requirements of Articles 359-380 of this Code;

368.2.2. the procedure provided for under Articles 308-358 of this Code shall be followed.

368.3. It shall be prohibited for the public prosecutor, the victim (or victim bringing a private prosecution), the accused and defence counsel as well as the other parties to the proceedings to speak to the jurors during the hearings and during the intervals between hearings.

368.4. On one of the following grounds, a juror may be dismissed by reasoned decision of the president:

368.4.1. if there is clear evidence that the juror lacks the impartiality and objectivity which are necessary to try the criminal case by jury in full compliance with the legislation of the Azerbaijan Republic;

368.4.2. if information is received to the effect that the juror is unlawfully influenced by persons with an interest in the results of the court's examination of the case or by another person removed from the court hearing.

368.5. If there is no further possibility of replacing main jurors with reserve jurors during the court's examination of the case, the court examination shall be declared invalid by decision of the president and the jurors shall be selected again in accordance with this Code.

#### **Article 369. Matters to be decided by the jury**

369.0. After the end of the oral submissions and the final statement by the accused, the president shall put the following questions to the jury:

369.0.1. the main obligatory question of the guilt of the accused on the appropriate part of the charge (taking into account the requirements as to the limits of the

court's examination of any offence concerning which charges are brought by the public prosecutor);

369.0.2. if the accused is found guilty, the obligatory question of whether he deserves clemency or not.

**Article 370. Requirements for drawing up the questions to be answered by the jury**

370.1. The president shall draw up the list of questions to be answered by the jury on the basis of the charge argued by the public prosecutor, the results of the court's examination of the case and the oral submissions. These questions shall meet the following requirements:

370.1.1. they shall be asked in a way that is clear to the jurors, separately in respect of each accused;

370.1.2. they shall be drawn up in written form;

370.1.3. they shall be announced at the hearing;

370.1.4. they shall be given to the public prosecutor, the victim (or victim bringing a private prosecution), the civil party, the defendant to the civil claim and their representatives, the accused and defence counsel.

370.2. Those cited in Article 370.1.4 of this Code shall have the right to make amendments to the questions put by the president and to request that other questions be asked. The president may not refuse to put a question relating to the innocence of the accused or the availability of evidence which gives grounds for imposing a lighter sentence on the accused.

370.3. After this, the president shall finalise the questions to be answered by the jury and present them in the form of a questionnaire.

370.4. In its final form, the questionnaire shall meet the following requirements:

370.4.1. questions which may conflict with each other shall not be combined;

370.4.2. questions shall not be worded in such a way that an answer to them allows the accused to be found guilty of an offence with which the public prosecutor has not charged him, or concerning which the public prosecutor is not arguing the charge at the time when the question is asked;

370.4.3. questions which make it possible to establish that the accused is guilty of a minor offence may be asked, provided that they do not make the situation of the accused worse and that his defence rights are not violated.

370.5. The questionnaire shall be:

370.5.1. signed by the president;

370.5.2. confirmed by decision of the president;

370.5.3. included in the record of the hearing;

370.5.4. read out by the president and given to the foreman of the jury.

#### **Article 371. Instructions by the president**

371.1. Before the jurors go to the deliberation room to adopt a verdict, the president shall give them instructions.

371.2. While giving his instructions, the president may not express his opinion in any form on the questions put before the jury.

371.3. The president shall give the following in his instructions:

371.3.1. a brief reminder of the charge;

371.3.2. information about the provisions of criminal law governing the offence with which the accused is charged;

371.3.3. if necessary, while remaining objective, he shall remind the jury of all or some of the evidence examined by the court and correct any misrepresentations made by the parties to the proceedings;

371.3.4. if necessary, he shall remind the jury of the positions of the public prosecutor and defence counsel;

371.3.5. he shall explain the main rules of the assessment of evidence, the nature of the presumption of innocence and the rule that any unresolved suspicions shall be interpreted in favour of the accused;

371.3.6. if the accused refuses to testify, or remains silent during the court's examination of the case, he shall draw the attention of the jury to the fact that this does not have any legal significance and may not be interpreted as an acknowledgment of guilt;

371.3.7. he shall explain to the jurors that their verdict may be based only on the evidence directly examined at the hearing, that no evidence has any predetermined value for the jury, and that their conclusions may not be based on suppositions or on evidence excluded from the court's examination of the case;

371.3.8. he shall explain to jurors the procedure for deliberating, preparing the answers to the questions and reaching the verdict;

371.3.9. he shall determine the period for which the jurors retire to the deliberation room in order to reach a verdict (taking into consideration the complexity of the case and the length of the questionnaire, it shall not be less than 3 hours or more than 24);

371.3.10. he shall explain to the jurors the procedure for reaching a verdict, the fact that efforts should be made to reach unanimous decisions, and the procedure for indicating on the questionnaire any answers adopted by a majority of votes;

371.3.11. he shall remind the jurors of the content of the oath taken and draw their attention the need to consider, in the event of a conviction, whether the accused deserves clemency.

371.4. After listening to the instructions of the president and acquainting themselves with the questions put to them, the jurors shall have the right to request further explanations from the president.

#### **Article 372. Retirement of the jury to the deliberation room**

Immediately after giving his instructions, the president shall excuse the reserve jurors from further participation in the court's examination of the case and ask the main jurors to start reaching a verdict. The jury shall retire to the deliberation room for this purpose.

#### **Article 373. Objections to the president's instructions**

373.1. After the jurors have left the courtroom, the public prosecutor, the victim, the civil party, the defendant to the civil claim and their representatives, and the accused and defence counsel shall have the right to raise objections to the content of the president's instructions on the grounds of a breach of the principle of objectivity.

373.2. If the parties to the proceedings do not raise such objections, they may not refer to the content of the president's instructions as grounds for re-examination by a higher court.

373.3. If the president considers the objections of the parties to the proceedings to be justified, he shall call the jurors back from the deliberation room and give them further instructions.

#### **Article 374. Secrecy of the jury's deliberations**

374.1. No one other than the main jurors may be present in the deliberation room. At night, with the permission of the president, if working hours are over, the jurors shall have the right to interrupt their deliberations in order to rest.

374.2. The jurors shall not have the right to disclose any opinions expressed during the deliberations.

#### **Article 375. Jury's deliberations, vote and adoption of a verdict**

375.1. The foreman shall lead the jury's deliberations, put forward the questions for discussion in the right order, conduct voting on the answers and count the votes.

375.2. If the items listed below are shown to the president by the foreman of the jury, taking account of the opinions of the parties to the proceedings, the jury shall review them in the following order during their deliberations:

375.2.1. the text of the conclusions of the judgment convicting the accused;

375.2.2. the documents read out at the hearing;

375.2.3. material evidence, including photos and drawings examined at the hearing;

375.2.4. audio recordings heard and video or film recordings shown at the hearing;

375.2.5. the text of the president's instructions.

375.3. During the jury's deliberations, the voting shall be conducted openly. No juror may be neutral during the voting. The foreman shall vote last.

375.4. If the jury is unable to reach a unanimous decision in the time allowed for discussing the questions, the following rules shall apply:

375.4.1. if the majority of the jurors answer the main question of the guilt of the accused in the affirmative, a verdict convicting the accused shall be considered as adopted;

375.4.2. if at least 6 jurors answer the main question of the guilt of the accused negatively, an acquittal verdict shall be considered as adopted;

375.4.3. answers to the other questions shall be determined by a simple majority of the votes and if the votes divide equally, the most favourable answer for the accused shall be adopted.

375.5. The answers to all the questions put in the questionnaire shall be affirmative or negative and clarified by explanatory words or expressions, such as  yes, he is guilty,  no, he is not guilty,  yes, he is guilty but did not intend to kill or  yes, he deserves clemency.

375.6. The answers to the questions shall be recorded on the questionnaire by the foreman immediately after the relevant question has been answered. If the answer given to the previous question makes it unnecessary to give an answer to the next question, the foreman, with the consent of the majority of the jurors, shall note  no answer  after that question.

375.7. If the answer to the question is decided by a vote, the foreman shall indicate the result of the vote count after the answer.

375.8. The questionnaire incorporating the answers of the jury shall be signed by the foreman.

#### **Article 376. Renewal of the court's investigation of the case at the request of the jury**

376.1. If, during the deliberations, the majority of the jurors consider it necessary to investigate further any circumstances which are of importance in answering the questions put to them, they shall take the following steps:

376.1.1. the jurors shall return to the courtroom;

376.1.2. the foreman, on behalf of the jury, shall make an official request to the president to renew the court's investigation of the case for the relevant purpose.

376.2. If it is possible and necessary to grant the request of the jury, the following steps shall be taken:

376.2.1. the president shall renew the court's investigation of the case and, after it has been completed, taking into account the opinions of the parties to the proceedings, shall clarify the questions put to the jury or put forward new questions;

376.2.2. after hearing the submissions and replies of the parties to the proceedings on the newly investigated circumstances as well as the final statement by the accused and the president's instructions, the jury shall return to the deliberation room to reach a verdict.

#### **Article 377. Announcement of the jury's verdict**

- 377.1. After the questionnaire has been completed and signed:
- 377.1.1. the jurors shall return to the courtroom;
- 377.1.2. the foreman shall hand the questionnaire on which the answers are written to the president.
- 377.2. Having studied the verdict, if he considers it unclear or contradictory, the president shall have the following rights:
- 377.2.1. to inform the jury that their verdict is unclear or contradictory and ask that they clarify it in the deliberation room;
- 377.2.2. after hearing the opinions of the parties to the proceedings, to make the necessary changes to the questionnaire.
- 377.3. In the circumstances provided for in Article 377.2 of this Code, the jury, after receiving brief instructions from the president concerning the changes made to the questionnaire, shall return to the deliberation room to reach a verdict.
- 377.4. If there are no observations to be made on the verdict of the jury, the following steps shall be taken:
- 377.4.1. the president shall return the questionnaire bearing the jury's answers to the foreman;
- 377.4.2. the foreman shall announce the jury's verdict, reading out the questions put to the jury and the answers given to them.
- 377.5. All those present in the courtroom shall stand to listen to the verdict of the jury.
- 377.6. The verdict of the jury shall be given to the court clerk for inclusion in the file on the court proceedings.

**Article 378. Steps to be taken by the president following the announcement of the jury's verdict**

378.0. Immediately after the verdict has been reached, the following steps shall be taken in the order indicated:

378.0.1. if a person detained on remand is found completely innocent, the president shall immediately give instructions to release him from detention in the courtroom;

378.0.2. the president shall thank the jurors, announce the end of their participation in the hearing and declare an adjournment of the hearing.

#### **Article 379. Discussion of the results of the jury's verdict**

379.1. If necessary, the results of the jury's verdict may be discussed at the hearing without the participation of the jurors. Until the end of the court's examination of the case, the jurors shall have the right to remain in the courtroom, taking seats intended for other participants.

379.2. The discussion of the results of the jury's verdict shall commence with the reading out of the documents concerning the conviction of the accused and an examination of the evidence which, under the rules governing the court's investigation of cases, may be examined without the participation of the jury.

379.3. The president shall allow the public prosecutor, the victim (or victim bringing a private prosecution), the civil party, the defendant to the civil claim or their representatives, and the accused and defence counsel, to make one statement each on matters relating to the legal results of the verdict reached by the jury, including the classification of the act committed by the accused, sentencing and the settlement of the civil claim. The accused and defence counsel shall always make their statements last.

379.4. It shall be prohibited for the parties to the proceedings to question the truth of the verdict of the jurors in their statements.

379.5. After the parties to the proceedings have made their statements, the president shall retire to the deliberation room to pass judgment.

379.6. If the accused is considered to deserve a reduction of the sentence, the president shall perform the following duties:

379.6.1. determine the degree of seriousness of the most serious of the offences of which the accused is found guilty in accordance with the requirements of criminal law;

379.6.2. sentence the accused to a penalty designed for offences which are one degree below the degree of seriousness of the offence determined in accordance with Article 379.6.1 of this Code;

379.6.3. if the most serious offence among those of which the accused is found guilty belongs to the category of offences which do not pose a major public threat, convict the accused without imposing punishment.

**Article 380. Characteristics of appeals against judgments given on the results of court proceedings involving the participation of a jury**

380.0. A judgment of the court of first instance based on the verdict reached by a jury shall have the following characteristics:

380.0.1. no complaint or appeal against this judgment may be lodged with the court of appeal;

380.0.2. this judgment shall become final immediately after its delivery;

380.0.3. a complaint or appeal may be lodged with the Supreme Court on the grounds and within the time limits provided for in Article 410 of this Code.

## **SECTION NINE**

### **PROCEEDINGS IN THE COURTS OF APPEAL AND THE SUPREME COURT**

#### **Chapter XLVII**

##### **RE-examination of COURT JUDGMENTS and**

##### **decisions ON appeal**

## **Article 381 Complaints and appeals against judgments and decisions of first instance courts**

381.1. Complaints and appeals against judgments and decisions of first instance courts may be lodged with the court of appeal in accordance with the provisions of this Code.

381.2. The courts to which appeals may be submitted shall be:

381.2.1. against judgments or decisions of the district (city) courts of the Nakhchivan Autonomous Republic: the division for violations of criminal and administrative law of the Supreme Court of the Nakhchivan Autonomous Republic;

381.2.2. against judgments or decisions of district (city) courts other than those of the Nakhchivan Autonomous Republic: the division for violations of criminal and administrative law of the Court of Appeal of the Azerbaijan Republic;

381.2.3. against judgments or decisions of the military courts: the division for military cases of the Court of Appeal of the Azerbaijan Republic;

381.2.4. against judgments or decisions of the first instance division for serious offences of the Supreme Court of the Nakhchivan Autonomous Republic, other than judgments given with the aid of a jury: the division for violations of criminal and administrative law of the Court of Appeal;

381.2.5. against judgments or decisions of the Assize Court of the Azerbaijan Republic, other than judgments given with the aid of a jury: the division for violations of criminal and administrative law of the Court of Appeal of the Azerbaijan Republic;

381.2.6. against judgments or decisions of the Military Assize Court of the Azerbaijan Republic dealing with serious offences, other than judgments given with the aid of a jury: the division for military cases of the Court of Appeal of the Azerbaijan Republic.

## **Article 382. Characteristics of complaint or appeal proceedings**

382.1. Proceedings concerning complaints or appeals against judgments or decisions given by first instance courts during their examination of criminal cases, files on simplified pre-trial proceedings or complaints with a view to a private prosecution shall be conducted in accordance with Articles 381-407 of this Code.

382.2. Proceedings concerning complaints or appeals against decisions given by first instance courts under the system of judicial supervision shall be conducted by the court of appeal in accordance with the provisions of Articles 452-454 of this Code.

### **Article 383. Persons entitled to lodge a complaint or appeal**

383.1. The following shall have the right to lodge a complaint with a court of appeal:

383.1.1. as regards the interests of the person convicted: the person convicted, his legal representative or his defence counsel;

383.1.2. as regards the evidence and grounds for acquittal - the person acquitted, his legal representative or his defence counsel;

383.1.3. as regards the application of compulsory corrective training measures - the minor himself, his legal representative or his defence counsel;

383.1.4. as regards the application of compulsory medical measures - the legal representative and defence counsel of the person to whom the compulsory medical measure has been applied, and the person himself if the nature of his illness does not preclude him from exercising his rights;

383.1.5. as regards the interests of the victim as part of his requests to the court of first instance - the victim (or victim bringing a private prosecution) and his representative;

383.1.6. as regards the civil claim - the civil party, the defendant to the civil claim and their legal representatives or representatives.

383.2. The public prosecutor participating in the examination of a case in the court of first instance shall have the right to lodge an appeal against any part of the

judgment which does not take into consideration his conclusions and proposals. If the afore-mentioned public prosecutor dies, disappears, becomes chronically ill or deliberately fails to lodge an appeal, the Principal Public Prosecutor of the Azerbaijan Republic or his deputy shall have the right to lodge an appeal in place of the public prosecutor who participated in the case before the court of first instance.

383.3. Complaints by close relatives of the victim or of the person convicted shall give rise to appeal proceedings only if these persons are allowed to participate in the case, as legal representatives of the accused or the victim, by the investigator or the court of first instance in accordance with the rules of this Code.

#### **Article 384. Time limits and conditions for the lodging of complaints and appeals**

384.1. Complaints and appeals shall be lodged within 20 (twenty) days of the judgment or other decision of the court being delivered, by anyone with the right to lodge a complaint or appeal, under the following circumstances:

384.1.1. if a judgment convicting or acquitting the accused is given;

384.1.2. if a decision is taken to suspend the criminal proceedings, the simplified pre-trial proceedings or the proceedings on a complaint with a view to a private prosecution;

384.1.3. if a decision is taken to discontinue the criminal proceedings, the simplified pre-trial proceedings or the proceedings on a complaint with a view to a private prosecution;

384.1.4. if a decision is taken to allow an objection to the judge (or judges);

384.1.5. if a decision is taken to discontinue the examination of a criminal case or of the file on simplified pre-trial proceedings and to return it to the prosecutor in charge of the procedural aspects of the investigation in order to eliminate serious violations committed during the investigation and listed under Article 303.3 of this Code;

384.1.6. if a decision is taken to suspend the court's examination of the case and to return a criminal case or the file on simplified pre-trial proceedings to the

prosecutor in charge of the procedural aspects of the investigation in order for fresh charges to be brought;

384.1.7. if a decision is taken to refuse jurisdiction for a complaint with a view to a private prosecution;

384.1.8. if a decision is taken to apply compulsory medical measures;

384.1.9. if a decision is taken to apply compulsory corrective training measures.

384.2. Complaints against conviction by sentenced persons in detention shall be lodged within 20 (twenty) days of receipt of a copy of the relevant judgment or decision.

384.3. Convicted or acquitted persons who fail to appear in court may lodge a complaint within 20 (twenty) days of the judgment being announced on the notice board of the court of first instance.

384.4. The criminal case file may not be requested from the court of first instance by the higher court during the period set for the lodging of complaints and appeals.

384.5. Persons entitled to lodge complaints and appeals shall have the right to give reasons for their disagreement with another decision made by the court of first instance during its examination of their case in their complaint or appeal against the court's final decision on the criminal case.

### **Article 385. Lodging of complaints and appeals**

385.1. Appeals shall be lodged through the court of first instance which gave the judgment or decision.

385.2. Complaints and appeals shall have enough copies attached for the parties to the criminal proceedings to whose interests the complaint or appeal relates. Copies shall not be required for a sentenced person in detention, a minor or a person subject to a compulsory medical measure. In these cases the necessary copies of the complaint shall be produced by the court of first instance.

385.3. If a complaint or appeal is lodged directly with the court of appeal, that court shall send it to the court of first instance in order for the requirements of Article 385.2 of this Code to be met.

**Article 386. Extension of the time limit for lodging complaints and appeals**

386.1. If the time limit for lodging a complaint or appeal is missed for good reasons, persons entitled to appeal under Article 383 of this Code shall have the right to apply to the court of first instance which gave the judgment or decision for the time limit to be extended.

386.2. The application for an extension of the time limit shall be decided in the court of first instance by the court president or the judge. The applicant shall be informed in good time of the date and time of the examination of his application. His failure to attend shall not prevent the examination from taking place.

386.3. If the application for an extension of the time limit for lodging a complaint or appeal is rejected, a complaint against this decision may be lodged with the court of appeal. If the court of appeal grants an extension, it shall send its decision for implementation to the court of first instance.

**Article 387. Requirements to be met when lodging a complaint or appeal**

387.1. The following shall be indicated in a complaint or appeal:

387.1.1. the name of the court of appeal to which the complaint or appeal is addressed;

387.1.2. the name of the person lodging the complaint or appeal;

387.1.3. the name of the court of first instance which gave the judgment or decision;

387.1.4. a summary of the judgment or other final decision of the court and the reason why the person lodging the complaint or appeal considers it unlawful, groundless or unjust;

387.1.5. the request of the person lodging the complaint or appeal;

387.1.6. a list of the documents attached to the complaint or appeal.

387.2. The grounds given for the amendment or annulment of the judgment in the complaint or appeal shall refer to the appropriate pages of the case file. This requirement shall not apply to sentenced persons in detention or minors.

387.3. Complaints and appeals shall be submitted in writing and signed by the person lodging them.

387.4. If the document confirming the status of the legal representative or representative is not in the criminal case file, the file on simplified pre-trial proceedings or the file on a complaint with a view to a private prosecution, the document confirming the status of the legal representative or representative shall be attached to the complaint or appeal.

387.5. The use in the complaint or appeal of new evidence not presented to the court of first instance shall be admissible only if it is proved that it was impossible to present it to the court of first instance or that the court refused to accept it.

#### **Article 388. Notification of receipt of complaints and appeals**

388.1. After a complaint or appeal has been received, the court of first instance shall present or send copies thereof within 48 hours to the persons mentioned in Article 383.1 and 383.2 of this Code and shall explain to them their right to object to these documents and to acquaint themselves with other persons□ objections and the time limits for doing so.

388.2. Objections to a complaint or appeal shall be attached to the case file; if such objections are received after the case file has been sent to the court, they shall be sent directly to the court of appeal.

#### **Article 389. Results of the lodging of complaints and appeals**

389.1. A complaint or appeal against a judgment or decision of a court of first instance shall stay the execution thereof.

389.2. After the complaint or appeal has been received, the court which gave the judgment or decision shall, within 10 (ten) days, send it to the court of appeal

together with the case file, the file on simplified proceedings or the complete file on the complaint with a view to a private prosecution.

#### **Article 390. Withdrawal, amendment or amplification of a complaint or appeal**

390.1. Before the case is examined by the court of appeal, the appellant shall have the right to withdraw, amend or add to it, as well as to object to a complaint or appeal lodged by another party to the criminal proceedings.

390.2. The public prosecutor appointed to the case in the court of appeal shall have the right to make additions to an appeal lodged by the public prosecutor responsible for the case at the court of first instance, and to amend or withdraw it.

390.3. Amendments to a complaint or appeal which cause a change for the worse in the situation of a person subject to compulsory corrective training or medical measures, or of a convicted or acquitted person, may be made only during the period prescribed for the lodging of complaints and appeals.

390.4. Except in the circumstances provided for in Articles 390.5 and 390.6 of this Code, anyone who has lodged a complaint or appeal shall have the right to withdraw it until the final decision is made in the court of appeal.

390.5. Defence counsel may withdraw a complaint only with the consent of the person he is defending or his legal representative. The defence counsel involved in the appeal proceedings on the criminal case, the simplified pre-trial proceedings or the complaint with a view to a private prosecution shall have the right to make additions and amendments to the appeal made by the defence counsel participating in the proceedings before the court of first instance only with the consent of the convicted or acquitted person or his legal representatives.

390.6. A convicted or acquitted person shall have the right to withdraw a complaint lodged by his defence counsel.

390.7. The representative of the victim (or victim bringing a private prosecution) participating in the appeal court proceedings shall have the right to withdraw his own complaint and the complaint of the victim's representative who participated in

the proceedings before the court of first instance only with the consent of the victim (or victim bringing a private prosecution) or his legal representative.

#### **Article 391. Initial examination of complaints and appeals**

391.1. When a complaint or appeal is received by the court of appeal it shall be allocated to judges in accordance with Article 298.1 of this Code. The court of appeal, comprising three judges, shall conduct an initial examination of the complaint or appeal within 15 (fifteen) days, with the participation of the court clerk. Those who have the right to lodge a complaint and the public prosecutor representing the prosecution shall have the right to participate in the hearing. These persons shall be informed of the place and time of the hearing in advance under the statutory procedure, but their absence shall not prevent the initial examination of the complaint or appeal.

391.2. The procedure for the initial examination of the complaint or appeal shall be established by the court of appeal. In all cases the court of appeal shall examine the following matters:

391.2.1. whether the complaint or appeal is within the jurisdiction of this court;

391.2.2. whether the complaint or appeal was lodged in accordance with the requirements of Articles 381-390;

391.2.3. whether there are grounds to discontinue or suspend the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

391.2.4. whether there are grounds for amendment, annulment or adoption of a restrictive measure on the criminal case;

391.2.5. whether there were serious violations of the requirements of this Code during the first instance court proceedings on the criminal case, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution.

391.3. During its initial examination of the complaint or appeal, the court of appeal shall give one of the following decisions in accordance with the provisions of this Code:

393.3.1. to keep the complaint or appeal without taking any action;

391.3.2. to send it to the relevant court;

391.3.3. to extend or refuse to extend the time limit for lodging a complaint or appeal;

391.3.4. to schedule the court's examination of the complaint or appeal;

391.3.5. to refuse to accept jurisdiction for the complaint or appeal;

391.3.6. to return the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution to the court of first instance;

391.3.7. to discontinue the examination of the complaint or appeal and return the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution to the court of first instance;

391.3.8. to suspend the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

391.3.9. to discontinue the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

391.3.10. to discontinue the examination of the complaint or appeal.

391.4. If the requirements of Articles 386 and 387 of this Code are not met, the court of appeal shall decide to keep the complaint or appeal without taking any action and shall set a time limit of 10 (ten) to 20 (twenty) days for meeting these requirements. If these requirements are not met during the set period, the court of appeal shall decide to leave it unexamined.

391.5. If a complaint or appeal is lodged by a person who does not have the right to do so, the court of appeal shall decide to decline jurisdiction for it.

391.6. The court of appeal shall decide to return the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution to the court of first instance in the following cases:

391.6.1. if the record of the proceedings before the court of first instance was not signed by the court president or clerk;

391.6.2. if a copy of the judgement was not given to the person convicted or acquitted or if it was given without having been translated into his mother tongue or a language he speaks;

391.6.3. if the judgment or decision of the court of first instance was not signed by the judge who participated in the court's examination of the case;

391.6.4. if the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution does not include the record of the trial or the judgment or decision given during the first instance court's examination of the case.

391.7. In the circumstances provided for in Article 391.6 of this Code, the following steps shall be taken:

391.7.1. the court of appeal shall set a time limit of no more than 10 (ten) days to remedy the violations and shall return the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution to the court of first instance;

391.7.2. the court of first instance shall remedy the violations as far as possible within the given time limit and shall send the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution to the court of appeal for re-examination of the complaint or appeal.

391.8. In the event of the following serious violations of the provisions of this Code, the court of appeal shall decide to discontinue examination of the complaint or appeal and to return the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution to the court of first instance:

- 391.8.1. if the first instance court's examination of the case was conducted in violation of the requirements of Article 303.3 of this Code;
- 391.8.2. if the court of first instance fails to remedy any of the violations provided for in Article 391.6 of this Code;
- 391.8.3. if the first instance court's examination of the case was conducted in violation of the rules governing jurisdiction;
- 391.8.4. if the first instance court's examination of the case was conducted with the illegal participation of a judge who was the subject of objections or had requested to withdraw;
- 391.8.5. if the first instance court's examination of the case was conducted in violation of the requirements on prohibitions of changes to the membership of the court;
- 391.8.6. if the first instance court's examination of the case was conducted in violation of the defence rights of the accused;
- 391.8.7. if the first instance court's examination of the case was conducted in violation of the right of the accused to use his mother tongue or to have the assistance of an interpreter;
- 391.8.8. if the examination in the court of first instance was conducted in violation of the requirements for the participation of the public prosecutor, the accused or defence counsel;
- 391.8.9. if the first instance court's examination was conducted in violation of the requirement that the accused, the victim and the public prosecutor be allowed to address the court and that the accused also be allowed to make the final statement;
- 391.8.10. if the final court decision on the results of the first instance court's examination of the case was given in violation of the requirement for secrecy of the judges' deliberations;

391.8.11. if the first instance court's examination of the case was conducted in violation of the requirements on the limits of the charge (if the judgment convicting the accused concerns a more serious offence than that covered by the charge);

391.8.12. if the judgment or decision of the court of first instance was not signed in accordance with the requirements of Article 352.5 and 352.6 of this Code.

391.9. In the circumstances provided for in Article 391.8 of this Code, the court of appeal shall decide as follows:

391.9.1. to set aside the judgment or decision given by the court of first instance on the results of its examination of the case;

391.9.2. to return the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution to the court of first instance for a renewal of the court's preparatory hearing or of the court's examination of the case.

391.10. In the cases provided for in Article 391.6 and 391.8 of this Code, the court of appeal may give a special decision on serious violations of this Code and shall send that decision to the following persons:

391.10.1. as regards officials of state bodies: to the head of the appropriate higher state body;

391.10.2. as regards the investigator, preliminary investigator and employees of the preliminary investigating authority: to the head of the appropriate government body of the Azerbaijan Republic;

391.10.3. as regards the prosecutors and prosecutor's office investigators: to the Principal Public Prosecutor of the Azerbaijan Republic;

391.10.4. as regards judges of the court of first instance: to the President of the Supreme Court of the Azerbaijan Republic.

391.11. If a person who has lodged a complaint or appeal withdraws it, and no complaint or appeal is lodged by other parties to the criminal proceedings, the court shall decide to discontinue examination of the complaint or appeal. As soon as

examination of the complaint or appeal is discontinued, the judgment or other decision of the court of first instance shall become final.

391.12. Complaints or appeals may be lodged with the Supreme Court against decisions taken on the results of the initial examination of a complaint or appeal by the court of appeal.

#### **Article 392. Scheduling of appeal court hearings**

392.1. When scheduling the examination of a complaint or appeal, the court of appeal shall decide the following matters:

392.1.1. the need for and length of a court investigation of the case;

392.1.2. the need to request additional evidence;

392.1.3. the persons to be summoned to the court hearing;

392.1.4. the alteration, annulment or adoption of a restrictive measure on the criminal case;

392.1.5. the summoning of an interpreter where necessary;

392.1.6. whether to examine the complaint or appeal in public or in camera;

392.1.7. the time and place of the court hearing;

392.1.8. all other matters concerning the preparatory measures for the conduct of the appeal court's examination of the case.

392.2. If there is a possibility that the situation of the convicted or acquitted person will worsen as a result of the complaint or appeal or if the court of appeal considers a court investigation necessary, the convicted or acquitted person and his legal representatives shall be summoned without fail to the hearing of the court of appeal. In such cases the defence counsels whose participation in the criminal proceedings is obligatory shall also be summoned.

392.3. If there are grounds to suppose that not all the facts of importance for the court to arrive at an accurate result were investigated by the court of first instance, the court of appeal may consider it necessary to conduct a full or partial court investigation. Where a full or partial investigation is conducted, all the evidence on which the appeal is based shall be examined without fail.

392.4. The court of appeal shall set the date for its examination of the complaint or appeal within (20) twenty days of receiving it. If the examination of the complaint or appeal is especially complicated to organise, this period may be extended to 30 (thirty) days by decision of the president of the court of appeal.

#### **Article 393. Notification of the date of examination of the complaint or appeal**

393.1. The persons to be summoned to the appeal court hearing shall be notified of the fact by a summons. The convicted or acquitted person shall at the same time be sent a copy of the decision on setting down the case for examination on appeal.

393.2. The court of appeal shall post up information on the time and place of the examination of the complaint or appeal on its notice board at least three days before the court hearing.

#### **Article 394. Rules governing the examination of complaints or appeals**

394.1. After taking the initial steps provided for in Articles 322 and 323 of this Code, the president shall explain the following rights:

394.1.1. to those entitled to lodge a complaint or appeal: the right to defend or withdraw their complaint or appeal;

394.1.2. to the other parties to the criminal proceedings: the right to defend the appeal, to raise objections to it or to make submissions on it;

394.1.3. to the parties to the criminal proceedings: the right to speak in court;

394.1.4. to the parties to the criminal proceedings: the right to file applications, but only on that part of the first instance court's judgment or decision which is being considered on appeal.

394.2. After this the president shall take the following steps:

394.2.1. explain the substance of the disputed judgment or decision of the court of first instance;

394.2.2. state who has lodged the complaint or appeal, and to what extent;

394.2.3. ascertain whether those who lodged the complaint or appeal intend to defend it, and list those who have filed objections to it;

394.2.4. ascertain whether other parties to the criminal proceedings intend to argue their objections.

394.3. If the court of appeal examines the complaint or appeal without conducting an investigation, after the steps provided for in Article 394.2. of this Code have been taken:

394.3.1. the president shall acquaint the parties to the proceedings with any additional applications filed;

394.3.2. the court shall hear the evidence given by the parties to the proceedings on the complaint or appeal and shall hear oral submissions in accordance with the rules provided for in Articles 339-343 of this Code.

394.4. If the court of appeal examines the complaint or appeal on the basis of a court investigation, after the steps provided for in Article 394.4. of this Code have been taken:

394.4.1. the court's investigation of the case and the oral submissions shall be conducted in accordance with the rules provided for in Articles 324-343 of this Code;

394.4.2. taking into consideration the date when the appeal was received, the person who lodged the complaint or appeal shall make the first oral submissions.

394.5. During its examination of the complaint or appeal, the court of appeal shall have the right to take decisions on any applications filed by the parties to the

proceedings and on matters concerning the conduct of its examination of the appeal.

394.6. Before the court of appeal retires to the deliberation room to give the final court decision, the convicted (or acquitted) person shall be allowed to make the final statement.

#### **Article 395. Renewal of the court's investigation of the case**

If it is necessary to investigate fresh circumstances or evidence heard during the oral submissions, the final statement by the convicted (or acquitted) person or the adoption of the final court decision, the court of appeal shall renew its investigation of the case in accordance with the requirements of Articles 324-343 of this Code.

#### **Article 396. Discontinuation of the examination of the complaint or appeal**

If the person who lodged the complaint or appeal withdraws it and if there are no complaints by other parties to the proceedings, the court of appeal shall decide to discontinue its the examination of the complaint or appeal.

#### **Article 397. Limits of the examination of the complaint or appeal**

397.1. The court of appeal shall verify that the court of first instance accurately established the facts of the case and applied the provisions of criminal law and of this Code.

397.2. The facts established by the court of first instance shall be verified by the court of appeal only within the limits of the complaint or appeal. The first instance court's compliance with the provisions of the criminal law and of this Code shall be verified by the court of appeal regardless of the evidence for the complaint or appeal.

397.3. If one of the following circumstances arises during its examination of the complaint or appeal, the court of appeal shall examine fresh evidence:

397.3.1. if the parties to the proceedings prove that failure to submit fresh evidence to the court of first instance was due to reasons beyond their control;

397.3.2. if the court of first instance refused to examine this evidence without giving objective reasons.

397.4. If the court of appeal considers the examination of fresh evidence as an attempt to prolong the examination of the complaint or appeal, it shall have the right to dismiss the application for examination of this evidence.

397.5. If the results of its examination of the complaint or appeal give grounds for this, the court of appeal shall give a final decision in favour of persons who did not lodge an appeal.

#### **Article 398. Final court decision on the examination of the complaint or appeal**

398.1. As a result of its examination of the complaint or appeal, the court of appeal shall have the right to do one of the following:

398.1.1. decide to maintain the judgment or decision of the court of first instance unchanged;

398.1.2. give a new judgment setting aside the judgment of the court of first instance;

398.1.3. set aside the judgment or decision of the court of first instance and decide to discontinue the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

398.1.4. decide to amend the judgment or decision of the court of first instance.

398.2. The appeal court judgment shall comply with the requirements of Article 353 of this Code. Any other final decision of the court of appeal shall consist of an introduction, a statement of the facts and reasons, and a conclusion. As well as giving the final decision, the court of appeal may give a special decision if it establishes the following as a result of its examination of the complaint or appeal:

398.2.1. if the grounds or conditions for the commission of the offence were acts or omissions by individuals which are not subject to criminal responsibility, or violations, deficiencies or omissions of officials of state executive authorities or state bodies in the performance of their duties;

398.2.2. if during the proceedings on the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution, the requirements of this Code were violated either by the prosecuting authorities or by the court of first instance.

**Article 399. Grounds for setting aside or amending the judgment or decision of the court of first instance**

399.1. The grounds for setting aside or amending the judgment or decision of the court of first instance as a result of the examination of the complaint or appeal shall be the following:

399.1.1. the court's failure to investigate all the facts of importance for its conclusions;

399.1.2. inconsistency between the court's conclusions and the facts of the case;

399.1.3. failure to prove the facts determined by the court of first instance as being of significance to the case;

399.1.4. failure to apply the provisions of criminal law correctly;

399.1.5. the fact that the penalty imposed is unsuited to the seriousness of the offence or the personality of the offender.

399.2. The court of appeal may not alter a judgment to acquittal solely on the grounds that the rights of the accused were seriously violated.

399.3. A judgment or decision of the court of first instance which is substantively correct and was given after examination of all the facts of the case may not be set aside solely on the formal grounds that the requirements of this Code were violated.

**Article 400. Failure to investigate all the facts of importance for the court's conclusions**

400.1. If, during the appeal court's examination of fresh evidence, other facts are determined which influence the accuracy of the court's conclusions, the first

instance court's failure to investigate all the facts of importance for its conclusions shall constitute grounds for setting aside or amending the first instance court's judgment or decision.

400.2. Failure to investigate all the facts of importance for the court's conclusions shall mean the following:

400.2.1. failure to question persons or request documents, or material or other evidence, for the purpose of confirming or disproving facts of importance for the correct settlement of the case;

400.2.2. if the necessity of investigating a given fact becomes apparent from fresh evidence submitted during the appeal court's examination of the complaint or appeal;

400.2.3. failure to shed sufficient light on information concerning the personality of an acquitted person or a convicted person subject to compulsory medical or corrective training measures.

**Article 401. Inconsistencies between the first instance court's conclusions and the facts of the case**

401.1. The judgment or decision of the court of first instance shall be set aside only where inconsistency between the court's conclusions and the facts of the case affects the following:

401.1.1. settlement of the issue of the guilt of a convicted person or the innocence of a person who has been acquitted;

401.1.2. accurate application of the criminal legislation governing the classification of an act posing a public threat;

401.1.3. determination of the penalty;

401.1.4. application of compulsory medical or reformatory measures.

401.2. The court's conclusions shall be considered inconsistent with the facts of the case in the following circumstances:

401.2.1. if the conclusions of the court of first instance set out in the court judgment or decision are not corroborated by the evidence examined at the court hearing;

401.2.2. if the court of first instance did not take account of evidence which was examined at the court hearing and significantly affected the accuracy of its conclusions;

401.2.3. if the court of first instance does not give a reason for accepting some evidence and refusing other evidence in its judgment or decision, and if there is conflicting evidence which is of importance for the court's conclusions;

401.2.4. if there are significant contradictions between the facts explained in the judgment or decision of the court of first instance and the conclusions it reached.

#### **Article 402. Failure to prove the facts determined by the court of first instance**

402.0. The facts determined by the court of first instance shall be considered unproven in the following cases:

402.0.1. if the facts of importance for the examination of the charge are not corroborated by the evidence required by law in the judgment or decision of the court of first instance;

402.0.2 if the facts of importance for the examination of the charge are corroborated by unreliable, contradictory, inadmissible or irrelevant evidence in the judgment or decision of the court of first instance.

#### **Article 403. Failure to apply the provisions of criminal law correctly**

403.0. The following shall be considered as failure to apply the provisions of criminal law correctly and as cause for setting aside or amending the judgment or decision of the court of first instance:

403.0.1. failure to apply the provisions of criminal law which should be applied;

403.0.2. application of provisions of criminal law which should not be applied;

403.0.3. failure to interpret the provisions of criminal law correctly.

**Article 404. Penalty unsuited to the seriousness of the offence and the personality of the offender**

A penalty that is obviously unfair in its severity or its leniency, even if it does not exceed the limits established by the appropriate article of criminal law, shall be considered unsuited to the seriousness of the offence and the personality of the offender.

**Article 405. Amendment of the judgment or decision of the court of first instance**

405.1. The court of appeal shall amend the judgment of the court of first instance in the following circumstances:

405.1.1. if it considers the penalty unsuited, by reason of its severity, to the seriousness of the offence and the personality of the offender, and therefore reduces the sentence;

405.1.2. if it alters the classification of the offence and applies the criminal legislation on minor offences;

405.1.3. if it reduces or increases the length of the sentence and this increase or decrease does not affect the content of the charge and the classification of the offence;

405.1.4. in other cases where amending the judgment does not alter the content of the charge and the legal classification of the convicted person's acts, but the court of appeal increases the penalty imposed by the court of first instance.

405.2. The court of appeal shall amend a decision of the court of first instance in the following cases:

405.2.1. to alter the classification of an act which poses a public threat or apply a provision of criminal law relating to a lesser offence;

405.2.2. to reduce or increase the compulsory reformatory or medical measures.

**Article 406. Special decision on the results of the examination of a complaint or appeal**

406.1. If, as a result of its examination of the complaint or appeal, the court of appeal establishes significant violations of the parties' rights during the investigation of the case or its examination by the court of first instance, it may give a special decision.

406.2. The special decision of the court of appeal shall indicate which criminal case, simplified pre-trial proceedings or complaint with a view to a private prosecution it concerns and by whom it is given, and shall explain in detail the substance of the charge, the grounds for giving a special decision, exactly what violation was committed and by whom, and the legal consequences of this violation.

406.3. The special decision of the court of appeal shall be sent to the following persons so that appropriate and effective measures may be taken:

406.3.1. as regards officials of state bodies: to the head of the higher state body in the hierarchy;

406.3.2. as regards investigators, preliminary investigators and employees of the preliminary investigating authorities: to the head of the appropriate government authority of the Azerbaijan Republic;

406.3.3. as regards prosecutors and prosecutor's office investigators: to the Principal Public Prosecutor of the Azerbaijan Republic;

406.3.4. as regards judges of the first instance courts: to the President of the Supreme Court of the Azerbaijan Republic.

406.4. The officials to whom the special decision of the court of appeal is addressed shall take the following measures within 30 (thirty) days of receipt of the decision:

406.4.1. resolve the question of the responsibility of those who committed the violation of the rights of the parties to the criminal proceedings;

406.4.2. inform the court of the measures taken.

## **Article 407. Production of a copy of the court of appeal\s final decision and entry into force of the decision**

407.1. Within 3 (three) days of the delivery of the final court decision on the results of the proceedings before the court of appeal, the following measures shall be taken:

407.1.1. a copy of the judgment shall be given to the convicted or acquitted person, his defence counsel, his legal representative, the victim (or victim bringing a private prosecution) and his representative;

407.1.2. a copy of any other final decision of the court shall also be given to the parties to the criminal proceedings on request.

407.2. The court of appeal\s final decision shall come into force immediately after its delivery.

## **CHAPTER XLVIII**

### **RE-EXAMINATION OF COURT JUDGMENTS AND DECISIONS BY THE SUPREME COURT**

#### **Article 408. Lodging of complaints and appeals with the Supreme Court**

408.1. Complaints and appeals to the Supreme Court may be lodged against the following court judgments and decisions in accordance with the provisions of this Code:

408.1.1. judgments and decisions given by the courts of appeal;

408.1.2. judgments given by the courts of first instance with the participation of a jury.

408.2. Complaints and appeals may be submitted as follows:

408.2.1. against judgments of the serious offences division of the Supreme Court of the Nakhchivan Autonomous Republic given with the aid of a jury: to the division

for violations of criminal and administrative law of the Supreme Court of the Azerbaijan Republic;

408.2.2. against judgments or decisions of the division for violations of criminal and administrative law of the Supreme Court of the Nakhchivan Autonomous Republic: to the division for violations of criminal and administrative law of the Supreme Court of the Azerbaijan Republic;

408.2.3. against judgments of the Assize Court of the Azerbaijan Republic given with the aid of a jury: to the division for violations of criminal and administrative law of the Supreme Court of the Azerbaijan Republic;

408.2.4. against judgments of the Military Assize Court of the Azerbaijan Republic given with the aid of a jury: to the division for violations of criminal and administrative law of the Supreme Court of the Azerbaijan Republic;

408.2.5. against judgments or decisions of the division for violations of criminal and administrative law of the Court of Appeal of the Azerbaijan Republic: to the division for violations of criminal and administrative law of the Supreme Court of the Azerbaijan Republic;

408.2.6. against judgments or decisions of the division for military cases of the Court of Appeal of the Azerbaijan Republic: to the division for military cases of the Supreme Court of the Azerbaijan Republic.

408.3. The President of the Supreme Court of the Azerbaijan Republic shall make submissions against a judgment or other final decision of the court of appeal, in accordance with Articles 408.2.2, 408.2.5, 408.2.6, 410 and 413 of this Code, at the request of persons not summoned to participate in the criminal proceedings whose interests are affected by the judgment or decision. The submissions shall be examined in accordance with Articles 414 and 416-420 of this Code. The President of the Supreme Court of the Azerbaijan Republic shall also exercise these powers on the basis of submissions by the President of the Court of Appeal of the Azerbaijan Republic or the President of the Supreme Court of the Nakhchivan Autonomous Republic (in the event of a request by the above-mentioned persons).

## **Article 409. Persons entitled to lodge a complaint or appeal with the Supreme Court**

409.1. The following persons shall have the right to lodge a complaint with the Supreme Court:

409.1.1. an accused who has been convicted or acquitted, his defence counsel or his legal representative;

409.1.2. the victim (or victim bringing a private prosecution), his legal representative or his representative;

409.1.3. the civil party, the defendant to the civil claim, their legal representatives or their representatives.

409.2. The convicted person, his defence counsel or his legal representative shall have the right to lodge a complaint only insofar as it relates to the interests of the convicted person. A complaint lodged on behalf of a convicted person may not lead to a worsening of the position of another convicted or acquitted person.

409.3. The acquitted person, his defence counsel or his legal representative shall have the right to lodge a complaint only against the part of the judgment that relates to the evidence and grounds for the acquittal. During the court's re-examination of the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution, such a complaint may not afford grounds for setting aside the acquittal and convicting the accused.

409.4. The victim, his legal representative or his representative shall have the right to appeal only against the part of the judgment that relates to the person who caused damage to the victim and to that person's actions. Their demands may not exceed those put forward at the court of first instance.

409.5. The civil party, the defendant to the civil claim, their legal representatives or their representatives shall have the right to lodge a complaint against the part of the judgment that relates to the civil claim, but only in accordance with the demands brought before the court of first instance.

409.6. A complaint by close relatives of the convicted person or the victim may give rise to proceedings before the Supreme Court only if those persons were allowed by the investigator or the court of first instance to participate in the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution as legal representative or representative of the accused or the victim (or victim bringing a private prosecution).

409.7. The public prosecutor who participated in the court of appeal proceedings shall have the right to lodge an appeal in respect of those of his conclusions and proposals which were not taken into consideration by the court. If this public prosecutor dies, goes missing, becomes chronically ill or intentionally avoids lodging an appeal, the Principal Public Prosecutor of the Azerbaijan Republic shall have the right to lodge an appeal with the Supreme Court instead of the public prosecutor who participated in the court of appeal proceedings.

#### **Article 410. Time-limits for lodging a complaint or appeal with the Supreme Court**

410.1. A complaint or appeal shall be lodged with the Supreme Court within the following time-limits:

410.1.1. against the decisions of the court of appeal provided for in Article 391.3 of this Code: within 1 (one) month of the decision being given;

410.1.2. against an acquittal or a court decision to discontinue the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution: within 6 (six) months of the decision being given;

410.1.3. against a conviction, on the grounds of the need to apply the law on a more serious offence or those of excessive leniency of the sentence, or on other grounds which worsen the position of the convicted person, and against a court decision on the application of compulsory reformatory measures: within 12 (twelve) months of the decision being given;

410.1.4. against a conviction, on the grounds of the need to apply the law on a less serious offence or those of the innocence of the convicted person, and against a court decision on the application of compulsory medical measures: within 18 (eighteen) months of the decision being given.

410.2. Except where submissions, a complaint or an appeal are lodged with the Supreme Court, the higher court may not request the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution from the court of appeal within the time-limits for the lodging of a complaint or appeal with the Supreme Court.

**Article 411. Extension of the time-limits for lodging a complaint or appeal with the Supreme Court**

411.1 If the time-limit for lodging a complaint or appeal is exceeded for good reasons, the persons referred to in Article 409.1 of this Code shall have the right to apply to the Supreme Court to extend the time-limit for lodging it.

411.2. The Supreme Court shall have the right to grant the application to extend the time-limit for lodging a complaint or appeal in the following circumstances:

411.2.1. if the person referred to in Article 409.1 of this Code contracts a serious illness giving rise to a long-term physical or mental disorder, and as a result is objectively unable to lodge a complaint or appeal in time;

411.2.2. if extraordinary circumstances prevent the person mentioned in Article 409.1 of this Code from lodging a complaint or appeal in time;

411.3 .The decision of the Supreme Court not to extend the time-limit for lodging a complaint or appeal shall be final and no appeal shall lie against it.

411.4. The persons referred to in Article 409.1 of this Code shall be informed of the Supreme Court's decision to extend or not to extend the time-limit..

**Article 412. Rules governing the lodging of a complaint or appeal with the Supreme Court**

412.1. A complaint or appeal shall be lodged directly with the Supreme Court. If it is lodged with the court of first instance or the court of appeal, the latter shall refer it to the Supreme Court.

412.2 . A complaint or appeal shall be submitted in writing.

412.3. A copy of the disputed court judgment or decision shall be attached to the complaint or appeal. Documents supporting the applicant's arguments shall be attached to the complaint or appeal.

412.4. Copies shall be attached to the complaint or appeal in sufficient numbers to give to all the parties to the criminal proceedings whose interests are affected by it. This requirement shall not apply to sentenced persons in prison, to minors or to those subject to compulsory medical measures.

412.5. Complaints or appeals shall not be accepted from those who do not have the right to submit them, or in oral form.

412.6. An application to the court of appeal to withdraw a complaint or appeal to the Supreme Court shall not prevent the exercise of the right to lodge a further complaint or appeal within the time-limit provided for in Article 410.1 of this Code for lodging of a complaint or appeal.

412.7. The lodging with the Supreme Court of a complaint or appeal against a final court judgment or decision shall not stay the execution of the latter.

### **Article 413. Content of a complaint or appeal to the Supreme Court**

413.1. The following shall be set out in the complaint or appeal:

413.1.1. the name of the Supreme Court with which the complaint or appeal is lodged;

413.1.2. the name and status of the person lodging the complaint or appeal;

413.1.3. the name of the court which gave the judgment or decision;

413.1.4. a summary of the judgment or decision and the appellant's opinion as to what makes it unlawful, groundless or unfair;

413.1.5. the appellant's request;

413.1.6. the list of documents attached to the complaint or appeal.

413.2. When justifying the need to amend or set aside the judgment, the complaint or appeal shall refer to the relevant pages of the case file. This requirement shall not apply to sentenced persons in prison or to minors.

**Article 414. Withdrawal, amendment or amplification of a complaint or appeal to the Supreme Court**

414.1. Until the complaint or appeal is examined by the Supreme Court, the person lodging it shall have the right to withdraw, amend or amplify it and to express his objections to a complaint or appeal lodged by other parties to the criminal proceedings.

414.2. The public prosecutor appointed to participate in the Supreme Court proceedings on the criminal case, simplified pre-trial proceedings or complaint with a view to a private prosecution shall have the right to amplify, amend or withdraw the appeal lodged by the public prosecutor who participated in the proceedings before the court of first instance or court of appeal.

414.3. Amendments which are likely to worsen the position of a person subject to compulsory medical or reformatory measures or a convicted or acquitted person may be added to the complaint or appeal only during the period prescribed for lodging the complaint or appeal.

414.4. Defence counsel may withdraw his appeal only with the consent of the person he is defending or his legal representative. Defence counsel summoned to take part in proceedings before the Supreme Court shall have the right to make additions and changes to the appeal of the defence counsel who participated in the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution before the courts of first instance or appeal, but only with the consent of the convicted or acquitted person and his legal representative.

414.5. The convicted or acquitted person shall have the right to withdraw an appeal lodged by his defence counsel.

414.6. An appeal lodged by the public prosecutor in favour of a convicted or acquitted person or a person subject to compulsory reformatory or medical

measures may not be withdrawn by the public prosecutor without the consent of the convicted or acquitted person or the above-mentioned person and their legal representatives.

414.7. The representative of the victim (or victim bringing a private prosecution) before the Supreme Court shall have the right to withdraw his appeal, or the appeal lodged by the representative of the victim (or victim bringing a private prosecution) who participated in the criminal case, simplified pre-trial proceedings or proceedings on the complaint with a view to a private prosecution before the courts of first instance or appeal, only with the consent of the victim (or victim bringing a private prosecution) and his legal representative.

**Article 415. Grounds for leaving the complaint or appeal to the Supreme Court unexamined**

415.0. The Supreme Court shall have the right to leave unexamined a person's complaint or appeal against a final court judgment or decision in the following cases:

415.0.1. if that person does not have the right to lodge a complaint or appeal;

415.0.2. if that person did not submit the complaint or appeal in writing;

415.0.3. if that person did not attach copies of the disputed court judgment or decision to the complaint or appeal;

415.0.4. if that person did not attach copies of the complaint or appeal in sufficient numbers to give to all parties to the criminal proceedings whose interests it affects.

**Article 416. Grounds for the Supreme Court to set aside or amend a court judgment or decision**

416.0. The Supreme Court shall have the right to set aside or amend the judgment or decision of the court of first instance or appeal in the following cases:

416.0.1. if the court refused, without any grounds, to examine evidence submitted by a party to the criminal proceedings which could be of importance for the full, thorough and objective examination of the charge;

416.0.2. if the court did not examine the evidence in accordance with Articles 143-146 of this Code;

416.0.3. if the court judgment as to the guilt of the convicted person or the innocence of the acquitted person is based on inadmissible evidence;

416.0.4. if the court did not fulfil the requirements of Article 391.6 of this Code;

416.0.5 if the court did not express its opinion on one of the acts with which the accused was charged;

416.0.6. if the court convicted the accused although the ingredients of a criminal offence were lacking;

416.0.7. if the court erroneously convicted the accused of an act with which he had not been charged, except in cases where the acts of the accused are reclassified under a more lenient provision of the law;

416.0.8. if the court erroneously convicted the accused of an act not provided for in criminal law;

416.0.9. if the court convicted the accused and imposed a penalty not provided for in criminal law or a penalty reduced in accordance with the jury's verdict, but to inadmissible limits;

416.0.10. if the court convicted the accused of an act of which he was previously convicted by a final court judgment;

416.0.11. if the court convicted the accused in spite of the existence of circumstances precluding a criminal prosecution;

416.0.12 . if the court convicted the accused and either imposed a penalty abolished by a new criminal law or failed to apply an amnesty;

416.0.13. if the court erroneously acquitted the accused on the grounds that the act he had committed was not provided for in criminal law;

416.0.14. if the court erroneously discontinued the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution, regardless of the fact that under the terms of a new criminal law or an amnesty there were grounds for revoking the final court judgment on the case, the circumstances precluding prosecution or the imposition of a penalty;

416.0.15. if the court made an error in classifying the act committed;

416.0.16. if the court, in adopting a judgment or decision on the case, exercised the powers of another authority or exceeded its own powers;

416.0.17. if the court seriously violated the requirements of Articles 107-118, 308 and 309 of this Code concerning objections and members of the court;

416.0.18. if the court examined the criminal case, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution without the participation of the public prosecutor, the victim bringing a private prosecution, the accused, his defence counsel or the interpreter, although their participation was obligatory under the provisions of this Code;

416.0.19. if the court did not order a forensic psychiatry report on the accused to determine the circumstances provided for in Article 140.0.2 of this Code;

416.0.20. if the court gave the decisions provided for in Article 391.3.2.-391.3.5, 391.3.7-397.3.9. and 391.6 of this Code without grounds for doing so;

416.0.21. if the court sentenced the accused without taking account of aggravating or mitigating circumstances.

#### **Article 417. Notification of receipt of the complaint or appeal to the Supreme Court**

417.1. Within 3 (three) days of receiving the complaint or appeal, the Supreme Court shall give or convey their copies to the persons referred to in Article 409.1 of this Code whose interests are affected by the complaint or appeal, and shall explain that they have the right to file objections to it and acquaint themselves with the objections of others within 20 (twenty) days.

417.2. Persons entitled to lodge a complaint or appeal shall have the right to acquaint themselves with the complaint or appeal received and the criminal case file, the file on simplified pre-trial proceedings and the file on the complaint with a view to a private prosecution, and to extract the necessary information from them.

417.3. Objections to the complaint or appeal shall be lodged directly with the Supreme Court.

#### **Article 418. Preliminary examination of a complaint or appeal to the Supreme Court**

418.1. For preliminary examination, complaints or appeals received by the Supreme Court shall be given to one of the judges of the relevant division of the Supreme Court of the Azerbaijan Republic. The allocation of complaints and appeals received shall be conducted in accordance with the rules provided for in Article 298.1. of this Code.

418.2. The judge carrying out the preliminary examination shall take the following steps within 3 (three) days of receiving the complaint or appeal:

418.2.1. take cognisance of the complaint or appeal and the attached documents;

418.2.2. ensure that the requirements of Articles 415 and 417 of this Code are met;

418.2.3. if the contents of the complaint or appeal give rise to suspicion as to the legality and soundness of the disputed court judgment or decision, give a decision requesting the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution, and ensure that the request is complied with;

418.2.4. study the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution, comparing them with the reasons given for the complaint or appeal;

418.2.5. prepare an opinion on the re-examination of the final court judgment or decision (on whether there are grounds for the Supreme Court to re-examine the disputed judgment or decision);

418.2.6. send the complaint or appeal and the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution, as well as his opinion, to the appropriate division for examination at a hearing;

418.2.7. inform the public prosecutor, the convicted (or acquitted) person, the victim (or victim bringing a private prosecution) and any other interested persons of the time and place of the substantive examination of the complaint or appeal on the merits.

418.3. If the appellant does not fulfil the requirements of Article 415 of this Code, the Supreme Court judge shall have the following rights:

418.3.1. to decide to leave the complaint or appeal unexamined;

418.3.2. to give the appellant a period of 10 (ten) to 20 (twenty) days to fulfil these requirements.

418.4. If these requirements are not met within the specified time-limit, the complaint or appeal shall be considered as not having been submitted and shall be left unexamined on the basis of the Supreme Court judge's decision.

#### **Article 419. Substantive examination of a complaint or appeal to the Supreme Court**

419.1. When conducting its substantive examination of the complaint or appeal, the Supreme Court shall only verify whether the rules of criminal law and of this Code on points of law are applied correctly or not.

419.2. The substantive examination of the complaint or appeal shall be conducted by the Supreme Court as a bench of three judges. The persons entitled to lodge an appeal and the public prosecutor representing the prosecution before the Supreme Court shall have the right to attend the court hearing.

419.3. On receipt of the opinion of the judge who made the preliminary examination of the complaint or appeal the president of the relevant division shall decide on the time-limit for the substantive examination of the complaint or appeal

(no more than 30 (thirty) days after the receipt of the above-mentioned opinion) and shall inform the relevant parties to the criminal proceedings accordingly.

419.4. The hearing of the Supreme Court shall be opened by the court president, who shall announce which court decision is to be examined and on what grounds, who are the members of the court and which of the parties to the criminal proceedings are present in the court room. The absence of the person who lodged the appeal, if he was duly informed, shall not prevent the Supreme Court hearing from taking place.

419.5. The president shall give the parties to the criminal proceedings the opportunity to express their objections and present applications. After the objections and applications have been settled, the court shall decide whether to pursue or postpone its examination of the case.

419.6. After the Supreme Court's decision to continue its examination of the case, the president shall give the floor to the parties to the criminal proceedings who lodged the complaint or appeal. If there are several such parties they shall inform the court of the order in which they propose to speak. If the parties to the criminal proceedings do not come to an agreement on this, the order in which they are to speak shall be determined by the court.

419.7. The party to the criminal proceedings who lodged the complaint or appeal shall explain the evidence and grounds which in his opinion prove the illegality or groundlessness of the disputed judgment or decision of the court of first instance or appeal.

419.8. The president shall then give the floor to the other parties to the criminal proceedings. The representatives of the party lodging the complaint or appeal shall take the floor first. The order in which the representatives of each of the parties to the criminal proceedings speak shall be determined by agreement among them, and if there is no such agreement, by decision of the Supreme Court.

419.9. During the substantive examination of the complaint or appeal only the judges of the Supreme Court shall have the right to ask questions at the hearings.

419.10. After the submissions by the parties to the criminal proceedings, the judges of the Supreme Court shall deliberate and adopt one of the following decisions:

419.10.1. to uphold without change the judgment or decision of the court of first instance or appeal as the case may be, and dismiss the complaint or appeal;

419.10.2. to set aside the judgment or decision and order the case to be re-examined by the court of first instance or appeal with the participation of a jury;

419.10.3. to set aside the final court judgment or decision and discontinue the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

419.10.4. to amend the judgment or decision of the court of first instance or appeal.

419.11. The Supreme Court may not determine facts which were not the subject of the first instance or appeal court's examination of the case or consider them as proven.

419.12. In the event of a decision under Article 419.10.2 of this Code, the Supreme Court may not decide in advance the conclusions which the court of first instance or appeal may reach during its re-examination of the criminal case, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution, nor may it decide the following matters:

419.12.1. whether the charge is proven or not;

419.12.2. whether a given piece of evidence is reliable or not;

419.12.3. whether one piece of evidence takes precedence over others;

419.12.4. whether the court of first instance or appeal should apply a given provision of criminal law;

419.12.5. whether the court of first instance or appeal should impose a given penalty.

419.13. The decision of the Supreme Court shall consist of an introduction, a statement of the facts and reasons and a conclusion.

419.14. If, as a result of the substantive examination of the complaint or appeal, the Supreme Court finds that there were serious violations of the rights of the parties to the criminal proceedings during the pre-trial proceedings or the proceedings before the court of first instance or appeal, the Supreme Court may give a special decision in accordance with the provisions of Article 406 of this Code.

**Article 420. Rules governing the examination of the case after the court judgment or decision has been set aside by the Supreme Court**

420.1. After the court judgment or decision has been set aside by the Supreme Court:

420.1.1. the re-examination of the criminal case shall be carried out before the court of first instance with the participation of a jury in accordance with provisions of Articles 298-380 of this Code;

420.1.2. the re-examination of the criminal case, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution shall be carried out before the court of appeal in accordance with Articles 381-407 of this Code.

420.2. During the re-examination of the case by the court of first instance with the participation of a jury the penalty may be increased or the legal provisions governing a more serious offence may be applied only if the initial judgment was set aside pursuant to the public prosecutor's appeal to the Supreme Court..

420.3. Where the criminal case file, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution is referred to the court of appeal for re-examination, a decision aggravating the position of the convicted person may be given only in the cases provided for in Article 420.2 of this Code.

**CHAPTER XLIX**

**RE-examination of COURT JUDGMENTS and decisions ON ADDITIONAL APPEAL TO THE SUPREME COURT**

## **Article 421. Additional submissions, appeals and complaints to the Supreme Court**

421.1. Additional submissions, appeals and complaints may be filed with the Supreme Court in the following cases:

421.1.1. if the Supreme Court, in examining the complaint or appeal, violated one or more requirements of Articles 418.2.2., 418.2.3., 418.2.5, 418.2.7., 418.3., 418.4, 419.2., 419.5., 419.6., 419.8., 419.11 and 419.13 of this Code;

421.1.2. if the Supreme Court's decision does not state the reasons;

421.1.3. if the concluding part of the Supreme Court's decision is inconsistent with its statement of the facts and reasons.

421.2. Submissions on additional appeal may also be made if the final judgment or decision of the court of first instance or appeal or the Supreme Court was based on a legal instrument deemed by the Constitutional Court of the Azerbaijan Republic to be unconstitutional.

421.3. Additional submissions, appeals and complaints appeal shall be made before the plenary Supreme Court of the Azerbaijan Republic.

## **Article 422. Persons entitled to file additional submissions, appeals and complaints with the Supreme Court**

422.1. Only the President of the Supreme Court of the Azerbaijan Republic shall have the right to make submissions on additional appeal to the plenary Supreme Court of the Azerbaijan Republic. The President of the Supreme Court of the Azerbaijan Republic shall also exercise these powers on the basis of submissions by the President of the Court of Appeal of the Azerbaijan Republic or the President of the Supreme Court of the Nakhchivan Autonomous Republic.

422.2. The Principal Public Prosecutor of the Azerbaijan Republic shall have the right to file an additional appeal only in the case of a public or semi-public prosecution.

422.3. Only a convicted person or a defence counsel who meets the following requirements shall have the right to file an additional complaint:

- 422.3.1. a lawyer meeting the requirements of Article 92.1. of this Code;
- 422.3.2. a lawyer who has been ordered by the relevant local branch of the bar association to participate in the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution.

**Article 423. Filing of additional submissions, appeals and complaints with the Supreme Court**

- 423.1. Additional submissions, appeals and complaints may be filed with the Supreme Court only on points of law, to verify whether the provisions of criminal law or of this Code have been correctly applied.
- 423.2. In the cases provided for in Article 421.1. of this Code, submissions, appeals and complaints may be submitted within 12 (twelve) months of the disputed Supreme Court decision. In the cases provided for in Article 421.2. of this Code, there shall be no time-limit for making submissions on additional appeal.
- 423.3. Additional submissions, appeals and complaints shall be filed in writing together with copies of the disputed judgment or decision and of any documentary evidence.
- 423.4. Additional submissions, appeals and complaints shall comply with the requirements of Article 413.1.1.- 413.1.6 of this Code.
- 423.5. Copies of additional submissions, appeal or complaint shall be attached in sufficient number to be given to all those entitled to file such submissions, appeals or complaints.
- 423.6. A person who files additional submissions or an additional appeal or complaint shall have the right to withdraw it until the matter is examined by the plenary Supreme Court of the Azerbaijan Republic. Withdrawal of such submissions, appeals and complaints shall cause their examination by the Supreme Court of the Azerbaijan Republic to be discontinued.

**Article 424. Grounds for leaving an additional complaint or appeal to the Supreme Court unexamined**

424.0. The President of the Supreme Court of the Azerbaijan Republic shall have the right to leave an additional appeal or complaint unexamined in the following cases:

424.0.1. if the person who filed the appeal or complaint does not have right to do so;

424.0.2. if the person who filed the appeal or complaint did not file it in writing;

424.0.3. if the person who filed the appeal or complaint did not attach a copy of the disputed court decision;

424.0.4. if the person who filed the appeal or complaint did not attach copies in sufficient number to give to all those entitled to file such an appeal or complaint.

**Article 425. Notification of the filing of additional submissions or an additional appeal or complaint with the Supreme Court**

425.0. Within 3 (three) days of the receipt of additional submissions or an additional appeal or complaint by the Supreme Court of the Azerbaijan Republic, copies thereof shall be sent to those entitled to file such submissions, appeals or complaints. These persons shall also be informed of the following rights:

425.0.1. to acquaint themselves with the additional submissions, appeal or complaint filed with the plenary Supreme Court of the Azerbaijan Republic as well as with the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution and to make the necessary extracts from them;

425.0.2. to express their objections to the submissions, appeal or complaint within 10 (ten) days of receiving a copy thereof;

425.0.3. to acquaint themselves with the objections raised by other persons until the additional submissions, appeal or complaint are examined at a hearing of the plenary Supreme Court of the Azerbaijan Republic;

425.0.4. to participate and speak during the examination of the additional submissions, appeal or complaint at a hearing of the plenary Supreme Court of the Azerbaijan Republic.

**Article 426. Preliminary examination of additional appeals and complaints to the Supreme Court**

426.1. The President of the Supreme Court of the Azerbaijan Republic shall assign the additional appeal or complaint received by the Court to one of the judges of the relevant division of the court for preliminary examination. Additional appeals and complaints received by the Supreme Court of the Azerbaijan Republic shall be allocated in accordance with the rules laid down in Article 298.1 of this Code.

426.2. The judge who conducts the preliminary examination of the additional appeal or complaint shall take the following steps within 30 (thirty) days of receipt of the appeal or complaint by the Supreme Court of the Azerbaijan Republic:

426.2.1. acquaint himself with the appeal or complaint and the documents attached to it;

426.2.2. ensure that the requirements of Articles 424 and 425 of this Code are met;

426.2.3. if the content of the appeal or complaint leads him to suspect the legality or soundness of the disputed judgment or decision, decide to request demanding the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution and ensure that the decision is complied with;

426.2.4. acquaint himself with the criminal case file, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution, comparing it with the evidence adduced in support of the appeal or complaint;

426.2.5. draw up an opinion on the question of whether there are grounds for re-examination of the disputed judgment or decision on additional appeal;

426.2.6. submit the appeal or complaint, the documents attached to it, the criminal case file or the file on simplified pre-trial proceedings or on the complaint with a

view to private prosecution, and his own opinion, to the President of the Supreme Court of the Azerbaijan Republic;

426.2.7. inform the persons entitled to file an additional appeal or complaint of the time and place of the hearing on the appeal or complaint.

**Article 427. Substantive examination of additional submissions, appeals and complaints by the plenary Supreme Court of the Azerbaijan Republic**

427.1. The President of the Supreme Court of the Azerbaijan Republic shall include the following matters on the agenda of the plenary Supreme Court of the Azerbaijan Republic:

427.1.1. examination of additional submissions: within 30 (thirty) days of the submissions being filed;

427.1.2. examination of an additional appeal or complaint: within 30 (thirty) days of receiving the opinion of the judge of the Supreme Court of the Azerbaijan Republic on this appeal or complaint.

427.2. The President of the Supreme Court of the Azerbaijan Republic shall inform those entitled to file additional submissions or an additional appeal or complaint of the date and time of the plenary Supreme Court's examination of the submissions, appeal or complaint at least 10 (ten) days before the start of the hearing.

427.3. Additional submissions, appeals and complaints shall be examined by the plenary Supreme Court of the Azerbaijan Republic according to the following rules:

427.3.1. the court president shall announce which court judgment or decision is disputed, by whom and on what grounds and shall give the names of those entitled to file additional submissions or an additional appeal or complaint who are present in the courtroom of the plenary Supreme Court;

427.3.2. the president shall explain that if any of the persons who were informed of the date and time of the examination of the additional appeal or complaint do not appear in court, this shall not preclude examination of the additional submissions, appeal or complaint by the plenary Supreme Court;

427.3.3. the plenary Supreme Court shall decide whether to examine the additional submissions, appeal or complaint in the absence of one of the persons entitled to file them, or to postpone the examination;

427.3.4. the president shall give the floor to the person who filed the additional submissions, appeal or complaint; if there are two or more such persons, they shall inform the court of the order in which they will speak; if they are unable to agree on the matter, the order in which they speak shall be decided by the Supreme Court;

427.3.5. the person who filed the additional submissions, appeal or complaint shall speak and shall explain the evidence and grounds which he considers the court judgment or decision groundless or unlawful;

427.3.6. the president shall give the floor in turn to the other persons entitled to file additional submissions or an additional appeal or complaint;

427.3.7. those entitled to file additional submissions or an additional appeal or complaint shall speak in turn and shall explain their reasons and evidence for either supporting or objecting to the additional submissions, appeal or complaint;

427.3.8. those entitled to file additional submissions or an additional appeal or complaint shall answer the questions put by the judges of the Supreme Court;

427.3.9. if they so wish, the judges of the Supreme Court may make statements about the additional submissions, appeal or complaint;

427.3.10. the plenary Supreme Court shall give a decision on the additional submissions, appeal or complaint that it has examined.

427.4. In the circumstances provided for in Article 421.1. of this Code, the plenary Supreme Court of the Azerbaijan Republic shall have the right to make one of the following decisions on the additional submissions, appeal or complaint that it has examined:

427.4.1. to uphold the Supreme Court decision unchanged and dismiss the additional submissions, appeal or complaint;

427.4.2. in the cases provided for in Article 421.1. and 421.2. of this Code, to set aside the Supreme Court decision and give a new decision;

427.4.3. in the cases provided for in Articles 421.1.2. and 421.1.3. of this Code, to amend the Supreme Court decision.

427.5. In the circumstances provided for in Article 421.2. of this Code, the plenary Supreme Court of the Azerbaijan Republic shall have the right to give one of the following decisions on the additional submissions that it has examined:

427.5.1. to uphold the disputed judgment or decision of the court of first instance or appeal or the Supreme Court and dismiss the additional submissions;

427.5.2. to set aside, either completely or partially, a judgment or decision given by the court of first instance or appeal or the Supreme Court on the basis of a legal instrument which is unconstitutional, and to refer the criminal case, the file on simplified pre-trial proceedings or the file on a complaint with a view to a private prosecution back to the court of first instance or appeal for re-examination;

427.5.3. in the cases provided for in Article 421.2. and 421.3 of this Code, to amend the Supreme Court decision.

427.6. When adopting a decision on the results of its examination of the additional appeal or complaint, the plenary Supreme Court of the Azerbaijan Republic shall not have the right to establish facts which were not the subject of the first instance or appeal court's examination of the case or to consider them proven.

427.7. Only if the criminal case was not the subject of the appeal court's examination shall the plenary Supreme Court of the Azerbaijan Republic have the right to set aside, either completely or partially, the judgment or decision given by the court of first instance or appeal or the Supreme Court on the basis of a legal instrument which is unconstitutional and to refer the criminal case, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution back to the court of first instance for re-examination.

427.8. If the criminal case, the file on simplified pre-trial proceedings or the file on the complaint with a view to a private prosecution is referred back to the court of

first instance or appeal for re-examination, the plenary Supreme Court of the Azerbaijan Republic may not decide in advance the conclusions to be reached by the court or the following matters:

- 427.8.1. whether the charge is proven or not;
  - 427.8.2. whether the evidence is reliable or not;
  - 427.8.3. whether a piece of evidence takes precedence over the others or not;
  - 427.8.4. whether a given provision of criminal law is to be applied by the court or not;
  - 427.8.5. whether a given penalty is to be imposed by the court or not.
- 427.9. The decision of the plenary Supreme Court of the Azerbaijan Republic shall comply with the requirements of Article 398 of this Code concerning decisions of the court of appeal.
- 427.10. If the Supreme Court of the Azerbaijan Republic finds, as a result of its substantive examination of the additional appeal or complaint, that the rights of the parties to the proceedings were seriously violated during the investigation or during the examination of the case by the court of first instance or appeal or the Supreme Court, it may give a special decision. A special decision of the plenary Supreme Court shall comply with the requirements of Article 406 of this Code.

## **SECTION TEN**

### **PROCEEDINGS CONCERNING CERTAIN CATEGORIES OF PERSONS**

#### **Chapter L**

##### **PROCEEDINGS CONCERNING MINORS**

###### **Article 428. Rules governing proceedings concerning minors**

428.1. The conduct of pre-trial proceedings, first instance and appeal court proceedings and Supreme Court proceedings concerning minors shall be governed by the general rules of this Code and Articles 428-435 of this Code.

428.2. The term 'minors' in criminal proceedings shall denote those who had not reached the age of 18 before the commission of the offence.

**Article 429. Circumstances to be established during proceedings concerning minors**

429.0. Besides the circumstances to be established with regard to the offence committed, the following circumstances shall be established during proceedings concerning minors:

429.0.1. the age of the minor (year, month, day of birth);

429.0.2. the lifestyle and background of the minor;

429.0.3. the level of the minor's physical, intellectual and mental abilities;

429.0.4. the possibility of separating the criminal proceedings concerning the minor if other persons participated in the offence that he committed.

**Article 430. Obligation to conduct an investigation**

Pre-trial proceedings concerning an offence committed by a minor may only take the form of an investigation.

**Article 431. Separation of criminal proceedings concerning minors**

431.1. If the minor committed the offence jointly with other persons, the criminal case concerning him shall be separated from the others, as far as possible, at the stage of the pre-trial proceedings.

431.2. If the separation of the criminal case concerning the minor creates significant obstacles to the thorough, full and objective investigation of the circumstances of the case, the case shall not be separated from the others.

## **Article 432. Conduct of the investigation concerning a minor**

432.1. The investigation concerning a minor shall be conducted, as far as possible, by special departments of the investigating authorities or by persons who have relevant work experience with minors.

432.2. Criminal proceedings concerning minors shall be conducted without delay. The participation of the minor's defence counsel shall be compulsory.

432.3. During the investigation the relationship between the minor and the investigator shall be based on consideration of the facts of the criminal case to the requisite extent, a respectful approach to the minor, concern for his welfare and protection of the minor from harm.

432.4. At all stages of the investigation concerning the minor, the basic procedural safeguards for the following rights shall be observed:

432.4.1. the right to receive information about the charge brought;

432.4.2. the right to refuse to make a statement;

432.4.3 .the right to be defended;

432.4.4. the right of the parents or other legal representatives to participate;

432.4.5. the right to secrecy.

432.5. The investigator shall ensure the participation of a teacher or psychologist in the conduct of investigative procedures involving a person under 16 or a minor who shows signs of mental disability.

432.6. Where criminal proceedings concerning a minor are discontinued, this shall in all cases be done with the consent of the minor or his parents (or other legal representatives).

432.7. Before informing the under-age accused of the end of the investigation and presenting him with the criminal case file, the investigator and the prosecutor in charge of the procedural aspects of the investigation shall have the right to give a

reasoned decision not to show him the criminal case file if they consider that it may have an adverse effect on him. In such cases it shall be compulsory to acquaint the minor's defence counsel or legal representative with the file.

#### **Article 433. Detention of minors**

431.1. If the minor is detained, his parents or other legal representatives shall be immediately informed of the fact. If it is impossible to give the information immediately, the minor's parents or other legal representatives shall be informed of the detention as soon as possible.

433.2. As soon as the judge exercising judicial supervision and the prosecutor in charge of the procedural aspects of the investigation are informed of the detention of the minor, they shall consider the question of his release, except in the cases provided for in Article 434.1 and 434.2 of this Code.

#### **Article 434. Application of the restrictive measure of arrest to a minor**

434.1. Application of the restrictive measure of arrest to an under-age suspect or accused shall be admissible only if he is charged with a minor violent offence or a serious or very serious offence.

434.2. The restrictive measure of arrest may be applied to a minor as an exceptional measure and for the shortest possible time.

434.3. Minors remanded in custody shall be held separately from other persons. They shall be provided with the required services, defence and other personal assistance according to their age, sex and personality.

#### **Article 435. Court examination of the criminal case concerning an offence committed by a minor**

435.1. Criminal cases concerning offences committed by minors shall be examined by experienced judges.

435.2. During the court's examination of a case concerning a minor the court president shall ensure that the requirements of Articles 429-434 of this Code are met.

435.3. The parents or other legal representatives of the minor shall have the right to participate in the court's examination of the criminal case concerning the minor. The court may, by reasoned decision, request the participation of these persons in its examination of the case in the minor's interests or, if there are grounds for supposing that it would be detrimental to his interests, refuse the participation of the parents or other legal representatives.

435.4. In choosing the penalty for the minor the court shall be guided by the following:

435.4.1. the penalty should correspond not only to the circumstances and seriousness of the offence committed but also to the situation and requirements of the minor and the requirements of the community;

435.4.2. a penalty involving deprivation of the minor's liberty should be applied only after meticulous examination of the matter and should be reduced to the minimum;

435.4.3. if the minor is not found guilty of a serious or very serious offence, of a violent offence deliberately causing serious damage or of the repeated commission of another serious offence, deprivation of liberty is not advisable.

435.5. When adopting a final decision, if the court comes to the conclusion that the minor may be reformed without the application of a penalty, it may exempt the minor from punishment and apply compulsory reformatory measures.

## **Chapter LI**

### **PROCEEDINGS CONCERNING PERSONS HOLDING PRIVILEGES AND IMMUNITIES UNDER INTERNATIONAL TREATIES**

#### **Article 436. Jurisdiction of the Azerbaijan Republic with regard to persons holding diplomatic immunity**

Subject to the clearly expressed agreement of the relevant foreign state or international organisation, persons holding diplomatic immunity may come under the jurisdiction of the Azerbaijan Republic.

## **Article 437. Persons enjoying diplomatic immunity**

437.0. The following persons shall enjoy diplomatic immunity:

437.0.1. heads of the diplomatic representations of foreign countries, members of their diplomatic missions and their family members, provided that they live with them and are not citizens of the Azerbaijan Republic;

437.0.2. under reciprocal bilateral agreements between states, employees of the administrative and technical missions of diplomatic representations and their family members who live with them, provided that the employees and their family members are not citizens of the Azerbaijan Republic and do not live permanently in the Azerbaijan Republic;

437.0.3. under reciprocal bilateral agreements between states, employees of the service missions of diplomatic representations who are not citizens of the Azerbaijan Republic or do not live permanently in the Azerbaijan Republic;

437.0.4. diplomatic couriers;

437.0.5. heads of consulates and other consulate officials;

437.0.6. representatives of foreign countries, members of delegations representing foreign parliaments and governments and, under reciprocal bilateral agreements between countries, members of delegations representing foreign countries who come to the country to participate in international negotiations, conferences and discussions or with other official instructions, or who travel through the country's territory for those purposes, and the family members accompanying those persons, provided that they are not citizens of the Azerbaijan Republic;

437.0.7. in accordance with international treaties and generally accepted international custom, the heads, members and missions of foreign countries' delegations to international organisations, and the officials of those organisations on the territory of the Azerbaijan Republic;

437.0.8. heads of the diplomatic representations of foreign countries in third countries, members of their diplomatic missions and family members accompanying

them or travelling separately to join them or return to their own countries, where such persons travel through the territory of the Azerbaijan Republic.

#### **Article 438. Personal immunity**

438.1. The persons referred to in Article 437.0.1 □ 437.0.4 and 437.0.6 □ 437.0.8 of this Code shall have the right to personal immunity. Except where this is necessary for the enforcement of a final court judgment concerning them, these persons may not be detained or arrested.

438.2. Heads of consulates and other consulate officials may be detained or arrested only if they are prosecuted for a serious offence or in order to enforce a final court judgment concerning them.

438.3. The investigating authority, prosecutor in charge of the procedural aspects of the investigation or court that detains or arrests persons referred to in Articles 438.1 and 438.2 of this Code shall immediately inform the relevant government authority of the Azerbaijan Republic of the fact.

#### **Article 439. Immunity with regard to criminal jurisdiction**

439.1. Persons listed in Articles 437.0.1, 437.0.2, 437.0.4 and 437.0.6-439.0.8 of this Code shall hold immunity with regard to criminal jurisdiction in the Azerbaijan Republic. The charging of such a person as a suspect or accused shall be decided through diplomatic channels.

439.2. Employees of the service mission of diplomatic representations, heads of consulates and other consulate officials who are not citizens of the Azerbaijan Republic or do not live permanently in the Azerbaijan Republic shall come under the criminal jurisdiction of the Azerbaijan Republic only in respect of offences committed in the performance of their duties.

#### **Article 440. Immunity from giving evidence**

440.1. Persons listed in Articles 437.0.1-437.0.4 and 437.0.6-437.0.8 of this Code shall not be obliged to testify as witnesses or victims. If they agree to testify, they may give evidence in writing without appearing before the investigator, the prosecutor in charge of the procedural aspects of the investigation or the court.

440.2. If such persons give statements as victims or witnesses during the investigation, but do not come to the court hearing, the court may read out their statements.

440.3. Heads of consulates and other consulate officials may not refuse to testify as witnesses or victims except in matters connected with the performance of their duties. If consulate officials refuse to give evidence as witnesses, coercive procedural measures may not be applied to them.

440.4. If the consent provided for in Article 440.1 of this Code is received, the summons addressed to such persons shall not threaten them with coercive procedural measures if they do not appear before the prosecuting authority.

440.5. Persons holding diplomatic immunity shall not be obliged to give correspondence and other documents relating to the performance of their duties to the investigating authority, the prosecutor in charge of the procedural aspects of the investigation or the court.

#### **Article 441. Inviolability of premises and documents**

441.1. Premises accommodating diplomatic representations, the headquarters of the head of a diplomatic representation, the residences of members of diplomatic missions and their property shall be inviolable. Entry to these premises, search, seizure, arrest and attachment of property may be conducted only with the consent of the head of the diplomatic representation or his deputy.

441.2. Under reciprocal bilateral agreements between states, the rights provided for in Article 441.1 of this Code shall also extend to the residences of the employees of the administrative and technical missions of diplomatic representations and their family members who are not citizens of the Azerbaijan Republic or do not live permanently in the Azerbaijan Republic.

441.3. Premises accommodating consulates and the headquarters of the heads of consulates shall be inviolable. Entry to these premises, search, seizure and arrest may be conducted only with the consent or at the request of the head of the consulate or diplomatic representation.

441.4. The archives, documents and official correspondence of diplomatic representations and consulates shall be inviolable. Diplomatic mail may not be opened or delayed.

441.5. Consent to entry to the premises of diplomatic representations and consulates referred to in Articles 441.1, 441.2 and 441.3 of this Code, and to search, seizure and arrest on those premises shall be sought by the investigating authority or the prosecutor's office via the appropriate government authority of the Azerbaijan Republic.

441.6. Any search, seizure or arrest on the above-mentioned premises shall be conducted with the participation of the prosecutor in charge of the procedural aspects of the investigation and a representative of the relevant government authority of the Azerbaijan Republic.

## **SECTION ELEVEN**

### **SPECIAL PROCEEDINGS**

#### **Chapter LII**

##### **conduct of JUDICIAL SUPERVISION**

###### **Article 442. General provisions governing judicial supervision**

442.1. Judicial supervision shall be exercised by the relevant court of first instance within the bounds of its authority in places where compulsory investigative procedures, coercive procedural measures or search operations are conducted.

442.2. In exercising judicial supervision, the court shall examine the following:

442.2.1. applications and submissions concerning the compulsory conduct of investigative procedures, the application of coercive procedural measures or the conduct of search operations which restrict individual freedom, the inviolability of premises, personal inviolability and the right to privacy (including that of family life, correspondence, telephone conversations, post, telegraph and other information) or which concern information containing state, professional and commercial secrets;

442.2.2. complaints against the procedural acts or decisions of the prosecuting authorities.

442.3. The applications, submissions and complaints referred to in Article 442.2 of this Code shall be examined only by the judge of the court exercising judicial supervision.

442.4. The judge's decisions on the matters provided for in Article 442.2 of this Code may be re-examined by the court of appeal in the following circumstances:

442.4.1. on a complaint by the person whose rights and freedoms are restricted as a result of the compulsory conduct of an investigative procedure, the application of a coercive procedural measure or the conduct of a search operation;

442.4.2. on an appeal by the prosecutor in charge of the procedural aspects of the investigation or the prosecutor supervising the search operation.

442.5. Matters relating to the scope of judicial supervision and the rules governing the exercise thereof are dealt with in Articles 443-454 of this Code.

#### **Article 443. Compulsory conduct of investigative procedures by court decision**

443.1. The compulsory conduct of investigative procedures provided for in Article 177.3 of this Code shall as a rule be subject to a court decision.

443.2. In cases where the investigative procedures provided for in Article 177.3.1 □ 177.3.5 of this Code are conducted without a court decision on the basis of a reasoned decision by the investigator, the investigator shall take the following steps after completing the procedure concerned:

443.2.1. within 24 hours, inform the court exercising judicial supervision and the prosecutor in charge of the procedural aspects of the investigation of the investigative procedure conducted;

443.2.2. within 48 hours, submit the material relating to this investigative procedure to the court exercising judicial supervision and the prosecutor in charge of the procedural aspects of the investigation in order that they may verify the legality of the investigative procedure conducted.

#### **Article 444. Application of coercive procedural measures by court decision**

444.1. The following coercive procedural measures may be applied only by court decision:

444.1.1. detention in the cases provided for in Article 152 of this Code;

444.1.2. arrest as a restrictive measure;

444.1.3. removal of the accused from his post as a restrictive measure;

444.1.4. placement of the suspect, the accused or a person who cannot be charged owing to mental disorder in a medical institution for the conduct of a forensic psychiatry or forensic medical examination.

444.2. If the requirements of the prosecuting authority are not met, the following coercive procedural measures shall also be applied by court decision:

444.2.1. the person shall be brought to a medical institution for the conduct of the medical examination or for placement in the institution;

444.2.2. samples shall be taken for examination.

#### **Article 445. Conduct of search operations by court decision**

445.1. The following search operations shall be carried out by court decision:

445.1.1. interception of telephone conversations;

445.1.2. monitoring of mail, telegraph and other correspondence;

445.1.3. extraction of information from technical communication channels and other technical devices;

445.1.4. entry to buildings, including private residences, fenced building sites, installations and plots of land, and their examination thereof;

445.1.5. observation of premises using technical devices or sound recording, video, photography, film and other recording devices;

445.1.6. shadowing of persons.

445.2. In cases provided for in Article 10, paragraph 4 of the Law of the Azerbaijan Republic on "Search Operations", the search operations provided for in Article 445.1 of this Code may be carried out without a court decision, on the basis of a reasoned decision by an authorised official of the body carrying out the search operation. In this case, the authorised official of the body conducting the search operation shall, within 48 hours of carrying out the search, submit the reasoned decision on the conduct of the search operation to the court exercising judicial supervision.

**Article 446. Applications to the courts to resolve matters concerning the compulsory conduct of investigative procedures, the application of coercive procedural measures or the conduct of search operations**

446.1. The following shall be essential for a court's examination of the compulsory conduct of investigative procedures, the application of coercive procedural measures or the conduct of search operations:

446.1.1. the reasoned application by the investigator and the submissions by the prosecutor in charge of the procedural aspects of the investigation for the compulsory conduct of the investigative procedure;

446.1.2. the reasoned application by the investigator or another authorised official and the submissions by the prosecutor in charge of the procedural aspects of the investigation for the application of the coercive procedural measure;

446.1.3. the application by an authorised official of the body carrying out the search operation for the conduct of the search operation.

446.2. Any application provided for in Article 446.1 of this Code shall indicate the following:

446.2.1. the date, time and place at which it was drawn up;

446.2.2. the family name, first name, father's name and title of the person drawing it up;

446.2.3. if there is a criminal case, when, by whom and in what connection it was opened;

446.2.4. information concerning the offence committed, prevented or announced in connection with the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation;

446.2.5. whose and which rights and freedoms may be restricted as a result of the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation;

446.2.6. the reasons for the necessity of the compulsory conduct of the investigative procedure, the application of the compulsory procedural measure or the conduct of the search operation concerning which the application is made;

446.2.7. the result to be achieved by the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation and the reason why it is impossible to achieve this result by other means and methods;

446.2.8. the timing, location and means determined for the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation;

446.2.9. the results expected of the search operation and the means by which these results will be made official;

446.2.10. to whom the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation should be assigned;

446.2.11. any other information required for the adoption of a lawful and reasoned decision on this matter.

446.3. Within 48 hours of the receipt of the reasoned application for a court decision for the compulsory conduct of the investigative procedure, or the application of the coercive procedural measure, the prosecutor in charge of the

procedural aspects of the investigation shall make submissions to the court for the adoption of the relevant decision or shall give a reasoned decision refusing to uphold the application.

446.4. Documents corroborating the need for the compulsory investigative procedure, the coercive procedural measure or the search operation shall be attached to the application. If these documents are not sufficient, the prosecutor in charge of the procedural aspects of the investigation or the judge exercising judicial supervision shall have the right to request that they be supplemented.

**Article 447. Rules governing the court's examination of applications on matters concerning the compulsory conduct of investigative procedures, the application of coercive procedural measures or the conduct of search operations**

447.1. Applications on matters concerning the compulsory conduct of investigative procedures, the application of coercive procedural measures or the conduct of search operations shall be examined by a single judge at a closed court hearing.

447.2. Applications for the choice of arrest as a restrictive measure and for the conduct of a search operation shall be examined by the court within 24 hours of their receipt and other applications within 48 hours.

447.3. The following persons shall have the right to participate in the closed court hearing on matters concerning the compulsory conduct of an investigative procedure or the application of a coercive procedural measure:

447.3.1. the person filing the application;

447.3.2. the prosecutor in charge of the procedural aspects of the investigation;

447.3.3. the person whose rights are to be restricted by the application and his defence counsel or legal representative (except in matters concerning the coercive procedural measures provided for in Article 177.3.4 -177.3.6 of this Code ).

447.4. Only the judge, the court clerk, the person filing the application and the prosecutor supervising the search operation may participate in the closed court hearing on matters concerning the conduct of a search operation.

447.5. In connection with the compulsory conduct of an investigative procedure or the application of a coercive procedural measure, the judge shall have the right to hear statements, to summon for questioning persons who confirm or deny the circumstances indicated in the application and to request the documents and material evidence required to verify the grounds for the application.

447.6. If the persons referred to in Article 447.3 of this Code, having been informed in time of the place and time of the examination of the application, do not appear at the court hearing on the compulsory conduct of the investigative procedure or the application of the coercive procedural measure, this shall not prevent the conduct of the court hearing.

447.7. The court hearing on the compulsory conduct of an investigative procedure, the application of a coercive procedural measures or the conduct of a search operation shall be conducted according to the following sequence:

447.7.1. the judge shall open the court hearing, announce the application to be examined, verify the authority of the participants in the court hearing and explain their rights and duties to them;

447.7.2. the person filing the application shall verbally state the reasons for it and answer the questions put by the judge and other participants in the court hearing;

447.7.3. if persons whose legal interests are affected by the application and their defence counsels and representatives are present at the hearing, they shall be given the opportunity to give explanations and express objections;

447.7.4. the prosecutor in charge of the procedural aspects of the investigation shall propose, in his final statement, that the court allow or dismiss the application; at this point the prosecutor shall have the right to withdraw the submissions that he filed with the court;

447.7.5. the judge shall decide to allow or dismiss the application in accordance with the requirements of this Code and of the criminal and other legislation of the Azerbaijan Republic and shall immediately announce his decision to the participants.

**Article 448. Decisions of the judge on the compulsory conduct of investigative procedures, the application of coercive procedural measures or the conduct of search operations**

448.1. The judge shall adopt one of the following decisions on the results of the court hearing concerning the compulsory conduct of an investigative procedure, the application of a coercive procedural measure or the conduct of a search operation:

448.1.1. to allow the application for the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation;

448.1.2. to dismiss the application for the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation;

448.1.3. to choose arrest or an alternative restrictive measure in respect of the accused or to refuse to do so, and to prolong the period of detention on remand or to refuse to do so.

448.2. When adopting a decision on the conduct of a search operation, the court shall rely on the provisions of this Code and of the Law of the Azerbaijan Republic on □Search Operations□.

448.3. The decision of the judge exercising judicial supervision shall indicate the following:

448.3.1. the date, time and place of the decision;

448.3.2. the family name, first name, father□s name and title of the judge;

448.3.3. the family names, first names, father□s names and titles of the person filing the application and the prosecutor;

448.3.4. the substance of the decision (detailing the court□s position on the issues referred to in Article 446.2.5-446.2.10 of this Code);

448.3.5. the period during which the decision shall be in force;

448.3.6. the official or body instructed to enforce the decision;

448.3.7. the signature of the judge confirmed by the court stamp.

448.4. A decision of the court to dismiss an application for the compulsory conduct of an investigative procedure, the application of a coercive procedural measure or the conduct of a search operation shall include the items provided for in Article 448.3.1-448.3.3 and 448.3.7 of this Code, the grounds for dismissing the application and other important circumstances to be indicated in connection with the adoption of the decision.

448.5. If, immediately after the delivery of the judge's decision to refuse arrest as a restrictive measure or an extension of the period of detention on remand, the prosecutor in charge of the procedural aspects of the investigation states that he does not agree with the court decision and will appeal against it to the court of appeal, the judge shall add to his decision a provision for the accused to be temporarily held under house arrest or detained on remand for 7 (seven) days.

448.6. A copy of the decision on the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation shall be sent to the following persons within 3 (three) days of this decision being given:

448.6.1. the person filing the application;

448.6.2. the prosecutor in charge of the procedural aspects of the investigation;

448.6.3. the head office of the facility where the accused is detained on remand;

448.6.4. on request, the person in respect of whom the conduct of investigative procedure or the application of the coercive procedural measure was examined.

448.7. If the accused attends the court hearing and the court decides to refuse arrest as a restrictive measure (or an extension of the period of detention on remand), the accused shall immediately be released from detention in the courtroom, except in the circumstances provided for in Article 448.5 of this Code.

448.8. After the judge has decided to dismiss the application for the compulsory conduct of an investigative procedure, the application of a coercive procedural measure or the conduct of a search operation or to refuse arrest as a restrictive measure (or an extension of the period of detention on remand), it shall be possible to renew the application to the court if fresh circumstances confirm the necessity of the compulsory conduct of the investigative procedure, the application of the coercive procedural measure or the conduct of the search operation..

**Article 449. Complaints to the court concerning procedural acts or decisions of the prosecuting authority**

449.1. Complaints may be lodged with the court exercising judicial supervision against the procedural acts or decisions of the following officials of the prosecuting authority:

449.1.1. the preliminary investigator (or the person exercising his powers);

449.1.2. the person in charge of the custody of the accused or of his detention in the remand facility;

449.1.3. the person in charge of the search operation;

449.1.4. the investigator;

449.1.5. the prosecutor in charge of the procedural aspects of the investigation.

449.2. The following persons shall have the right to lodge a complaint concerning the procedural acts or decisions of the prosecuting authority:

449.2.1. the accused (the suspect) and his defence counsel;

449.2.2. the victim and his legal representative;

449.2.3. other persons whose rights and freedoms are violated as a result of the decision or act.

449.3. The persons referred to in Article 449. 2 of this Code shall have the right to lodge a complaint with the court concerning the procedural acts or decisions of the prosecuting authority in connection with the following matters;

449.3.1. refusal to accept an application concerning an offence;

449.3.2. custody and detention on remand;

449.3.3. violations of the rights of the detained person;

449.3.4. torture or other cruel treatment of the person detained on remand;

449.3.5. the opening of the criminal case and the suspension or discontinuation of the criminal proceedings;

449.3.6. the compulsory conduct of an investigative procedure, the application of a coercive procedural measure or the conduct of a search operation without a court decision;

449.3.7. the removal of defence counsel for the accused (or suspect) from the criminal proceedings;

449.3.8. other circumstances provided for in this Code.

#### **Article 450. Verification of the legality of the acts or decisions of the prosecuting authority**

450.1. Complaints against the procedural acts or decisions of the prosecuting authority shall be examined by a single judge, at a closed court hearing, within 10 (ten) days of their receipt.

450.2. The following persons shall have the right to participate in the court hearing to verify the legality of the procedural acts or decisions of the prosecuting authority:

450.2.1. the person lodging the complaint and his legal representative;

450.2.2. the person against whose act or decision the complaint was lodged;

450.2.3. the prosecutor in charge of the procedural aspects of the investigation or the senior prosecutor.

450.3. If the persons referred to in Article 450.2. of this Code, having been informed in time of the time and place of the examination of the complaint, do not attend the court hearing, this shall not prevent the conduct of the court hearing to verify the legality of the procedural acts or decisions of the prosecuting authority.

450.4. Before the start of the hearing to verify the legality of the procedural acts or decisions of the prosecuting authority, the court shall study all the material submitted to it.

450.5. The judge shall have the right to summon persons for questioning in support of or against the statements made and the complaint, and to request the documents and material evidence required to verify the grounds for the complaint.

450.6. The court hearing to verify the legality of the procedural acts or decisions of the prosecuting authority shall be conducted according to the following sequence:

450.6.1. the judge shall open the court hearing, announce which complaint is to be examined, verify the authority of the participants in the court hearing and explain their rights and duties to them;

450.6.2. the person lodging the complaint shall verbally state the reasons for it and answer the questions put by the judge and other participants in the court hearing;

450.6.3. if persons whose legal interests are affected by the complaint and their defence counsels or representatives are present at the court hearing, they shall be given the opportunity to give explanations and express objections;

450.6.4. the prosecutor participating in the court hearing shall propose, in his final statement, that the court allow or dismiss the complaint;

450.6.5. the judge shall decide, on the basis of the requirements of this Code and the criminal and other legislation of the Azerbaijan Republic, and of his personal conviction, whether the procedural acts or decisions of the prosecuting authority are lawful and well-founded or not, and shall immediately announce his decision to those participating in the hearing.

**Article 451. Decisions of the judge on the results of the verification of the legality of the procedural acts and decisions of the prosecuting authority**

451.1. The judge shall adopt one of the following decisions on the results of the verification of the legality of the procedural acts and decisions of the prosecuting authority:

451.1.1. to find that the act or decision complained of was lawful;

451.1.2. to find that the act or decision complained of was unlawful and set aside the decision.

451.2. The judge's decision on the results of the verification of the legality of the procedural acts or decisions of the prosecuting authority shall indicate the following:

451.2.1. the time and place of the decision;

451.2.2. the family name, first name, father\s name and title of the judge;

451.2.3. the family name, first name and father\s name of the person lodging the complaint;

451.2.4. the family name, first name, father\s name and title of the person against whose act or decision the complaint was lodged;

451.2.5. the family name, first name, father\s name and title of the prosecutor participating in the court hearing;

451.2.6. the substance of the complaint;

451.2.7. the grounds for the decision given by the judge and any other important circumstances which need to be noted in connection with the adoption of the decision;

451.2.8. the official or body instructed to enforce the judge\s decision;

451.2.9. the judge\s signature confirmed by the court stamp.

451.3. If the act or decision complained of is found to be unlawful, the following steps shall be taken on the basis of the judge's decision:

451.3.1. the prosecutor in charge of the procedural aspects of the investigation or the senior prosecutor shall immediately take the necessary measures to end the violations of the complainant's rights and freedoms and to restore the violated rights and freedoms;

451.3.2. the head of the higher authority in the hierarchy shall settle the matter of the criminal responsibility of the accused official who violated the person's rights and freedoms, in accordance with the rules provided for in the legislation of the Azerbaijan Republic;

451.3.3. it shall be explained to the person who lodged the complaint that he has the right to apply for compensation for the damage sustained.

451.4. A copy of the judge's decision on the results of the verification of the legality of the procedural acts or decisions of the prosecuting authority shall be sent to the following persons within 3 (three) days of the decision being adopted:

451.4.1. the person who lodged the complaint;

451.4.2. the person against whose act or decision the complaint was lodged;

451.4.3. the prosecutor in charge of the procedural aspects of the investigation or the senior prosecutor, and the head of the higher authority dealing with the official who violated the person's rights and freedoms.

#### **Article 452. Complaints and appeals against the judge's decisions concerning the choice or refusal of arrest as a restrictive measure**

452.1. Within 3 (three) days of the announcement of the judge's decision to choose arrest as a restrictive measure or refuse to do so, or to prolong the period of detention on remand or to refuse to do so, the prosecutor in charge of the procedural aspects of the investigation may appeal against the decision and the accused, his defence counsel or his legal representative, as well as the victim, his legal representative or his representative, may lodge a complaint against it, as follows:

- 452.1.1. directly to the court of appeal;
  - 452.1.2. through the court which gave the decision;
  - 452.1.3. through the head of the remand facility (for complaints only).
- 452.2. On receipt of the complaint by the accused against the judge's decision to choose arrest as a restrictive measure or to refuse to do so, or to prolong the period of detention on remand or to refuse to do so, the head of the remand facility shall take the following steps without delay:
- 452.2.1. record the complaint;
  - 452.2.2. refer the complaint to the court where the judge gave the decision;
  - 452.2.3. inform the prosecutor in charge of the procedural aspects of the investigation, in writing, of the receipt of the complaint.
- 452.3. On receipt of the complaint or appeal against the judge's decision to choose arrest as a restrictive measure or to refuse to do so, or to prolong the period of detention on remand or to refuse to do so, the court of first instance shall take the following steps without delay:
- 452.3.1. record the complaint or appeal;
  - 452.3.2. send it, together with the material in the court's possession, to the court of appeal;
  - 452.3.3. inform the prosecutor in charge of the procedural aspects of the investigation, the accused and (if they took part in the examination of the case at the court of first instance) his defence counsel or legal representative, in writing, of the receipt of the complaint or appeal.
- 452.4. On receipt of the complaint or appeal against the judge's decision to choose arrest as a restrictive measure or to refuse to do so, or to prolong the period of detention on remand or to refuse to do so, the court of appeal shall take the following steps without delay:

452.4.1. request the court of first instance to provide the file on the examination of the issue of arrest or extension of the period of detention on remand;

452.4.2. request the prosecutor in charge of the procedural aspects of the investigation to provide documents confirming the necessity of arrest or of extending the period of detention on remand.

452.5. In the following circumstances the prosecutor in charge of the procedural aspects of the investigation shall send the documents on the examination of the issue of arrest or extension of the period of detention on remand to the court of appeal without delay:

452.5.1. on being informed by the head of the remand facility that a complaint has been lodged;

452.5.2. on receipt of the request from the court of appeal.

**Article 453. Verification of the legality and soundness of the judge□s decision to choose arrest as a restrictive measure or to refuse to do so**

453.1. Within 3 (three) days of receiving the complaint or appeal against the judge□s decision to choose arrest as a restrictive measure or to refuse to do so, or to prolong the period of detention on remand or to refuse to do so, the court of appeal shall hold a court hearing to verify the legality and soundness of the decision complained of.

453.2. The verification of the legality and soundness of the judge□s decision to choose arrest as a restrictive measure or to refuse to do so, or to prolong the period of detention on remand or to refuse to do so, shall be conducted by 3 (three) judges at a closed court hearing of the court of appeal.

453.3. The person lodging the complaint, the prosecutor in charge of the procedural aspects of the investigation and the accused person□s defence counsel or legal representative shall have the right to participate in the court hearing to verify the legality and soundness of the judge□s decision to choose arrest as a restrictive measure or to refuse to do so, or to prolong the period of detention on remand or to refuse to do so. The court of appeal may also summon the preliminary

investigator (or the person conducting the preliminary investigation), the investigator and the victim to the court hearing to give evidence. If the above-mentioned persons, having been informed in time of the time and place of the examination of the appeal or complaint, do not attend, this shall not prevent the court hearing from taking place.

453.4. Before the start of the court hearing to verify the legality and soundness of the judge□s decision to choose arrest as a restrictive measure or to refuse to do so, or to prolong the period of detention on remand or to refuse to do so, the court of appeal shall study all the material submitted to it.

453.5. The court hearing to verify the legality and soundness of the judge□s decision shall be conducted according to the following sequence:

453.5.1. the court president shall open the hearing, announce which complaint or appeal is to be examined and against which decision, verify the authority of the participants and explain their rights and duties to them;

453.5.2. the person lodging the complaint or appeal shall verbally state the reasons for it and answer the questions put by the judges and other participants in the court hearing;

453.5.3. if persons whose legal interests are affected by the application and their defence counsels or representatives are present at the court hearing, they shall be given the opportunity to give explanations and express their objections;

453.5.4. the judges shall ask the participants in the hearing the questions required for clarification and shall then deliberate and adopt a decision. The president shall announce the decision to those participating in the hearing.

453.6. At the end of the court hearing to verify the legality and soundness of the judge□s decision to choose arrest as a restrictive measure or to refuse to do so, or to prolong the period of detention on remand or to refuse to do so, the court of shall give one of the following decisions:

453.6.1. to leave the decision of the court of first instance unchanged;

453.6.2. to set aside the decision to choose arrest as a restrictive measure and release the accused from detention;

453.6.3. to set aside the judge□s decision to refuse arrest as a restrictive measure and choose arrest as a restrictive measure in respect of the accused;

453.6.4. to set aside the judge□s decision to prolong the period of detention on remand and release the accused from detention;

453.6.5. to set aside the judge□s decision to refuse to prolong the period of detention on remand and prolong the period of detention.

453.7. If the documents confirming the legality and soundness of the choice of arrest as a restrictive measure or of the extension of the period of detention on remand of the accused were not submitted at the court hearing, the court of appeal shall set aside the relevant decision and release the accused from detention.

453.8. A copy of the appeal court□s decision shall be sent to the following persons within 3 (three) days of the decision being adopted:

453.8.1. the person lodging the complaint;

453.8.2. the prosecutor in charge of the procedural aspects of the investigation;

453.8.3. the head of the remand facility where the accused is held.

453.9. On receipt of the appeal court□s decision to set aside the decision to choose arrest as a restrictive measure or to prolong the period of detention on remand, the head of the remand facility shall immediately release the accused from detention.

453.10. No further complaint or appeal against a judge□s decision whose legality and soundness have already been verified by the court of appeal may be examined.

**Article 454. Complaints against other decisions given by the judge in the exercise of judicial supervision and verification of their legality and soundness**

The lodging of complaints against a judge□s decision on the compulsory conduct of investigative procedures, the application of coercive procedural measures or the

conduct of search operations and on verification of the legality of acts and decisions of the prosecuting authorities, and verification of the legality and soundness of the judge□s decisions, shall be governed by the provisions of Articles 452 and 453 of this Code.

## **CHAPTER LIII**

### **PROCEEDINGS GOVERNING APPLICATIONS FOR VERIFICATION OF THE CONSTITUTIONALITY OF LEGAL INSTRUMENTS**

#### **Article 455. Right to file an application to verify the constitutionality of a legal instrument**

455.1. Parties to criminal proceedings shall have the right, under Article 130, section III, sub-paragraphs 1-6 and 8 of the Constitution of the Azerbaijan Republic, to apply to the plenary Supreme Court of the Azerbaijan Republic for a request to the Constitutional Court of the Azerbaijan Republic to verify the constitutionality of a legal instrument.

455.2. An application to verify the constitutionality of a legal instrument may be filed in the following cases:

455.2.1. during the examination of the criminal case, file on simplified pre-trial proceedings or complaint with a view to a private prosecution by the court of first instance or appeal or the Supreme Court, if the legal instrument applied at the previous stage of the criminal proceedings is inconsistent with the provisions of the Constitution of the Azerbaijan Republic;

455.2.2. if the remedies before the court of appeal and the Supreme Court against a judgment or other final court decision on the criminal case, simplified pre-trial proceedings or complaint with a view to a private prosecution are exhausted and if it is supposed that the person□s rights and freedoms under the Constitution of the Azerbaijan Republic are violated by the legal instrument applied.

455.3. An application to verify the constitutionality of a legal instrument may be filed as follows:

455.3.1. in the case provided for in Article 455.2.1. of this Code: before the start of the examination of the criminal case, file on simplified pre-trial proceedings or complaint with a view to a private prosecution by the court of first instance or appeal or the Supreme Court;

455.3.2. in the case provided for in Article 455.2.2 of this Code: only after examination of the complaint or appeal concerning the criminal case, simplified pre-trial proceedings or complaint with a view to a private prosecution by the relevant division of the Supreme Court of the Azerbaijan Republic.

455.4. The rules governing verification by the Supreme Court of the Nakhchivan Autonomous Republic of whether a legal instrument is consistent with the Constitution of the Nakhchivan Autonomous Republic shall be established by the legislation of the Nakhchivan Autonomous Republic, taking account of the provisions of this Code.

#### **Article 456. Requirements governing applications to verify the constitutionality of a legal instrument**

456.1. Applications to verify the constitutionality of a legal instrument shall be filed in writing.

456.2. Applications to verify the constitutionality of a legal instrument shall indicate the following:

456.2.1. the name of the court with which the application is filed;

456.2.2. the name and postal or legal address of the person filing the application;

456.2.3. the title of the disputed legal instrument and the date of its adoption;

456.2.4. the body or official that adopted the disputed legal instrument;

456.2.5. the specific provision of the disputed legal instrument which violates the fundamental rights and freedoms provided for in the Constitution;

456.2.6. the purpose of the application and a statement of the reasons for it;

456.2.7. the request addressed to the plenary Supreme Court of the Azerbaijan Republic to forward the inquiry to the Constitutional Court of the Azerbaijan Republic.

456.3. The following shall be attached to the application to verify the constitutionality of a legal instrument:

456.3.1. the officially published text of the disputed legal instrument;

456.3.2. a copy of the judgment or court decision which, in the applicant's opinion, violates his fundamental rights and freedoms under the Constitution of the Azerbaijan Republic, if the judgment or decision is disputed at the same time as the legal instrument;

456.3.3. a copy of the indictment or of the final record of the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution, and any other documents required to confirm that the application is well-founded.

456.4. The application shall be signed by the party to the criminal proceedings or by his representative if he has authority to sign it.

**Article 457. Steps to be taken by the court of first instance or appeal or the Supreme Court concerning applications to verify the constitutionality of a legal instrument**

457.1. If, in the circumstances provided for in Article 455.2.1 of this Code the court of first instance or appeal or the Supreme Court receives an application to verify the constitutionality of a legal instrument, it shall take the following steps:

457.1.1. verify that the application meets the requirements of Article 456 of this Code;

457.1.2. verify whether the disputed legal instrument was actually applied during the proceedings on the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

457.1.3. if it establishes that the application filed by the party to the criminal proceedings does not meet the requirements or that the disputed legal instrument was not applied, dismiss the application;

457.1.4. if it establishes that the application filed by the party to the criminal proceedings meets the requirements or that the disputed legal instrument was applied, refer the application to the plenary Supreme Court of the Azerbaijan Republic and suspend the criminal proceedings.

457.2. The decision of the court of first instance or appeal or the Supreme Court concerning the application to verify the constitutionality of a legal instrument shall comply with the general requirements of this Code.

457.3. Copies of the decision of the court of first instance or appeal or the Supreme Court concerning the application to verify the constitutionality of a legal instrument shall be given to the parties to the criminal proceedings on request.

457.4. No appeal shall lie against the court's decision to refer the application for verification of the constitutionality of a legal instrument to the plenary Supreme Court of the Azerbaijan Republic or to dismiss the application. The evidence adduced in the application may be explained in a complaint to the court of appeal or the Supreme Court.

457.5. The proceedings on the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution shall be reinstated in the following circumstances:

457.5.1. if the application is dismissed by the plenary Supreme Court of the Azerbaijan Republic: immediately after the court receives the decision of the plenary Supreme Court of the Azerbaijan Republic;

457.5.2. if the request is referred to the Constitutional Court of the Azerbaijan Republic by the Supreme Court of the Azerbaijan Republic: immediately after the court receives the relevant decision of the Constitutional Court of the Azerbaijan Republic.

**Article 458. Examination by the Supreme Court of the Azerbaijan Republic of matters connected with the referral of the request to the Constitutional Court of the Azerbaijan Republic**

458.1. An application to verify the constitutionality of a legal instrument, received by decision of the court of first instance or appeal or the Supreme Court, or directly from a party to the criminal proceedings in the case provided for in Article 455.3.2. of this Code, shall be referred by the President of the Supreme Court of the Azerbaijan Republic to one of the judges of the appropriate division of the Supreme Court in order for the following steps to be taken:

458.1.1. verify that the application meets the requirements of Article 456 of this Code;

458.1.2. verify that the disputed legal instrument was actually applied in the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

458.1.3. prepare a written opinion on the matters provided for in Article 458.1.1. and 458.1.2. of this Code and make an oral presentation of that opinion as a rapporteur at the hearing of the plenary Supreme Court of the Azerbaijan Republic.

458.2. When examining the application to verify the constitutionality of a legal instrument, the plenary Supreme Court of the Azerbaijan Republic shall listen to the rapporteur judge's opinion on the application at its hearing and, without interfering with the powers of the Constitutional Court of the Azerbaijan Republic, shall refer to the Constitutional Court of the Azerbaijan Republic the request to verify the constitutionality of the legal instrument applied during the proceedings on the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution.

458.3. When examining the application to refer the request to the Constitutional Court of the Azerbaijan Republic, the plenary Supreme Court of the Azerbaijan Republic shall not have the right to exceed the provisions of this article, to initiate discussions on matters concerning the constitutionality of the disputed legal instrument or the constitutional and legal content of the application, or to otherwise express its opinion on the issue raised in the application.

458.4. The plenary Supreme Court of the Azerbaijan Republic shall examine the application to refer the request for verification of the constitutionality of a legal instrument to the Constitutional Court of the Azerbaijan Republic within a month of receiving the application.

458.5. The request to the Constitutional Court of the Azerbaijan Republic shall be registered officially as provided for in the Law of the Azerbaijan Republic on the Constitutional Court.

458.6. The party to the criminal proceedings who filed the application and the court that gave the decision to refer the application to the plenary Supreme Court of the Azerbaijan Republic shall be informed in writing of the results of the examination of the application to refer the request for verification of the constitutionality of a legal instrument to the Constitutional Court of the Azerbaijan Republic.

**Article 459. Request by the plenary Supreme Court of the Azerbaijan Republic, on its own initiative, to the Constitutional Court of the Azerbaijan Republic**

459.1. If the following are established in respect of any provisions of a legal instrument applied during the proceedings on the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution, the plenary Supreme Court of the Azerbaijan Republic may make a request, on its own initiative, to the Constitutional Court of the Azerbaijan Republic:

459.1.1. if the legal instrument violates anyone's fundamental rights and freedoms under the Constitution;

459.1.2. if there is a contradiction between the provisions of this legal instrument and those of the Constitution, laws and other legal instruments of the Azerbaijan Republic which take precedence over it;

459.1.3. if any provisions of this legal instrument need official interpretation;

459.1.4. if any provisions of this legal instrument give rise to debate on the division of powers between Parliament, the executive and the judiciary.

459.2. In the cases provided for in Article 459.1 of this Code, the examination of the question of whether to make a request to the Constitutional Court of the

Azerbaijan Republic shall be conducted in accordance with the rules laid down in Article 458 of this Code.

**Article 460. Legal results of decisions by the Constitutional Court of the Azerbaijan Republic**

460.0. Decisions of the Constitutional Court of the Azerbaijan Republic ruling that a legal instrument has completely or partially lost its legal force or interpreting the Constitution or laws of the Azerbaijan Republic shall constitute definite grounds for the following:

460.0.1. giving the relevant judgment or decision on a criminal case, simplified pre-trial proceedings or a complaint with a view to a private prosecution which come under the jurisdiction of the courts of first instance, the court of appeal or the Supreme Court;

460.0.2. setting aside, on additional appeal to the Supreme Court, the judgments or decisions of a court of first instance, the court of appeal or the Supreme Court based on a provision of the legal instrument which has lost its legal force or was not interpreted correctly.

**Chapter LIV**

**PROCEEDINGS ON THE BASIS OF NEWLY DISCOVERED FACTS**

**Article 461. Grounds for examining court judgments or decisions on the basis of newly discovered facts**

461.0 The grounds for examining court judgments or decisions on the basis of newly discovered facts shall be as follows:

461.0.1. if a final court judgment or decision establishes that an erroneous judgment or decision was adopted as a result of deliberately false evidence given by the victim or a witness, a deliberately false opinion by the expert, deliberately false translation by the interpreter or forgery of material evidence, of records of the investigation and court procedures or of other documents;

461.0.2. if a final court judgment or decision establishes that misuse of powers by the preliminary investigator, investigator, prosecutor or judge during the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution resulted in the adoption of an erroneous judgment or decision;

461.0.3. if together with the self-evident facts and those previously established, facts that were unknown to the court and the parties to the proceedings when the judgment or decision was given indicate that the person convicted is innocent or committed an offence either more or less serious than that of which he was convicted, or that the person who was acquitted, or in respect of whom the criminal case, simplified pre-trial proceedings or proceedings on the complaint with a view to a private prosecution were discontinued, is guilty.

**Article 462. Judgments or decisions that may be examined on the basis of newly discovered facts**

462.0. The following final court judgments or decisions may be examined on the basis of newly discovered facts;

462.0.1. a conviction;

462.0.2. an acquittal;

462.0.3. a decision to discontinue the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;

462.0.4. a decision to apply compulsory medical measures;

462.0.5. a decision to apply compulsory reformatory measures.

**Article 463. Court empowered to examine court judgments or decisions on the basis of newly discovered facts**

Only the plenary Supreme Court of the Azerbaijan Republic shall have the right to examine court judgments or decisions on the basis of newly discovered facts.

**Article 464. Filing of applications for the examination of court judgments or decisions in connection with newly discovered facts**

464.1. Persons who have the right to file a complaint or appeal or submissions with the Supreme Court shall have the right to apply for examination of a court judgment or decision in connection with newly discovered facts.

464.2. An application for the examination of a court judgment or decision in connection with newly discovered facts shall be filed in writing in accordance with Article 412 of this Code and with the procedure for lodging complaints or appeals with the Supreme Court.

464.3. There shall be no time-limit for applying for the examination of a conviction in connection with newly discovered facts in favour of the convicted person.

464.4. An application for re-examination of an acquittal which may result in a worsening of the acquitted person's position, or for re-examination of a conviction which may result in a worsening of the convicted person's position may be filed within 12 (twelve) months of the appropriate facts being established or of the applicant receiving information about the newly discovered facts.

464.5. If re-examination is applied for with a view to acquitting the convicted person, that person's death shall not prevent examination of the court judgment or decision on the basis of newly discovered facts. In that case, the application for examination of the court judgment or decision on the basis of newly discovered facts may be filed by the spouse or other close relative of the dead person.

**Article 465. Requirements governing applications for examination of a court judgment or decision on the basis of newly discovered facts**

465.1. An application for examination of a court judgment or decision on the basis of newly discovered facts shall indicate the following:

465.1.1. the family name, first name, father's name and procedural status of the applicant;

465.1.2. the exact title of the disputed judgment or decision (when, by whom and concerning which proceedings the document was issued);

465.1.3. a detailed explanation of the grounds and evidence for the necessity of re-examining the court judgment or decision;

465.1.4. the reasons for requesting examination of the court judgment or decision;

465.1.5. information on compliance with the deadline for the submission of the application and on the proof available.

465.2. A copy of the disputed court judgment or decision as well as the documents (originals or copies) supporting the application shall be attached to the application for re-examination of the court judgment or decision.

465.3. The copies of the application for re-examination of the court judgment or decision and of the documents attached to it shall be in sufficient number to distribute to all those who have the right to lodge a complaint or appeal with the Supreme Court.

**Article 466. Preliminary examination of an application for examination of the court judgment or decision on the basis of newly discovered facts**

466.1. The President of the Supreme Court of the Azerbaijan Republic shall assign the preliminary examination of the application for examination of the court judgment or decision on the basis of newly discovered facts to one of the judges of the relevant division of the Supreme Court of the Azerbaijan Republic.

466.2. After studying the application for examination of the court judgment or decision in connection with newly discovered facts, the judge of the Supreme Court shall give one of the following decisions:

466.2.1. if the application does not give rise to doubts concerning the soundness of the disputed court judgment or decision, it shall be left unexamined;

466.2.2. if those facts are established by the application or the documents attached to it, or if it is apparent that their possible existence may indeed give rise to doubts as to the soundness of the disputed judgment or decision, it shall be decided to start proceedings on the application for examination of the court judgment or decision on the basis of newly discovered facts.

466.3. If it is decided to leave the application unexamined, a copy of this decision shall be sent to the applicant.

466.4. If the application for examination of the court judgment or decision on the basis of newly discovered facts is based on facts that have already been established, the judge shall verify whether there is a final court judgment confirming the doubts as to the correctness of the disputed decision. If he establishes that this is the case, he shall draw up an opinion to the effect that the criminal case, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution should be examined on the basis of newly discovered facts. This opinion, together with the application for examination of the court judgment or decision on the basis of newly discovered facts and the other documents, shall be given to the President of the Supreme Court of the Azerbaijan Republic.

466.5. If it is necessary to conduct a special investigation in order to determine the accuracy and completeness of the facts which provide the grounds for the application for examination of the court judgment or decision on the basis of newly discovered facts, the judge of the Supreme Court of the Azerbaijan Republic shall instruct the Principal Public Prosecutor of the Azerbaijan Republic to arrange the conduct of such an investigation.

466.6. The Principal Public Prosecutor of the Azerbaijan Republic shall have the right to assign the investigation of the newly discovered facts to one of the prosecutors or investigators under his authority. During the investigation of the newly discovered facts the investigative procedures shall comply with the requirements of Articles 226-276 of this Code.

466.7. On completion of the investigation of the newly discovered facts, all the records of investigative procedures and other documents shall be sent to the judge of the Supreme Court who initiated the proceedings on the newly discovered facts.

466.8. The judge of the Supreme Court shall examine the file on the investigation conducted by the prosecutor (or investigator) and shall give one of the following decisions:

466.8.1. to refuse to the examine the disputed judgment or decision on the basis of newly discovered facts;

466.8.2. to refer the application for re-examination of the court judgment or decision and the file on the investigation conducted by the prosecutor (or investigator) to the plenary Supreme Court of the Azerbaijan Republic for substantive examination. In addition to giving such a decision, the judge of the Supreme Court shall have the right to stay the execution of the disputed court judgment or decision. After giving this decision, the judge shall give all the documents in his possession on the newly discovered facts to the President of the Supreme Court of the Azerbaijan Republic.

466.9. All decisions of the judge of the Supreme Court of the Azerbaijan Republic who makes the preliminary examination of the application for examination of the judgment or decision on the basis of newly discovered facts shall be final and no complaints may be lodged against them.

466.10. The Principal Public Prosecutor of the Azerbaijan Republic or his representative, the convicted (or acquitted) person, the victim (or victim bringing a private prosecution) and any other persons whose interests are affected by the disputed court judgment or decision shall be informed of the results of the preliminary examination of the application for examination of the judgment or decision on the basis of newly discovered facts.

466.11. If it is decided to refer the application for examination of the judgment or decision on the basis of newly discovered facts and the file on the investigation conducted by the prosecutor (or investigator) to the plenary Supreme Court of the Azerbaijan Republic for substantive examination, the person indicated in Article 466.10. of this Code shall also be informed of the time and place of the examination of the matter.

**Article 467. Examination by the plenary Supreme Court of the Azerbaijan Republic of an application for examination of a court judgment or decision on the basis of newly discovered facts**

The examination of the judgment or decision on the basis of newly discovered facts at a hearing of the plenary Supreme Court of the Azerbaijan Republic shall be conducted in accordance with the rules laid down in Article 427 of this Code.

## **Chapter LV**

### **PROCEEDINGS CONCERNING the application of compulsory medical measures to PERSONS who commit AN OFFENCE WHILE OF UNSOUND MIND**

#### **Article 468. Characteristics of proceedings concerning the application of compulsory medical measures to persons who commit an offence while of unsound mind**

Proceedings concerning the application of compulsory medical measures to persons who commit an offence while of unsound mind shall be subject to the general rules of this Code, taking into consideration the characteristics provided for in Articles 468-478 of this Code.

#### **Article 469. Pre-trial proceedings concerning the application of compulsory medical measures to persons who commit an offence while of unsound mind**

469.1. Pre-trial proceedings concerning the application of compulsory medical measures to persons who commit an offence while of unsound mind shall take the form of an investigation.

469.2. If a person who commits an offence while of unsound mind remains a danger to society, the investigator and the prosecutor in charge of the procedural aspects of the investigation shall decide to bring a case for the application of compulsory medical measures to that person.

469.3. Except where the mental state of the person concerning whom the case for the application of compulsory medical measures has been brought prevents this, the person himself, his defence counsel and his legal representative may participate in the conduct of the proceedings.

469.4. If the person concerning whom the case for the application of compulsory medical measures has been brought cannot participate in the proceedings owing to his mental state, the investigator and the prosecutor in charge of the procedural

aspects of the investigation shall draw up a record to that effect and this record shall be sent to the judge to resolve the question of whether to consider that this person lacks legal capacity.

**Article 470. Circumstances which need to be determined in cases concerning persons of unsound mind**

470.0. The following shall be determined in cases concerning persons in respect of whom proceedings have been initiated for the application of compulsory medical measures:

470.0.1. the place, time, means and circumstances of the commission of the act provided for in criminal law;

470.0.2. the fact that the act was committed by this person;

470.0.3. whether this person had a mental disorder before the commission of the act, the degree and nature of the disorder at the time of the commission of the act and thereafter during the investigation;

470.0.4. the behaviour of this person before and after committing the act;

470.0.5. the nature and amount of the damage caused.

**Article 471. Separation of proceedings concerning the application of compulsory medical measures**

If it is established during the investigation of the criminal case that any of the parties were of unsound mind when committing the act provided for in criminal law, the proceedings concerning the application of compulsory medical measures shall be separated from the criminal case.

**Article 472. Participation of defence counsel and the legal representative**

472.1. The participation of defence counsel in the case concerning the application of compulsory medical measures shall be obligatory from the moment when the case is brought or is separated from the other proceedings.

472.2. By decision of the investigator, the prosecutor in charge of the procedural aspects of the investigation or the court, close relatives, spouses and the representative of the care institution accommodating the person may be summoned as legal representatives to participate in the case concerning a person subject to proceedings on the application of compulsory medical measures.

**Article 473. Rights of persons in respect of whom proceedings concerning the application of compulsory medical measures are conducted**

A person in respect of whom proceedings concerning the application of compulsory medical measures are conducted shall enjoy all the rights of the accused.

Depending on the degree and nature of the disorder, he shall have the following rights: to know which act posing a public threat is attributed to him, to participate in the conduct of investigative procedures with the investigator's permission, to acquaint himself with the records of investigative procedures in which he participates and to express his comments on the accuracy and completeness of the notes in them, to file applications and express objections, to acquaint himself with all the documents in the case file after the end of the proceedings and to take extracts from them without restrictions, to receive copies of the decisions on sending the case to court with a view to applying compulsory medical measures, to participate in the court hearing and the examination of the evidence, to acquaint himself with the record of the court hearing and to make comments on it.

**Article 474. Security measures in respect of persons who have committed an offence while of unsound mind**

474.1. The following security measures may be applied where necessary, instead of restrictive measures, to persons who have committed an act provided for in criminal law while of unsound mind:

474.1.1. placing the sick person under the supervision of his relatives and guardians and informing the health authorities of the fact;

474.1.2. placing the sick person in a special medical establishment (psychiatric hospital).

474.2. The sick person may be placed under the supervision of his relatives and guardians, and the health authorities be informed of the fact, subject to the following conditions:

474.2.1. from the moment when it is established that the person who committed the act provided for in criminal law is of unsound mind and does not pose a threat to those around him;

474.2.2. on the basis of a reasoned decision by the investigator, the prosecutor in charge of the procedural aspects of the investigation or the court.

474.3. The person may be placed in a special medical establishment (psychiatric hospital) in the following circumstances:

474.3.1. from the moment when it is established that the person who committed the act provided for in criminal law is of unsound mind and poses a threat to those around him;

474.3.2. only on the basis of a reasoned decision of the court and provided that the compulsory custody of the person who committed the act provided for in criminal law is ensured without fail.

#### **Article 475. End of the pre-trial proceedings concerning the application of compulsory medical measures**

475.1. If the evidence collected is considered sufficient to end the proceedings on the application of compulsory medical measures, the investigator shall take one of the following decisions:

475.1.1. to refer to the court the case concerning the person who was of unsound mind when he committed the act provided for in criminal law which gives rise to criminal responsibility;

475.1.2. to discontinue the proceedings if the person who was of unsound mind when he committed the act provided for in criminal law recovers before the pre-trial proceedings stage and there is no need for the application of compulsory medical measures;

475.1.3. to discontinue the proceedings if there are grounds for doing so under the provisions of this Code.

475.2. On completion of the pre-trial proceedings concerning the application of compulsory medical measures, the investigator shall submit the file on the completed proceedings to the victim, his representative, the person in respect of whom the proceedings were conducted and his legal representative or defence counsel.

475.3. A record shall be drawn up to the effect that the persons provided for in Article 475.2. of the Code have acquainted themselves with the case file on the application of compulsory medical measures.

**Article 476. Steps to be taken by the prosecutor after the end of the pre-trial proceedings concerning the application of compulsory medical measures**

476.0. The file on the completed proceedings concerning the application of compulsory medical measures shall be given, together with the investigator's decision to refer the case to the court, to the prosecutor in charge of the procedural aspects of the investigation, who shall take one of the following decisions:

476.0.1. to uphold the investigator's decision and refer the case to the court;

476.0.2. to refer the case back to the investigator for further investigation;

476.0.3. to discontinue the proceedings.

**Article 477. Characteristics of the court's examination of the case on the application of compulsory medical measures**

477.1. The court's investigation of the case shall start with the public prosecutor's statement concerning the necessity of applying compulsory medical measures to the person who committed the act provided for in criminal law. The court shall examine the evidence submitted by the parties to the criminal proceedings and shall hear the opinions of the defence counsel and legal representative of the person in respect of whom the proceedings are conducted as well as that of the public prosecutor. The court shall then retire to the deliberation room to adopt its decision.

477.2. When adopting a decision the court shall decide the following questions:

477.2.1. whether an act which poses a public threat was committed;

477.2.2. whether this act was committed by the person in respect of whom the proceedings concerning the application of compulsory medical measures are being conducted;

477.2.3. whether the act was committed while the person was of unsound mind and whether that person is of unsound mind during the court's examination of the case;

477.2.4. whether there is a need to apply compulsory medical measures to the person and specifically which one to apply.

477.3. If it is considered proven that the person was of unsound mind when he committed the act provided for in criminal law, the court shall decide to exempt him from criminal responsibility and from punishment and to apply compulsory medical measures to him.

477.4. If the person does not pose a public threat and does not need the application of compulsory medical measures, the court shall decide to discontinue the proceedings. The court shall also decide to discontinue the proceedings if the person was of unsound mind when he committed the offence but recovers during the court's examination of the case.

#### **Article 478. Annulment or alteration of a compulsory medical measure**

478.1. If, as a result of an improvement in the person's state of health or his complete recovery, there is no need to continue to apply the compulsory medical measure, the court shall consider whether to annul or alter the compulsory medical measure on the basis of submissions by the health authority based on the opinion of a panel of doctors.

478.2. An application to annul or alter the compulsory medical measure may be filed by close relatives of the person, his legal representatives or other interested parties.

478.3. All matters shall be settled by the court in the locality where the measure is applied, with the compulsory participation of the prosecutor and the person on whose application the annulment or alteration of the compulsory medical measure is being examined.

## **Chapter LXI**

### **proceedings concerning the application of compulsory medical measures to PERSONS who BECOME MENTALLY ILL after committing An offence**

#### **Article 479. Proceedings concerning the application of compulsory medical measures to persons who become mentally ill after committing an offence**

Bearing in mind the provisions of Articles 479-487 of this Code, compulsory medical measures shall be applied to persons who become mentally ill after committing an offence on the basis of the general rules of this Code.

#### **Article 480. Pre-trial preparation of the file on the application of compulsory medical measures to persons who become mentally ill after committing an offence**

480.1. The pre-trial preparation of the file on the application of compulsory medical measures to persons who become mentally ill after committing an offence shall take the form of an investigation.

480.2. The person who has become mentally ill after the act, his defence counsel and his legal representative may participate in the proceedings concerning the application of compulsory medical measures to persons who become mentally ill after committing an offence.

480.3. If, because of his state of health, the person who has become mentally ill cannot participate in the proceedings concerning the application of compulsory medical measures, the investigator and the prosecutor in charge of the procedural aspects of the investigation shall record this fact.

480.4. If the evidence collected is considered to be sufficient, the investigator shall take one of the following decisions:

480.4.1. to suspend the proceedings and send the file on the application of compulsory medical measures, to the prosecutor in charge of the procedural aspects of the investigation in order for him to decide whether to refer the case to the court for the application of a compulsory medical measure;

480.4.2. to discontinue the criminal proceedings.

480.5. After receiving the file referred to in Article 480.4. of this Code, the prosecutor in charge of the procedural aspects of the investigation shall take one of the following decisions:

480.5.1. to uphold the investigator's decision to refer the case to the court for the application of a compulsory medical measure;

480.5.2. to return the file to the investigator for further investigation;

480.5.3. to discontinue the criminal proceedings.

**Article 481. Participation of defence counsel in proceedings concerning the application of compulsory medical measures to persons who become mentally ill after committing an offence**

The participation of defence counsel in the proceedings concerning the application of compulsory medical measures to persons who become mentally ill after committing an offence shall be mandatory. If defence counsel has not previously participated in the case, he shall be admitted to the proceedings from the moment when the fact of mental disorder is established.

**Article 482. Separation of proceedings concerning a person who becomes mentally ill after committing an offence**

If it is established during the investigation that any of the parties has become mentally ill after committing an offence, the criminal proceedings in respect of this person may be separated from those against the other parties.

**Article 483. Restrictive measures applied to a person who becomes mentally ill after committing an offence**

483.1. If the state of health of a person who has become mentally ill after committing an offence is not an impediment, restrictive measures may be applied to him. If such a person is detained on remand, he shall be placed under special medical supervision in the appropriate unit of a medical establishment.

483.2. If restrictive measures cannot be applied to a person who has become mentally ill because of his state of health, the security measures provided for in Article 474 of this Code shall be applied.

**Article 484. Charging of persons who have become mentally ill after committing an offence**

484.1. If there is sufficient evidence to charge him with the offence, the investigator shall make a reasoned decision to charge the person who has become mentally ill.

484.2. If his state of health is not an impediment, the charge may be notified directly to the person who has become mentally ill. If it is impossible for the person to acquaint himself with the decision, a record of the fact shall be drawn up. Defence counsel and the legal representative of the accused shall acquaint themselves with the decision to charge the person who has become mentally ill after committing an offence.

**Article 485. Proceedings before the court of first instance concerning the application of compulsory medical measures to persons who have become mentally ill after committing an offence**

485.1. The participation of the public prosecutor and defence counsel in the proceedings before the court of first instance concerning the application of compulsory medical measures to persons who have become mentally ill after committing an offence shall be mandatory. A forensic expert may be invited to the hearing.

485.2. The court's investigation of the case file concerning a person who has become mentally ill after committing an offence shall start when the investigator announces his decision to send the file to the court for the application of compulsory medical measures. The court shall then examine the evidence.

485.3. At the end of the court's investigation of the case, the public prosecutor shall address the court and defence counsel's opinion shall be heard.

485.4. The court shall then adjourn to the deliberation room and shall decide the following points:

485.4.1. whether the act was committed or not;

485.4.2. whether the act comprised the ingredients of a criminal offence;

485.4.3. whether the act was committed by the accused;

485.4.4. whether the person has become mentally ill, the nature of the disorder and the time of its onset;

485.4.5. whether it is necessary to apply a compulsory medical measure to the person and, if so, specifically which measure needs to be applied.

485.5. If the person is mentally ill during the court's examination of the case, the court shall also decide whether to suspend the proceedings.

#### **Article 486. Annulment or alteration of a compulsory medical measure**

486.1. If, as a result of an improvement in the person's state of health or his complete recovery, there is no need to continue to apply the compulsory medical measure, the court shall consider whether to annul or alter the compulsory medical measure on the basis of submissions by the health authority based on the opinion of a panel of doctors.

486.2. An application to annul or alter the compulsory medical measure may be made by close relatives or legal representatives of the person or by other interested parties.

486.3. The annulment or alteration of compulsory medical measures shall be decided by the court in the locality where the compulsory medical measures are applied.

#### **Article 487. Reinstatement of the criminal proceedings**

487.1. If the court considers that a person subject to a compulsory medical measure has recovered, it shall decide whether to annul the compulsory medical measure on the basis of a medical opinion and whether to refer the criminal case to the investigating authority for investigation or to the court for examination.

487.2. The period spent in a medical establishment by a person subject to compulsory medical measures shall be included in the period of detention on remand.

## **Chapter LVII**

### **LEGAL ASSISTANCE IN criminal MATTERS**

#### **Article 488. Procedural and other acts relating to legal assistance in the territory of the Azerbaijan Republic**

488.1. In the territory of the Azerbaijan Republic, procedural and other acts relating to legal assistance may be carried out only at the official request of the relevant authorities of foreign states with which the Azerbaijan Republic has an agreement on legal assistance in criminal matters.

488.2. In the territory of the Azerbaijan Republic, procedural and other acts relating to legal assistance shall be carried out on the basis of this Code, of other laws and of the international agreements to which the Azerbaijan Republic is a party. In such cases, if the provisions of the legislation of the Azerbaijan Republic conflict with those of the international agreements to which the Azerbaijan Republic is a party, the provisions of the international agreements shall apply.

#### **Article 489. General provisions governing legal assistance in criminal matters in the territory of the Azerbaijan Republic**

489.1. Procedural documents drawn up in accordance with the legislation of the party submitting a request for legal assistance in the territory of the Azerbaijan Republic shall be accepted by the prosecuting authorities of the Azerbaijan Republic if they are accompanied by an official application for legal assistance signed by an official of the competent authority of the foreign state and certified by that authority's stamp.

489.2. The official language of the Azerbaijan Republic or, by mutual agreement with the competent authority of the foreign state, another language shall be used in the provision of legal assistance in the territory of the Azerbaijan Republic.

489.3. Unless otherwise provided for in an agreement signed by the requesting competent authority of the foreign state, all expenses connected with the provision of legal assistance by mutual agreement in the territory of the Azerbaijan Republic shall be paid by the prosecuting authorities of the Azerbaijan Republic.

**Article 490. Content of official requests for legal assistance in the territory of the Azerbaijan Republic**

490.1. Official requests for legal assistance in the territory of the Azerbaijan Republic shall indicate:

490.1.1. the name of the prosecuting authority to which the request is addressed;

490.1.2. the name of the requesting competent authority of the foreign state;

490.1.3. the title of the criminal case in respect of which legal assistance is requested and brief information about it;

490.1.4. a description and classification of the act committed;

490.1.5. the first and family names of the suspect, accused, victims and witnesses and, if possible, their address or whereabouts, nationality, occupation, place and date of birth;

490.1.6. the substance of the request for legal assistance;

490.1.7. any other information necessary for examination of the request.

490.2. Official requests for the extradition of a person who has committed an offence shall be submitted in accordance with Articles 488 and 489 of this Code.

**Article 491. Rules governing the examination of official requests for legal assistance in the territory of the Azerbaijan Republic**

491.1. Official requests for legal assistance in the territory of the Azerbaijan Republic shall be examined on the basis of the provisions of the legislation of the Azerbaijan Republic, under the procedure determined by the appropriate government authority of the Azerbaijan Republic.

491.2. When official requests for such assistance are examined and executed, the legislation of the foreign state may be applied at the request of the requesting body of that state if it does not conflict with the legislation of the Azerbaijan Republic.

491.3. If the prosecuting authority of the Azerbaijan Republic to which the request is addressed lacks the authority to examine and execute the official request for legal assistance, it shall forward it to the competent prosecuting authority of the Azerbaijan Republic and inform the competent authority of the foreign state accordingly.

491.4. If the execution of the official request for legal assistance requires the conduct of procedural and other acts which need the approval (decision) of a court, the prosecuting authorities of the Azerbaijan Republic shall apply to the appropriate court of the Azerbaijan Republic exercising judicial supervision in accordance with the provisions of this Code.

491.5. Officials of the competent requesting authority of the foreign state may participate in the execution of the request for legal assistance as determined by the appropriate government authority of the Azerbaijan Republic, under the provisions of the legislation of the Azerbaijan Republic.

491.6. If the assistance requested cannot be given, the appropriate prosecuting authority of the Azerbaijan Republic shall inform the competent authority of the foreign state which made the request of the circumstances preventing its execution.

## **Article 492. Refusal of requests for legal assistance**

492.1. If the provision of legal assistance may conflict with the legislation of the Azerbaijan Republic or may be detrimental to the sovereignty and security of the Azerbaijan Republic, the provision of such assistance may be refused.

492.2. Any decision to refuse legal assistance shall be made by the head of the prosecuting authority of the Azerbaijan Republic to which the request is addressed or by a court of the Azerbaijan Republic. The requesting competent authority of the foreign state shall be informed of the refusal and of the reasons for it.

#### **Article 493. Content of official requests for extradition**

493.1. Official requests for extradition of a person shall indicate the following:

493.1.1. the name of the prosecuting authority of the Azerbaijan Republic to which the request is addressed;

493.1.2. the name of the requesting competent authority of the foreign state;

493.1.3. the title of the criminal case in respect of which legal assistance is requested and brief information about it;

493.1.4. a description of the factual circumstances of the act and the text of the requesting state's law describing the act as an offence;

493.1.5. the family name, first name and father's name of the person to be extradited, his nationality, address or whereabouts and, if possible, a description of his personal appearance and other information about his identity;

493.1.6. the cost of the damage caused by the offence.

493.2. An official request for extradition in order to bring a criminal prosecution against the person concerned shall be accompanied by a certified copy of the warrant for his arrest.

493.3. An official request for extradition in order to enforce a judgment shall be accompanied by a certified copy of the final judgment and the text of the provision of criminal law applied to the convicted person. If the convicted person has served part of his sentence, information shall also be given on this point.

#### **Article 494. Requests for additional documents relating to extradition**

494.1. If any of the requisite information is not included in an official request for extradition, the prosecuting authority of the Azerbaijan Republic to which the request is addressed may request the provision of additional information within 1 (one) month. This period may be extended for 1 (one) further month at the request of the competent authority of the foreign state making the request.

494.2. If the competent authority of the foreign state requesting the extradition of a person in detention fails to provide the additional information during the prescribed period, the person shall be released by the prosecuting authority of the Azerbaijan Republic to which the request is addressed.

#### **Article 495. Arrest of a person with a view to extradition**

495.1. When a request for extradition and a copy of the arrest warrant are received from the competent authority of a foreign state, the prosecuting authority of the Azerbaijan Republic to which the request is addressed may if necessary, and in accordance with the provisions of this Code, take measures to have the person detained and arrested before the decision on extradition is taken.

495.2. In accordance with Article 495.1 of this Code, the arrested person shall have the right to apply to a court to confirm, amend or annul the restrictive measure applied to him.

495.3. Where necessary, the prosecuting authority of the Azerbaijan Republic to which the request is addressed shall also be empowered, in compliance with the provisions of this Code and at the request of the competent authority of the foreign state, to detain for the purposes of legal assistance a person in respect of whom no official request for extradition has been received. In this case the appropriate application:

495.3.1. shall have been received in advance by mail, telegram, telex or fax;

495.3.2. shall refer to the arrest warrant or the final court judgment;

495.3.3. shall confirm that the official request for extradition will be made within the next 48 hours.

495.4. The prosecuting authority of the Azerbaijan Republic shall immediately inform the requesting competent authority of the foreign state that the person has been detained or arrested on the basis of the official request for extradition, or that he has been detained for the purposes of legal assistance at the request of the foreign state, pending receipt of the official request for extradition.

495.5. A person arrested in accordance with Articles 495.1 and 495.3. of this Code shall have the right to complain to a court about the acts of the prosecuting authority.

#### **Article 496. Settlement of extradition matters**

496.1. A person who is in the territory of the Azerbaijan Republic shall be extradited by the prosecuting authority of the Azerbaijan Republic with a view to criminal prosecution or sentence enforcement, taking account of the need to meet the requirements of Article 496.2 - 496.7 of this Code, on the basis of an official request for his extradition from the competent authority of the foreign state concerned.

496.2. A person shall be extradited with a view to criminal prosecution in respect of acts which are punishable offences subject to a sentence of no less than 1 (one) year□s deprivation of liberty, or to a heavier sentence, under the legislation of the Azerbaijan Republic and of the requesting state.

496.3. A person shall be extradited with a view to sentence enforcement in respect of acts which are punishable offences subject, as regards the person concerned, to a sentence of no less than 6 (six) months□ deprivation of liberty, or to a heavier sentence under the legislation of the Azerbaijan Republic and of the requesting state.

496.4. The person shall not be extradited in the following cases:

496.4.1. if, at the time of receipt of the request for extradition, under the legislation of the Azerbaijan Republic, the criminal prosecution cannot be brought or the judgment be enforced because the time-limit for criminal prosecution has expired or on other legal grounds;

496.4.2. if there is a final court decision discontinuing the proceedings against the person whose extradition is requested;

496.4.3. if, under the legislation of the Azerbaijan Republic, the offence is privately prosecuted (on the basis of a complaint by the victim).

496.5. Extradition may be refused in the following cases:

496.5.1. if the person whose extradition is requested is a citizen of the Azerbaijan Republic or has been granted political asylum in the Azerbaijan Republic;

496.5.2. if the offence connected with the request for extradition was committed on the territory of the Azerbaijan Republic;

496.5.3. if the person whose extradition is requested is prosecuted for his political, racial or religious affiliations;

496.5.4. if the person whose extradition is requested is prosecuted in peacetime for committing a war crime;

496.5.5. if the state requesting extradition does not have an agreement with the Azerbaijan Republic on legal assistance in criminal matters, or if that state does not comply with the requirements of the agreement on legal assistance in criminal matters.

496.6. If the person whose extradition is requested is charged with or convicted of another offence in the territory of the Azerbaijan Republic, extradition may be deferred until the criminal prosecution is discontinued, the judgment is enforced or the person is released from punishment.

496.7. If an official request for a person's extradition is received from several states, the prosecuting authority of the Azerbaijan Republic to which the requests are addressed shall decide independently which one to grant first.

**Article 497. Release of a person arrested in connection with a request for his extradition**

497.1. A person detained under Article 495.3 of this Code shall be released if, within 48 hours of his detention, the prosecuting authority of the Azerbaijan Republic does not receive an official request for his extradition.

497.2. If a person is arrested under Article 495.1 of this Code before the decision on his extradition is taken, he shall be immediately released if the prosecuting authority of the Azerbaijan Republic decides that it is impossible, or refuses, to extradite him.

#### **Article 498. Limits on the prosecution of an extradited person**

498.1. A person who has been extradited without the consent of the prosecuting authority of the Azerbaijan Republic which received the request may not be charged with or punished for an offence committed before he was extradited, but for which he was not extradited.

498.2. Without the consent of the prosecuting authority of the Azerbaijan Republic which received the request, a person may not be extradited to a third state.

498.3. If, within 1 (one) month of the end of the criminal proceedings or, in the event of a conviction, within 1 (one) month of completing his sentence or being released from punishment, the person who has been extradited fails to leave the territory of the requesting foreign state or returns there voluntarily, the consent of the prosecuting authority of the Azerbaijan Republic which received the request shall not be required. The period during which the extradited person was unable to leave the territory of the requesting foreign state through no fault of his own shall not be included in the above-mentioned period.

#### **Article 499. Handing over of an extradited person**

499.1. The prosecuting authority of the Azerbaijan Republic to which the request was addressed shall inform the requesting competent authority of the foreign state of the date and place of the extradition.

499.2. If the competent authority of the foreign state does not accept the person concerned within 15 (fifteen) days of the date arranged for his extradition, the person shall be released from detention.

## **Article 500. Renewed extradition**

If a person who has been extradited evades criminal prosecution or punishment and returns to the territory of the Azerbaijan Republic, his renewed extradition to the requesting competent authority of the foreign state shall be effected without submission of the documents provided for in Article 493.2 and 493.3 of this Code being required.

## **Article 501. Transit**

501.1. At the request of the competent authority of a foreign state, the prosecuting authority of the Azerbaijan Republic to which the request is addressed shall give permission for persons extradited by a third state to transit through its territory.

501.2. The application for permission for such transit shall be examined by the prosecuting authority of the Azerbaijan Republic according to the rules established for the examination of official requests for extradition.

501.3. The prosecuting authority of the Azerbaijan Republic to which the request is addressed shall give permission for the transit to be effected by the means that it considers most appropriate.

## **Article 502. Obligation to prosecute**

502.1. The prosecuting authority of the Azerbaijan Republic shall, on the basis of an official request from the competent authority of a foreign state and in accordance with the legislation of the Azerbaijan Republic, bring a criminal prosecution against citizens of the Azerbaijan Republic suspected of committing an offence on the territory of the requesting state.

502.2. If the competent authority of a foreign state requests criminal prosecution of a person for an offence, and if the act committed by a person who is to be punished for that offence is the subject of a civil claim filed by the victims of the offence, the claim shall be examined during the proceedings if the victims claim compensation for the damage suffered.

### **Article 503. Content of an official request for criminal prosecution**

503.1. An official request for criminal prosecution shall indicate the following:

503.1.1. the name of the prosecuting authority of the Azerbaijan Republic to which the request is addressed;

503.1.2. the name of the requesting competent authority of the foreign state;

503.1.3. a description of the act in respect of which prosecution is requested;

503.1.4. as far as possible, the exact time and place of the commission of the offence;

503.1.5. the text of the provisions of criminal law under which the act is considered an offence in the requesting foreign state and of any other legislation of the foreign state which is of importance for the proceedings;

503.1.6. the family name and first name of the suspect, his nationality and other information about his identity;

503.1.7. in criminal cases brought on the basis of an application by the victim, the victim's application and any claims for compensation for damage;

503.1.8. the cost of the damage caused by the offence.

503.2. All the documents and evidence at the disposal of the requesting competent authority of the foreign state shall be attached to the official request for criminal prosecution.

503.3. If the criminal case brought by the requesting competent authority of the foreign state is transferred, the prosecuting authority of the Azerbaijan Republic to which the request is addressed shall pursue the investigation of the case in accordance with the legislation of the Azerbaijan Republic. All the documents and evidence in the criminal case file shall be certified by the stamp of the competent authority of the foreign state.

### **Article 504. Notification of the results of criminal prosecution**

The prosecuting authority of the Azerbaijan Republic to which the request is addressed shall inform the requesting competent authority of the foreign state of the final decision on the criminal case. At the request of the competent authority of the foreign state, a copy of the final decision on the case shall also be sent to it.

#### **Article 505. Release of property**

505.1. The prosecuting authority of the Azerbaijan Republic to which the request is addressed shall release the following items at the request of the competent authority of the foreign state:

505.1.1. items used during the commission of the offence which gave rise to the person's extradition, including the instruments used for the offence, items received as a result of the offence or as payment for it, and items received by the offender in place of those obtained in this way;

505.1.2. items which may be of evidential value in the criminal case.

505.2. The items referred to in Article 505.1 of this Code shall be released even if the extradition of the person is impossible as a result of death, escape or other circumstances.

505.3. If the items referred to in Article 505.1 of this Code are needed as evidence in the criminal case by the prosecuting authority of the Azerbaijan Republic to which the request is addressed, their release may be delayed until the end of the proceedings.

505.4. The right of third parties to the items released shall remain in force. After the end of the proceedings, these items shall be returned without compensation to the prosecuting authority of the Azerbaijan Republic which released them to the competent authority of the foreign state.

### **CHAPTER LVIII**

#### **PROCEEDINGS CONCERNING THE ENFORCEMENT OF JUDGMENTS AND OTHER FINAL COURT DECISIONS**

**Article 506. Obligation of the courts to ensure the timely and proper enforcement of judgments and other final court decisions by the establishments and authorities responsible for sentence enforcement**

506.0. A courts which adopts a judgment or other final court decision (or the judge presiding over the hearing at which they are adopted) shall take the following steps:

506.0.1. give immediate instructions for the enforcement of the final judgment or other court decision;

506.0.2. supervise the timely and proper enforcement of the judgment or other final court decision while examining the relevant applications at court hearings;

506.0.3. draw the prosecutor's attention to any instance of failure to enforce a judgment or other final court decision, or attempt to prevent their enforcement, so that criminal proceedings may be brought against the person who fails to enforce it;

506.0.4. examine applications from the sentenced person and submissions from the establishment or authority enforcing the sentence and settle on its own initiative any doubts or confusion surrounding the enforcement of the judgment or other final court decision;

506.0.5. exercise the other powers provided for in this Code.

**Article 507. Judges' instructions on the enforcement of judgments and other final court decisions**

507.1. The judge's instructions on enforcement of the judgment or other final court decision shall as a rule be carried out without delay as soon as the relevant judgment or decision becomes final.

507.2. The judge's instructions to enforce the court's acquittal of an accused or exempt him from punishment shall be given immediately after the delivery of the judgment. The accused, if present in the courtroom, shall then be immediately released from detention.

507.3. After the delivery of the court judgment, the accused shall be immediately released from detention on remand in the following cases:

507.3.1. if he was convicted, but not sentenced;

507.3.2. if he was sentenced to deprivation of liberty but that sentence was suspended or deferred;

507.3.3. if he was sentenced to a penalty not involving deprivation of liberty;

507.3.4. if he was sentenced to deprivation of liberty for a period not exceeding that for which he was detained either in custody or under a restrictive measure, or the part of the sentence that he served in this criminal case under a decision set aside by the court of appeal or the Supreme Court.

507.4. The judge's instructions on the enforcement of the judgment or other final court decision shall be sent to the officials of the establishment or authority responsible for enforcement of the judgment or other final decision. A copy of the relevant judgment or other final decision shall be sent with the judge's instructions.

507.5. When issuing instructions on sentence enforcement, the judge shall also inform the family of the person in detention and sentenced to deprivation of liberty about the enforcement of the judgment.

507.6. If, on account of the judgment, it is necessary to consider depriving the convicted person of a special or military rank, honorary title or state decoration, the judge shall send the relevant submissions and a copy of the court judgment to the authority which conferred the special or military rank, honorary title or state decoration.

#### **Article 508. Duties of officials responsible for the enforcement of judgments or other final court decisions**

508.1. The officials of the relevant establishments or authorities shall properly enforce the judgment or other final court decision without delay and immediately inform the judge who issued the instructions that this has been done.

508.2. The officials of the establishment or authority enforcing the sentence shall immediately inform the judge who issued the instructions, as well as the sentenced person's family, of the place where he is serving his sentence, of any change of location and of his release.

508.3. In accordance with the requirements of Article 508.1 and 508.2 of this Code, any officials of the relevant authorities who evade enforcement of a judgment or other final court decision or fail to enforce it properly shall incur criminal responsibility under the legislation of the Azerbaijan Republic.

#### **Article 509. Guarantee of sentenced persons' rights during sentence enforcement**

509.1. Between the passing of judgment by the court and the completion of the sentence, the sentenced person shall have the right to apply to the court for:

509.1.1. postponement of the sentence;

509.1.2. release from punishment due to illness or to expiry of the period of sentence enforcement;

509.1.3. conditional release before completion of the sentence;

509.1.4. commutation of the part of the sentence not yet served to a less severe penalty;

509.1.5. change to another type of penal institution or reformatory;

509.1.6. application of an amnesty or rectification of a failure to apply an amnesty correctly;

509.1.7. inclusion of a period of custody in a medical institution in the term of the sentence;

509.1.8. release from imprisonment before completion of the sentence;

509.1.9. other matters provided for in this Code.

509.2. Applications filed by sentenced persons under Article 509.1 of this Code shall be examined by the court in accordance with Articles 510-520 of this Code.

509.3. During the court's examination of an application from a sentenced person under Article 509.1 of this Code, the sentenced person and his defence counsel or legal representative shall have the following rights:

509.3.1. to participate in the court hearing;

509.3.2. to present evidence;

509.3.3. to file applications and make objections;

509.3.4. to acquaint themselves with all the documents.

509.4. The legal representative or defence counsel of a minor or person who has physical disabilities or is mentally ill may apply on his behalf to the court regarding the matters provided for in Article 509.1 of this Code relating to enforcement of a judgment or other final court decision. During the examination of such applications, the participation of the legal representative or defence counsel of the person concerned shall be compulsory.

#### **Article 510. Postponement of sentence enforcement**

510.1. In the circumstances provided for in criminal law, sentence enforcement in respect of a woman who is pregnant or has a young child shall be postponed by the court which gave the judgment until the child is 8 years old.

510.2. The court shall decide whether to postpone enforcement of a judgment relating to the satisfaction of a civil claim or the payment of damages in another form, taking account of the factual circumstances of the case and the material position of the sentenced person.

510.3. If it is impossible for the sentenced person to pay the fine within 1 (one) month, payment of the fine may be postponed for 6 months or the fine may be paid in instalments.

510.4. In the circumstances provided for in Article 510.1 and 510.3 of this Code, postponement of the enforcement of the judgment shall be considered by the court on the basis of an application by the sentenced person.

**Article 511. Release from punishment due to illness**

511.1. If a sentenced person contracts a serious illness which prevents him from serving his sentence, the court of first instance in the locality where the sentence is being served may, on the basis of the opinion of a panel of doctors and in accordance with the provisions of criminal law, release the person from punishment.

511.2. The question of the release of a sentenced person from punishment shall be examined on the basis of an application by the sentenced person, his defence counsel or his legal representative or submissions from the management of the penal institution concerned.

511.3. If a person who is mentally ill is released from punishment, the court shall have the right to apply compulsory medical measures to him or place him under the supervision of the health authorities or his relatives.

511.4. In deciding on the release from punishment of persons suffering from a serious illness other than a mental disorder, the court shall take into consideration the seriousness of the offence committed, the personality of the sentenced person and other circumstances.

511.5. In releasing a sentenced person from punishment because of illness, the court shall have the right to release him from serving both the main and any additional sentence.

**Article 512. Release from punishment due to expiry of the period of sentence enforcement, and annulment of the postponement of sentence enforcement**

512.1. In accordance with the provisions of criminal law, the court which gave the judgment shall release a sentenced person from punishment on the basis of an application from him on the grounds that the period of sentence enforcement has expired.

512.2. Annulment of the postponement of sentence enforcement and committal of the sentenced person to serve his prison sentence shall be effected by the court which gave the judgment, on the basis of submissions from the establishment or authority responsible for sentence enforcement and in accordance with the provisions of criminal law.

**Article 513. Conditional release before completion of the sentence and commutation of the part of the sentence not yet served to a less severe penalty**

513.1. Conditional release before completion of the sentence and commutation of the part of the sentence not yet served to a less severe penalty shall be ordered by the court on the basis of an application from the sentenced person and in accordance with the provisions of criminal law, taking into consideration the views of the establishment or authority responsible for sentence enforcement.

513.2. If the court refuses conditional release before completion of the sentence or commutation of the part of the sentence not yet served to a less severe penalty, a further examination of the relevant application shall be possible no less than 6 (six) months after the court's decision to refuse the application concerned.

**Article 514. Change to another type of penal institution**

514.1. The transfer of a sentenced person from one type of penal institution to another may be effected, in accordance with the provisions of criminal law and on the basis of an application by the sentenced person or submissions by the penal institution, by the court of first instance in the locality where the sentence is being served.

514.2. The transfer of a minor from one type of reformatory to another or from a reformatory to a penal institution shall be effected on the basis of an application by the sentenced person's legal representative or defence counsel or submissions by the reformatory.

514.3. If the court refuses to change the type of penal institution or reformatory, a further examination of such an application shall be possible no less than 6 (six) months after the court's decision to refuse the application.

514.4. When deciding whether to transfer a minor from a reformatory to a penal institution, the court shall take account of his rehabilitation. A sentenced person may be held in a reformatory until he is 20.

#### **Article 515. Application of an amnesty to a sentenced person**

515.1. An amnesty shall be applied to a sentenced person by the establishment or authority enforcing the sentence, in accordance with the provisions of the amnesty decision.

515.2. Any application by a sentenced person concerning failure to apply an amnesty or failure to apply it correctly shall be examined by the court of first instance in the locality where the sentence is being served, in accordance with the provisions of the amnesty decision and criminal law, and taking into consideration the views of the establishment or authority enforcing the sentence.

#### **Article 516. Inclusion of a period of custody in a medical institution in the term of the sentence served**

If a person serving a sentence in the form of deprivation of liberty is placed under supervision in a medical institution outside his penal institution during his term of imprisonment, the court of first instance in the locality where the sentence is being served shall include the period of custody in the medical institution in the term of the sentence, on the basis of an application by the sentenced person.

#### **Article 517. Release from imprisonment before completion of the sentence**

517.1. The following courts may release prisoners before completion of their sentences:

517.1.1. the court which gave the judgment or the court of first instance in the locality where the person lives: persons given suspended sentences and persons exempted or released from punishment owing to the expiry of the period of sentence enforcement;

517.1.2. the court of first instance in the locality where the sentence is being served: persons released because they are ill or granted conditional release before completion of the sentence;

517.1.3. the court of first instance in the locality where the sentenced person lives: other persons sentenced to various types of penalty.

517.2. Release from imprisonment before completion of the sentence shall be ordered by the court further to an application from the sentenced person and in accordance with the provisions of criminal law.

517.3. Applications by sentenced persons for early release from imprisonment shall be examined by the court taking account of the views of the establishment or authority enforcing the sentence.

**Article 518. Clarification of any doubts and obscure points during enforcement of judgments and other final court decisions**

518.0. The court which gave the judgment or other final decision shall have the right to clarify the following doubts and obscure points arising during enforcement, on the basis of an application by the sentenced person or submissions from the establishment or authority enforcing the sentence or on its own initiative:

518.0.1. doubts about the exact end of the sentence if it was not laid down in the judgment;

518.0.2. doubts about the type of penal institution or reformatory in which the sentence involving deprivation of liberty is to be served if this was not established by the judgment;

518.0.3. questions about the restrictive measure, the sharing of court expenses or the future of the material evidence if these were not resolved by the judgment or were not clearly resolved;

518.0.4. any other obscure points in the court's judgment or other final decision.

**Article 519. Settlement of other issues relating to enforcement of the judgment or other final court decision on the basis of submissions by the establishment or authority enforcing the sentence**

519.0. On the basis of submissions by the establishment or authority enforcing the sentence, the court in the locality where the sentenced person lives shall examine

the following issues connected with enforcement of the judgment or other final court decision:

519.0.1. the detention of a sentenced person who has evaded enforcement of the judgment or other final court decision, for his forcible transfer to the place where the sentence is to be served or for the commutation of the sentence to another type of sentence and the settlement of related matters;

519.0.2. the extension of the probation period in the event of a suspended sentence, a change in the duties of a person given a suspended sentence or the detention of a sentenced person for the annulment of a suspended sentence or of conditional release before completion of the sentence, or for the transfer of a sentenced person to serve the sentence and the settlement of related matters;

519.0.3. the release of a sentenced person in respect of whom sentence enforcement has been postponed;

519.0.4. the annulment of postponement of sentence enforcement and the transfer of the sentenced person to serve a sentence involving deprivation of liberty;

519.0.5. the annulment of compulsory medical measures.

**Article 520. Examination at a court hearing of applications relating to enforcement of a judgment or other final court decision**

520.1. Applications relating to enforcement of a judgment or other final court decision shall be examined by a single judge at a court hearing within 10 (ten) days of their receipt by the court.

520.2. The following persons shall have the right to participate in the court hearing relating to enforcement of the judgment or other final court decision:

520.2.1. the sentenced person and his defence counsel or legal representative;

520.2.2. a representative of the establishment or authority responsible for enforcing the judgment or other final court decision;

520.2.3. the prosecutor.

520.3. In the cases provided for in this Code, the participation of defence counsel in a court hearing relating to enforcement of the judgment or other final court decision shall be compulsory.

520.4. A representative of the panel of doctors which gave an opinion or, as the case may be, the civil party or his representative, may be summoned to attend the court hearing on the release or placement in hospital of a sentenced person due to illness, or if the matter relates to the civil claim. During a court hearing on enforcement of the judgment or other final court decision, the judge shall have the right to hear statements, to summon for questioning persons who confirm or deny the circumstances indicated in the application and to request the documents and material evidence required to verify the grounds for the application.

520.5. Except in cases where the participation of defence counsel is compulsory, the absence of the persons referred to in Article 520.2 of this Code, if they were informed in time of the time and place of the examination of the application relating to enforcement of the judgment or other final court decision, shall not impede the conduct of the court hearing.

520.6. A court hearing relating to enforcement of a judgment or other final court decision shall be conducted in the following order:

520.6.1. the judge shall open the court hearing, announce the application to be examined, verify the authority of the participants and explain their rights and duties to them;

520.6.2. the applicant or his representative shall verbally state the reasons for the application and answer the questions put by the judge and any other participants;

520.6.3. if persons whose interests are affected by the application, their defence counsel and their representatives are participating in the court hearing, they shall be given the opportunity to provide explanations and express objections;

520.6.4. participants in the court hearing shall address the hearing on the matter under examination, and the judge shall give them the opportunity to take part in the examination of the evidence submitted;

520.6.5. in his final statement the prosecutor shall propose that the court allow or dismiss the application;

520.6.6. the judge shall decide whether to allow or dismiss the application in accordance with the requirements of this Code and the criminal and other legislation of the Azerbaijan Republic and shall announce his decision to the participants.

**Article 521. Enforcement of judgments or other final decisions given by the courts of foreign states**

The courts of the Azerbaijan Republic shall examine the enforcement of judgments or other final decisions given by the courts of foreign states in accordance with the provisions of this Code, of the criminal and other legislation of the Azerbaijan Republic and of the international agreements to which the Azerbaijan Republic is a party.