Code of Criminal Procedure

Passed 12 February 2003,

(RT[1] I 2003, 27, 166; consolidated text RT I 2004, 65, 456),

entered into force 1 July 2004,

amended by the following Acts:

28.06.2004 entered into force 01.03.2005 - RT I 2004, 56, 403;
28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387;
19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329;
17.12.2003 entered into force 01.07.2004 - RT I 2003, 83, 558;
17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 590.

Chapter 1

General Provisions

§ 1. Scope of application of Code

This Code provides the rules for the pre-trial procedure and court procedure for criminal offences and the procedure for enforcement of the decisions made in criminal matters.

§ 2. Sources of criminal procedural law

The sources of criminal procedural law are:

1) the Constitution of the Republic of Estonia;

2) the generally recognised principles and provisions of international law, and international agreements binding on Estonia;

3) this Code and other legislation which provides for criminal procedure;

4) decisions of the Supreme Court in issues which are not regulated by other sources of criminal procedural law but which arise in the application of law.

§ 3. Territorial and temporal applicability of criminal procedural law

(1) Criminal procedural law applies in the territory of the Republic Estonia unless otherwise provided by an international agreement.

(2) In criminal proceedings, the criminal procedural law in force at the time of performance of a procedural act shall be applied.

(3) The requirements for using the evidence collected abroad in criminal proceedings in Estonia are provided for in § 65 of this Code.

§ 4. Applicability of criminal procedural law by reason of person concerned

Criminal procedural law applies equally to all persons with the following exceptions:

1) the specifications concerning preparation of a statement of charges and the performance of certain procedural acts with regard to members of the Riigikogu[1], the President of the Republic, members of the Government of the Republic, the Auditor General, the Chancellor of Justice and the Chief Justice and justices of the Supreme Court are provided for in Chapter 14 of this Code;

2) Estonian criminal procedural law may be applied to a person enjoying diplomatic immunity or other privileges prescribed by an international agreement at the request of a foreign state, taking into account the specifications provided for in an international agreement.

§ 5. Principle of state jurisdiction

Criminal proceedings shall be commenced and conducted on behalf of the Republic of Estonia.

§ 6. Principle of mandatory criminal proceedings

Investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence unless the circumstances provided for in § 199 of this Code which preclude criminal procedure or the grounds to terminate criminal proceedings for reasons of expediency pursuant to § 202, 203 or 205 of this Code exist.

§ 7. Presumption of innocence

(1) No one shall be presumed guilty of a criminal offence before a judgment of conviction has entered into force with regard to him or her.

(2) No one is required to prove his or her innocence in a criminal proceeding.

(3) A suspicion of guilt regarding a suspect or accused which has not been eliminated in a criminal proceeding shall be interpreted to the benefit of the suspect or accused.

§ 8. Safeguarding of rights of participants in proceedings

(1) Investigative bodies, Prosecutors' Offices and courts shall:

1) in the performance of a procedural act in the cases provided by law, explain the objective of the act and the rights and obligations of the participants in the proceeding to the participants;

2) provide the suspect and the accused with a real opportunity to defend themselves;

3) ensure the assistance of a counsel to the suspect and the accused in the cases provided for in subsection 45 (2) of this Code or if such assistance is requested by the suspect or the accused;

4) in cases of urgency, provide an arrested suspect or accused with other legal assistance at his or her request;

5) deposit the unsupervised property of an arrested suspect or accused with the person or local government specified by him or her;

6) ensure that the minor children of an arrested person be supervised and the persons close to him or her who need assistance be cared for.

§ 9. Safeguarding of personal liberty and respect for human dignity

(1) A suspect may be detained for up to forty-eight hours without an arrest warrant issued by a court.

(2) A person under arrest shall be immediately notified of the court's decision on arrest in a language and manner which he or she understands.

(3) Investigative bodies, Prosecutors' Offices and courts shall treat the participants in a proceeding without defamation or degradation of their dignity. No one shall be subjected to torture or other cruel or inhuman treatment.

(4) In a criminal proceeding, it is permitted to interfere with the private and family life of a person only in the cases and pursuant to the procedure provided for in this Code in order to prevent a criminal offence, apprehend a criminal offender, ascertain the truth in a criminal matter or secure the execution of a court judgment.

§ 10. Language of criminal proceedings

(1) The language of criminal proceedings is Estonian. With the consent of the body conducting a criminal proceeding, the participants in the proceeding and the parties to the court proceeding, the criminal proceeding may be conducted in another language if the body, participants and parties are proficient in such language.

(2) The assistance of a translator or interpreter shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian.

(3) All documents which are requested to be included in a criminal file shall be in Estonian or translated into Estonian.

(4) A text in a language other than Estonian may be entered in the minutes of a court session at the request of a party to a court proceeding. In such case, a translation of the text into Estonian shall be annexed to the minutes.

(5) If the accused is not proficient in Estonian, the text of the statement of charges translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

§ 11. Public access to court sessions

(1) Every person has the opportunity to observe and record court sessions pursuant to the procedure provided for in § 13 of this Code.

(2) The principle of public access applies to the pronouncement of court decisions without restrictions unless the interests of a minor, spouse or victim require pronouncement of a court decision in a court session held *in camera*.

(3) The principle of public access applies as of the opening of a court session until pronouncement of the court decision, taking into account the restrictions provided for in §§ 12 and 13 of this Code.

(4) A court may remove a minor from a public court session if this is necessary for the protection of the interests of the minor.

§ 12. Restrictions on public access to court sessions

(1) A court may declare that a session or a part thereof be held *in camera*:

1) in order to protect a state or business secret;

2) in order to protect morals or the private and family life of a person;

3) in the interests of a minor;

4) in the interests of justice, including in cases where public access to the court session may endanger the security of the court, a party to the court proceeding or a witness.

(2) A court shall adjudicate restrictions on public access to a court session on the grounds provided for in subsection (1) of this section by a ruling made on its own initiative or at the request of a party to the court proceeding.

(3) With the permission of the court, an official of an investigative body, a court official, witness, expert, interpreter, translator or a person close to the accused within the meaning of subsection 71 (1) of this Code may observe a court session held *in camera*.

(4) If a court session is held *in camera*, the court shall warn the parties to the court proceeding and other persons present in the courtroom that disclosure of the information relating to the proceeding is prohibited.

§ 13. Restrictions on recording of court sessions

(1) As of the opening of a court session until the pronouncement of the court decision, the persons present in the courtroom may:

1) take written notes;

2) make audio-recordings if this does not interfere with the court session.

(2) Other means for recording a court session may be used only with the permission of the court.

(3) If a court session is held *in camera*, the court may decide that written notes only may be taken.

§ 14. Adversarial court procedure

(1) In a court proceeding, the functions of accusation, defence and adjudication of the criminal matter shall be performed by different persons subject to the proceeding.

(2) Withdrawal of the charges pursuant to the procedure provided for in § 301 of this Code releases the court from the obligation to continue the proceedings. Withdrawal of the charges is a basis for a judgment of acquittal.

§ 15. Direct and oral court hearing

(1) A decision of a county or city court may be based only on evidence which has been orally presented and directly examined in the court hearing and recorded in the minutes.

(2) A decision of a circuit court may be based on:

1) evidence which has been orally presented and directly examined in a court hearing by the circuit court and recorded in the minutes;

2) evidence which has been directly examined in a county or city court and presented in appeal proceedings.

(3) A court decision shall not be based solely on the testimony of a witness declared anonymous pursuant to § 67 of this Code.

Chapter 2

Persons Subject to Criminal Proceeding

§ 16. Bodies conducting proceedings and participants in proceedings

(1) Proceedings shall be conducted by courts, Prosecutors' Offices and investigative bodies.

(2) The suspect or accused, his or her counsel, the victim and the civil defendant are the participants in a proceeding.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 17. Parties to court proceedings

(1) A Prosecutor's Office, the accused, his or her counsel, the victim and the civil defendant are the parties to a court proceeding.

(2) The parties to a court proceeding have all the rights of participants in the proceedings provided by this Code.

Division 1

Court

§ 18. Panels of county and city courts

(1) In county and city courts, criminal matters concerning criminal offences in the first degree shall be heard by a court panel consisting of the presiding judge and two lay judges. Lay judges have all the rights of a judge in a court hearing.

(2) Matters concerning criminal offences in the second degree and criminal matters in which simplified proceedings are applied shall be heard by a judge sitting alone.

(3) Criminal matters relating to criminal organisations shall be heard by a panel of three judges.

(4) If the court hearing of a criminal matter is time-consuming, a reserve judge or reserve lay judge may, by a court ruling, be involved in a court session who is required to be present in the courtroom during the court hearing. If a judge or lay judge cannot continue as a member of a court panel, he or she shall be replaced by a reserve judge or reserve lay judge.

(5) Pre-trial proceedings shall be conducted by a judge sitting alone.

(6) The composition of a court panel adjudicating a criminal matter by way of international co-operation is provided for in Chapter 19.

§ 19. Panels of circuit court

(1) In circuit courts, criminal matters shall be heard by a court panel consisting of at least three circuit court judges. Pre-trial proceedings in criminal matters shall be conducted by a circuit court judge sitting alone.

(2) The chairman of a circuit court may involve a judge of a county or city court of the same circuit in the panel of the circuit court with the consent of the judge.

§ 20. Panels of Supreme Court

(1) In the Supreme Court, criminal matters shall be heard by a court panel consisting of at least three justices of the Supreme Court.

(2) The Chief Justice of the Supreme Court may involve a circuit court judge in a panel of the Supreme Court with the consent of the judge.

§ 21. Preliminary investigation judge

A preliminary investigation judge is a county or city court judge who, sitting alone, shall perform the duties assigned to him or her by this Code in pre-trial proceedings.

§ 22. Judge in charge of execution of court judgments

A judge in charge of the execution of court judgments is a county or city court judge who, sitting alone, shall perform the duties assigned to him or her by this Code in the execution of decisions.

§ 23. Voting in collegial court panel and dissenting opinion of judge

(1) A collegial court panel shall adjudicate the issues relating to a criminal matter by voting.

(2) In county and city courts, the presiding judge shall be the last to present his or her opinion.

(3) In circuit courts and the Supreme Court, the judge who prepares a matter for court proceedings shall be the first to present his or her opinion unless he or she is the presiding judge. Voting is continued according to seniority in office, starting with the most junior judge. The presiding judge shall be the last to vote.

(4) Upon an equal division of votes, the vote of the presiding judge governs.

(5) A member of a court panel has no right to abstain from voting or remain undecided. In the event of voting on a series of issues, a member of the court panel who has maintained a minority position does not have the right to abstain from voting on a subsequent issue.

(6) A judge who maintains a minority position in voting shall annex his or her dissenting opinion to the court judgment. The dissenting opinions annexed to the judgments of the Supreme Court shall be published in the *Riigi Teataja* together with the judgments.

§ 24. General jurisdiction in hearing of criminal matters in county and city courts

(1) A criminal matter shall be heard by the county or city court in whose territorial jurisdiction the criminal offence was committed.

(2) As an exception, a criminal matter may be heard according to the location of occurrence of the consequences contained in the statutory definition of the criminal offence or the location of the majority of the accused persons or victims or witnesses.

Exceptional transfer of a criminal matter within the territorial jurisdiction of one circuit court shall be decided by the chairman of the circuit court; in other cases, the transfer shall be decided by the Chief Justice of the Supreme Court.

(3) If the place of commission of a criminal offence cannot be ascertained, the criminal matter shall be heard by the court in whose territorial jurisdiction the pre-trial proceedings are completed.

(4) A preliminary investigation judge of a county or city court, in whose territorial jurisdiction the criminal offence was committed shall perform the duties of a preliminary investigation judge. Where it is not possible to clearly determine the place of commission of the criminal offence, a preliminary investigation judge of a county or city court of the place of performance of the procedural act shall perform the duties of a preliminary investigation judge. Permission for surveillance activities is granted by the Chairman of Tallinn City Court or a judge designated by him or her acting as a preliminary investigation judge.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) The jurisdiction of criminal matters heard by way of international co-operation is provided for in Chapter 19.

§ 25. Exclusive jurisdiction in hearing of criminal matters in county and city courts

(1) A criminal matter concerning a criminal offence committed by means of printed matter shall be heard by the court of the place of publication of the printed matter unless the victim requests that the criminal matter be heard by the court of his or her residence or the court in whose territorial jurisdiction the printed matter has been disseminated.

(2) If a criminal offence is committed abroad, the criminal matter shall be heard by the court of the residence of the suspect or accused in Estonia. If the suspect or accused does not have a residence in Estonia, the criminal matter shall be heard by Tallinn City Court.

§ 26. Jurisdiction over joined criminal matter

If several courts are competent to hear a joined criminal matter, the matter shall be heard by one of such courts. The Prosecutor's Office which sends the statement of charges to the court shall decide on the jurisdiction pursuant to the interests of justice.

§ 27. Jurisdiction over criminal matters concerning judges

A criminal matter in which a judge is the accused or the victim and which according to general jurisdiction is to be heard by a court within the territorial jurisdiction of the circuit court of the place of employment of the judge shall be referred for hearing by the nearest court within the territorial jurisdiction of another circuit court.

§ 28. Verification of jurisdiction and resolution of jurisdictional disputes

(1) A court shall verify the jurisdiction over a criminal matter during preparation for the court hearing and, in the event of contestation of the jurisdiction, make a ruling on referral of the criminal matter to the court with appropriate jurisdiction.

(2) Before a criminal matter is referred to a court with appropriate jurisdiction, only urgent procedural acts shall be performed.

(3) If a court contests the jurisdiction over a criminal matter received from another court, the jurisdiction shall be determined by the Chief Justice of the Supreme Court.

§ 29. Procedural assistance between courts

A court may request procedural assistance from another court if performance of a procedural act in such other court would facilitate the hearing of a criminal matter, save the time of the participants in the proceedings and the court and reduce procedural expenses. A court from whom assistance is requested shall not refuse assistance unless otherwise provided by law.

Division 2

Prosecutor's Office

§ 30. Prosecutor's Office in criminal procedure

(1) A Prosecutor's Office shall direct pre-trial proceedings and ensure the legality and efficiency thereof and represent public prosecution in court.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) The authority of a Prosecutor's Office in criminal proceedings shall be exercised independently by the prosecutor in the name of the Prosecutor's Office and the prosecutor is governed only by law.

Division 3

Investigative Bodies

§ 31. Definition of investigative body

(1) The Police Board, Central Criminal Police, Security Police Board, Tax and Customs Board, Border Guard Administration, Competition Board and the Headquarters of the Defence Forces are investigative bodies within the limits of their competence. The aforementioned bodies shall perform the functions of an investigative body directly, through the bodies administrated by them or through their regional offices.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 590)

(2) In addition to the investigative bodies listed in subsection (1) of this section, urgent procedural acts are also performed by the Environmental Inspectorate, Rescue Board,

Technical Inspectorate, Labour Inspectorate, the captains of sea-going vessels and aircraft during voyages and the Prisons Department of the Ministry of Justice and prisons.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) Detention of a suspect, inspection, search, interrogation of a suspect, hearing of a witness or victim are urgent procedural acts.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The bodies listed in subsection (2) of this section are required to submit the materials of a criminal matter immediately to a competent body specified in subsection (1) of this section in accordance with investigative jurisdiction.

(5) A list of the positions where the officials have the right to participate in criminal proceedings within the limits of competence of an investigative body shall be approved by the heads of the bodies specified in subsections (1) and (2) of this section.

§ 32. Investigative bodies in criminal procedure

(1) An investigative body shall perform the procedural acts provided for in this Code independently unless the permission of a court or the permission or order of a Prosecutor's Office is necessary for the performance of the act.

(2) An investigative body has the right to demand submission of a document necessary for the adjudication of a criminal matter.

Division 4

Suspect and Accused

§ 33. Suspect

(1) A suspect is a person who has been detained on suspicion of a criminal offence, or a person whom there is sufficient ground to suspect of the commission of a criminal offence and who is subject to a procedural act.

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be postponed if immediate interrogation is not possible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel, translator or interpreter.

§ 34. Rights and obligations of suspects

(1) A suspect has the right to:

1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion;

2) know that his or her testimony may be used in order to bring charges against him or her;

3) the assistance of a counsel;

4) confer with the counsel without the presence of other persons;

5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;

6) participate in the hearing of an application for an arrest warrant in court;

7) submit evidence;

8) submit requests and complaints;

9) examine the report of procedural acts and give statements on the conditions, course, results and report of the procedural acts, whereas record shall be made of such statements;

10) give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings.

(2) A conference specified in clause (1) 4) of this section may be interrupted for the performance of a procedural act if the conference has lasted for more than one hour.

(3) A suspect is required to:

1) appear when summoned by an investigative body, Prosecutor's Office or court;

2) participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

§ 35. Accused

(1) The accused is a person with regard to whom a Prosecutor's Office has prepared a statement of charges pursuant to § 226 of this Code or a person with whom an agreement has been entered into in settlement proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) The accused has the rights and obligations of a suspect. The accused has the right to examine the criminal file through his or her counsel and participate in the court hearing.

(3) The accused with regard to whom a judgment of conviction has entered into force is a convicted offender.

(4) The accused with regard to whom a judgment of acquittal has entered into force is an acquitted person.

§ 36. Participation of suspect or accused who is legal person in criminal proceedings

A suspect or accused who is a legal person shall participate in the criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights of a suspect or accused, including the right to give testimony in the name of the legal person.

Division 5

Victim and Civil Defendant

§ 37. Victim

(1) A victim is a natural or legal person to whom physical, proprietary or moral damage has been directly caused by a criminal offence or by an unlawful act committed by a person not capable of guilt.

(2) A victim who is a legal person shall participate in the criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights of a victim, including the right to give testimony in the name of the legal person.

(3) The provisions applicable to witnesses apply to victims in the performance of procedural acts unless otherwise prescribed by this Code.

§ 38. Rights and obligations of victims

(1) A victim has the right to:

1) contest a refusal to commence or termination of criminal proceedings pursuant to the procedure provided for in §§ 207 and 208 of this Code;

2) file a civil action before termination of examination by court in the county or city court;

3) give or refuse to give testimony on the bases provided for in §§ 71-73 of this Code;

4) submit evidence;

5) submit requests and complaints;

6) examine the report of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas record shall be made of such statements;

7) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;

8) participate in the court hearing;

9) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the charges and punishment and the damage set out in the charges and the civil action.

(2) A victim is required to:

1) appear when summoned by an investigative body, Prosecutor's Office or court;

2) participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

(3) The filing of a civil action for compensation for proprietary damage in a criminal proceeding is exempt from state fees.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 39. Civil defendant

(1) A person bearing proprietary liability pursuant to law for damage which has been caused directly by a criminal offence or which a person not capable of guilt has caused by an unlawful act shall be declared a civil defendant by an order or ruling of the body conducting the proceedings.

(2) A civil defendant who is a legal person shall participate in a criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights of a defendant.

§ 40. Rights and obligations of civil defendants

(1) A civil defendant has the right to:

1) contest a civil action or file a counterclaim;

2) submit evidence;

3) submit requests and complaints;

4) examine the report of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas record shall be made of such statements;

5) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;

6) participate in the court hearing;

7) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the damage set out in the charges and the civil action.

(2) A civil defendant is required to:

1) appear when summoned by an investigative body, Prosecutor's Office or court;

2) participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

§ 41. Representative of victim and representative of civil defendant

(1) A victim or civil defendant who is a natural person may participate in the criminal proceeding personally or through a representative. Personal participation in a criminal proceeding does not deprive the person of the right to have a representative.

(2) A victim or civil defendant who is a legal person may have a contractual representative in a criminal proceeding in addition to the legal representatives specified in subsections 37 (2) and 39 (2) of this Code.

(3) In criminal proceedings, state legal aid shall be provided to victims and defendants on the bases and pursuant to the procedure prescribed in the State Legal Aid Act. If a court finds that the essential interests of a victim or defendant may be insufficiently protected without an advocate, the court may decide to grant state legal aid to the person on its own initiative and on the bases and pursuant to the procedure prescribed in the State Legal Aid Act.

(28.06.2004 entered into force 01.03.2005 - RT I 2004, 56, 403)

(4) A victim or civil defendant may have up to three representatives. A representative may have several principals if the interests of the principals are not in conflict. An advocate or another person who has completed the national curriculum of academic legal studies may be a contractual representative in court proceedings.

(28.06.2004 entered into force 01.03.2005 - RT I 2004, 56, 403)

(5) A representative has all the rights of the principal. A representative of a natural person or the contractual representative of a legal person does not have the right to give testimony in the name of the principal.

Division 6

Counsel

§ 42. Counsel

(1) In a criminal proceeding, the counsel is:

1) an advocate or, with the permission of the body conducting the proceedings, any other person who has completed the national curriculum of academic legal studies and whose competence in the criminal proceeding is based on an agreement with the person being defended (contractual counsel), or

(28.06.2004 entered into force 01.03.2005 - RT I 2004, 56, 403)

2) an advocate whose competence in the criminal proceeding is based on an appointment by the body conducting the proceedings, Prosecutor's Office or court (appointed counsel).

(2) In a court proceeding, a person being defended may, upon agreement, have up to three counsels.

(3) A counsel may defend several persons if the interests of the persons are not in conflict.

§ 43. Choice and appointment of counsel

(1) In a criminal proceeding, a suspect and the accused may choose a counsel personally or through another person.

(2) A counsel shall be appointed by an investigative body, Prosecutor's Office or court, if:

1) a suspect or the accused has not chosen a counsel but has requested the appointment of a counsel;

2) a suspect or the accused has not requested a counsel but the participation of a counsel is mandatory according to § 45 of this Code;

3) a counsel chosen by a person cannot assume the duties of defence within twelve hours as of the detention of the person as a suspect or, in other cases, within twenty-four hours as of entry into an agreement to defend the suspect or accused or summoning to the body conducting the proceedings and the counsel has not appointed a substitute counsel for himself or herself.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 44. Substitute counsel

(1) A counsel may appoint a substitute counsel to participate in a criminal proceeding instead of the counsel during the time the counsel is prevented from participating in the criminal proceeding.

(2) A substitute counsel has the rights and obligations of a counsel.

§ 45. Participation of counsel in criminal proceedings

(1) A counsel may participate in a criminal proceeding as of the moment when a person acquires the status of a suspect in the proceedings.

(2) The participation of a counsel throughout a criminal proceeding is mandatory if:

1) at the time of commission of the criminal offence, the person being defended was a minor;

2) due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability;

3) the person is suspected or accused of a criminal offence for which life imprisonment may be imposed;

4) the interests of the person are in conflict with the interests of another person who has a counsel;

5) the person has been under arrest for at least six months.

(3) The participation of a counsel in a pre-trial proceeding is mandatory as of presentation of the criminal file for examination pursuant to the procedure provided for in subsection 223 (3) of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The participation of a counsel in a court proceeding is mandatory.

(5) An appointed counsel is required to participate in a criminal proceeding until the end of the review of the criminal matter by way of cassation procedure and he or she may refuse to assume the duties of defence on own initiative or relinquish the duties of defence assumed by him or her on own initiative only on the grounds provided in subsection 46 (1) of this Code.

(6) The performance of duties of defence by a contractual counsel in pre-trial proceedings includes participating in the completion of pre-trial proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(7) The performance of duties of defence by a contractual counsel in a county or city court includes drawing up an appeal against the decision or ruling of the county or city court, if the person being defended so wishes.

(8) The performance of duties of defence by a contractual counsel in a circuit court includes drawing up an appeal in cassation or appeal against the decision of the circuit court, if the person being defended so wishes.

(9) A contractual counsel may refuse to assume the duties of defence on own initiative or relinquish the duties of defence assumed by him or her on own initiative only on the grounds provided in subsection 46 (1) of this Code.

§ 46. Refusal to assume duties of defence and relinquishing of assumed duties of defence

(1) A counsel may, on his or her own initiative and with the consent of the management of the law office, refuse to assume the duties of defence or relinquish the duties of defence assumed by him or her, if:

1) the counsel has been exempted from the obligation to maintain a professional secret pursuant to the procedure provided for in subsection 45 (5) of the Bar Association Act (RT I 2001, 36, 201; 102, 676; 2002, 57, 357; 2003, 4, 22) or if the suspect or accused has requested the performance of an act which is in violation of the law or the requirements for professional ethics;

2) performance of the duties of defence by this counsel would be in violation of the right of defence;

3) the person being defended violates any of the essential conditions of the client contract.

(2) A body conducting proceedings shall be immediately notified of any refusal to assume the duties of defence or relinquishing of assumed duties of defence.

(3) A refusal to assume the duties of defence or relinquishing of assumed duties of defence has legal effect as of the moment when a new counsel assumes the duties of defence.

(4) If a counsel has refused to assume the duties of defence or has relinquished the duties of defence previously assumed by him or her, the new counsel who assumed the duties of defence thereafter may request that any investigative activities requiring the participation of the person being defended and the counsel be postponed by three days in order to be able to examine materials concerning the criminal matter.

§ 47. Rights and obligations of counsel

(1) A counsel has the right to:

1) receive from natural and legal persons documents necessary for the provision of legal assistance to the person being defended;

2) submit evidence;

3) submit requests and complaints;

4) examine the report of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas record shall be made of such statements;

5) with the knowledge of the body conducting the proceedings, use technical equipment in the performance of the duties of defence if this does not obstruct the performance of procedural acts;

6) participate in the investigative activities carried out in the presence of the person being defended during the pre-trial proceeding, and pose questions through the body conducting the proceedings;

7) after he or she has been involved in a criminal proceeding, examine the record of interrogation of the person being defended and the record of detention of the suspect and, upon the completion of pre-trial investigation, all materials in the criminal file;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

8) confer with the person being defended without the presence of other persons for an unlimited number of times with unlimited duration unless a different duration of the conference is provided for in this Code.

(2) A counsel is required to use all the means and methods of defence which are not prohibited by law in order to ascertain the facts which vindicate the person being defended, prove his or her innocence or mitigate his or her punishment, and to provide other legal assistance necessary in a criminal matter to the person being defended.

§ 48. Waiver of counsel

A suspect and accused may waive counsel in writing during pre-trial proceedings unless participation of a counsel is mandatory.

Division 7

Circumstances Precluding Participation in Proceedings

§ 49. Bases for judge to remove himself or herself

(1) A judge is required to remove himself or herself from a criminal proceeding if he or she:

1) has previously made the decision in the same criminal matter;

2) has made a court ruling specified in §§ 132, 134, 135 or 137 of this Code as a preliminary investigation judge in the same criminal matter, except in the hearing of the criminal matter in settlement and summary proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) has previously been subject to criminal proceedings on another basis in the same criminal matter;

4) is or has been a person close to the accused, victim or civil defendant pursuant to subsection 71 (1) of this Code;

5) cannot remain impartial for any other reason.

(2) The participation of a judge in the Criminal Chamber of the Supreme Court does not constitute a basis for the judge to remove himself or herself from further hearing of the same criminal matter by the Supreme Court.

(3) Adjudication of an appeal against a ruling of a preliminary investigation judge or an order of a Prosecutor's Office does not constitute a basis for a judge to remove himself or herself.

(4) Persons who are or have been close to each other pursuant to subsection 71 (1) of this Code shall not be members of the same court panel.

(5) The removal of a judge by himself or herself shall be formalised by a reasoned petition for removal which shall be included in the criminal file.

§ 50. Removal of judge

(1) If a judge does not remove himself or herself on a basis provided for in § 49 of this Code, a party to the court proceeding may submit a petition of challenge against the judge.

(2) Petitions of challenge shall be submitted at the opening of a court session. If the basis for a judge to remove himself or herself becomes evident later and the court is immediately notified thereof, petitions of challenge may be submitted before the final rebuttal of the accused.

(3) In the event of submission of a petition challenge, the judge may perform only urgent procedural acts before the adjudication of the petition.

(4) Before the adjudication of a petition of challenge, the court shall hear the explanation of the judge to be removed and the opinions of the parties.

(5) Petitions of challenge shall be adjudicated by a ruling made in chambers. A petition of challenge regarding a judge shall be adjudicated by the rest of the panel of the court in the absence of the judge to be removed. In the event of an equal division of votes, the judge is removed. A petition of challenge against several judges or the full panel of the court shall be adjudicated by the same panel of the court by a simple majority.

(6) If a criminal matter is heard by a judge sitting alone, the judge shall adjudicate petitions of challenge himself or herself.

(7) An appeal against a decision may contain a reference to the basis for the removal of a judge if the petition of challenge was submitted with the lower court on time but was dismissed or if the basis for removal becomes evident after the adjudication of the criminal matter.

§ 51. Replacement of removed judge

If a judge who has removed himself or herself or who has been removed cannot be replaced in the same court, the chairman of the circuit court shall refer the criminal matter for hearing by another county or city court within the territorial jurisdiction of the circuit court. Referral of a criminal matter for hearing by a county or city court within the territorial jurisdiction of another circuit court shall be decided by the Chief Justice of the Supreme Court.

§ 52. Bases for prosecutor to remove himself or herself

(1) A prosecutor is required to remove himself or herself from a criminal proceeding on the bases provided for in clauses 49 (1) 3)–5) of this Code.

(2) The fact that a prosecutor has previously participated in the same criminal proceeding as the prosecutor does not constitute a basis for his or her removal.

§ 53. Removal of prosecutor

(1) If a prosecutor does not remove himself or herself on a basis provided for in clauses 49 (1) 3)-5) of this Code, the suspect, accused, victim, civil defendant or counsel may submit a petition of challenge against the prosecutor.

(2) A petition of challenge submitted against a prosecutor in a pre-trial proceeding shall be adjudicated by an order of the Public Prosecutor's Office within five days as of the submission of the petition.

(3) Petitions of challenge filed in a court proceeding shall be adjudicated by the court.

§ 54. Bases for counsel to remove himself or herself

A person shall not act as counsel if he or she:

1) is or has been subject to criminal proceedings on another basis in the same criminal matter;

2) in the same or related criminal matter, has previously defended or represented another person whose interests are in conflict with the interests of the person to be defended.

§ 55. Bases for removal of counsel

(1) If a counsel does not remove himself or herself on a basis provided for in § 54 of this Code, the court shall remove the counsel by a ruling on its own initiative or at the request of a party to the court proceeding.

(2) The court shall remove a counsel if it becomes evident in a proceeding for removal provided for in §§ 56 and 57 of this Code that the counsel has abused his or her status in the proceedings by communicating with the person being defended, after the person has

been detained as a suspect or arrested, in a manner which may promote the commission of another criminal offence or violation of the internal procedure rules of the custodial institution.

§ 56. Request for initiation of proceedings for removal of counsel

(1) A proceeding for the removal of a counsel shall be conducted:

1) in a pre-trial proceeding, by the preliminary investigation judge;

2) in a county or city court, by the judge sitting alone or one of the judges of the panel of the court;

3) in a circuit court or the Supreme Court, by one of the judges of the panel of the court.

(2) Submission of a request for initiation of a proceeding for the removal of a counsel shall not hinder the pre-trial proceeding.

(3) If a request for initiation of a proceeding for the removal of a counsel is submitted in a court proceeding, the court session shall be adjourned for up to one month.

(4) On the first working day following the date of receipt of a request for initiation of a proceeding for the removal of a counsel, the judge shall schedule the time for a court session for the conduct of the proceeding and notify the Prosecutor's Office which submitted the request, the counsel to be removed, the person being defended by the counsel and, if the counsel to be removed is a member of the Bar Association, the leadership of the Bar Association of the scheduled time.

§ 57. Proceeding for removal of counsel

(1) A proceeding for the removal of a counsel shall be conducted within five days as of the receipt of the request for the initiation of the proceeding.

(2) If the person who submitted a request fails to appear in a court session where a proceeding for the removal of a counsel is to be conducted, the counsel shall not be removed.

(3) If a counsel fails to appear, with good reason as referred to in § 170 of this Code, in a court session where a proceeding for the removal of the counsel is to be conducted, the proceeding shall be adjourned for up to three days.

(4) If a counsel who has received a summons fails, without good reason, to appear in a court session where a proceeding for the removal of the counsel is conducted or if the reason for his or her failure to appear is unknown or if he or she fails to appear in a court session which has been adjourned, the proceeding for the removal of the counsel shall be conducted in his or her absence.

(5) In a proceeding for the removal of a counsel, the court shall hear the person who submitted the request for the removal, and the counsel, and the person and counsel may submit evidence and pose questions to each other with the permission of the court.

(6) The decision made in a proceeding for removal shall be formalised by a court ruling.

(7) A counsel who has been removed pursuant to the procedure provided for in this section and § 55 has the right to re-enter the criminal proceeding after the basis for removal provided for in subsection 55 (2) of this Code has ceased to exist.

§ 58. Replacement of removed counsel

If a counsel removes himself or herself or is removed on a basis provided for in § 55 of this Code, the person being defended may choose a new counsel within the term granted by the court or, in the cases provided for in § 43 or 45 of this Code, a new counsel is appointed for him or her.

§ 59. Removal of other persons participating in proceeding

(1) An official of an investigative body who is conducting proceedings in a criminal matter is required to remove himself or herself on the bases provided for in clauses 49 (1) 3)-5) of this Code.

(2) A specialist is required to remove himself or herself on the bases provided for in clauses 49 (1) 3)–5) of this Code. Prior participation of a specialist as an expert or specialist does not constitute a basis for removal.

(3) An expert, the clerk of a court session and translator or interpreter are required to remove themselves or they shall be removed on the bases and pursuant to the procedure provided by §§ 96, 97, 157 and 162 of this Code.

(4) The representative of a victim or civil defendant is required to remove himself or herself on the bases provided by § 54 of this Code.

(5) Petitions of challenge submitted in a pre-trial proceeding shall be adjudicated by an order of the Prosecutor's Office within three days as of the submission of the petition.

(6) Petitions of challenge filed in a court proceeding shall be adjudicated by the court.

Chapter 3

Proof

Division 1

General Conditions for Proof and Collection of Evidence

§ 60. Proof and matter of common knowledge

(1) In the adjudication of a criminal matter, the court shall rely on facts which it has declared to be proved or a matter of common knowledge.

(2) A fact is deemed to be proved if, as a result of the proof submitted, the court is convinced that the facts relating to the subject of proof exist or do not exist.

(3) A fact concerning which reliable information is available from sources outside the criminal proceeding may be declared a matter of common knowledge by the court.

§ 61. Evaluation of evidence

(1) No evidence has predetermined weight.

(2) A court shall evaluate all evidence in the aggregate according to the conscience of the judges.

§ 62. Subject of proof

The facts relating to a subject of proof are:

1) the time, place and manner of commission of the criminal offence, and other facts relating to the criminal offence;

2) the necessary elements of the criminal offence;

3) the guilt of the person who committed the criminal offence;

4) information describing the person who committed the criminal offence, and other circumstances affecting the liability of the person.

§ 63. Evidence

(1) "Evidence" means the statements of a suspect, accused or victim, the testimony of a witness, an expert's opinion, the statements given by an expert upon provision of explanations concerning the expert's report, physical evidence, the reports on investigative activities, minutes of court sessions and the reports on surveillance activities, and any other documents, photographs, films or other data recordings.

(2) Evidence not listed in subsection (1) of this section may also be used in order to prove the facts relating to a criminal proceeding.

§ 64. General conditions for collection of evidence

(1) Evidence shall be collected in a manner which is not prejudicial to the honour and dignity of the persons participating in the collection of the evidence, does not endanger their life or health or cause unjustified proprietary damage. Evidence shall not be collected by torturing a person or using violence against him or her in any other manner, or by means affecting a person's memory capacity or degrading his or her human dignity.

(2) If it is necessary to undress a person in the course of a search, physical examination or taking of comparative material, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists, shall be of the same sex as the person.

(3) If technical equipment is used in the course of collection of evidence, the participants in the procedural act shall be notified thereof in advance and the objective of using the technical equipment shall be explained to them.

(4) Investigative bodies and Prosecutors' Offices may involve impartial specialists in the collection of evidence and the specialists may be heard as witnesses.

(5) If necessary, participants in a procedural act shall be warned that pursuant to § 214 of this Code disclosure of information relating to pre-trial proceedings is prohibited.

(6) The general conditions for the collection of evidence by surveillance activities are listed in §§ 110–112 of this Code.

§ 65. Evidence obtained from foreign states

Evidence collected in a foreign state pursuant to the legislation of such state may be used in a criminal proceeding conducted in Estonia unless the procedural acts performed in order to obtain the evidence are in conflict with the principles of Estonian criminal procedure.

Division 2

Hearing of Witnesses

§ 66. Witness

(1) A witness is a natural person who may know facts relating to a subject of proof.

(2) A suspect or accused or the official of the investigative body, the prosecutor or the judge conducting the proceedings in the criminal matter shall not participate in the same criminal matter as witnesses.

(3) A witness shall give truthful testimony unless there are lawful grounds specified in §§ 71–73 of this Code for refusal to give testimony.

§ 67. Ensuring safety of witnesses

(1) Taking into account the gravity of a criminal offence or the exceptional circumstances relating thereto, a preliminary investigation judge may, at the request of the Prosecutor's Office, declare a witness anonymous by a ruling in order to ensure the safety of the witness.

(2) In order to make a ruling on anonymity, the preliminary investigation judge shall question the witness in order to ascertain his or her reliability and the need to ensure his

or her safety, and shall hear the opinion of the prosecutor. If necessary, the preliminary investigation judge shall examine the criminal file.

(3) A fictitious name shall be assigned to an anonymous witness on the basis of the ruling on anonymity and the name shall be used in procedural acts pursuant to subsection 146 (8) of this Code.

(4) Information concerning the name, personal identification code or, in the absence thereof, date of birth, citizenship, education, residence and place of employment or the educational institution of a witness declared anonymous shall be enclosed in an envelope bearing the number of the criminal matter and the signature of the person conducting the proceedings. The envelope shall be sealed and kept separately from the criminal file. The information contained in the envelope shall be examined only by the person conducting the proceedings who shall seal and sign the envelope again after examining the information.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) In a court proceeding, a witness bearing a fictitious name shall be heard by telephone pursuant to the procedure provided for in clause 69 (2) 2) of this Code using voice distortion equipment, if necessary. Questions may be submitted to the witness also in writing.

§ 68. Hearing of witnesses

(1) The rights and obligations of witnesses and the right to write the testimony in hand-writing shall be explained to a witness.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A witness of at least 14 years of age shall be warned against refusal to give testimony without a legal basis and giving knowingly false testimony, and the witness shall sign the minutes of the hearing to that effect. If necessary, it is explained to the witness that intentional silence on the facts known to him or her shall be considered refusal to give testimony.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) While giving testimony, a witness may use notes and other documents concerning numerical data, names and other information which is difficult to memorise.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) A witness may be heard only as regards the facts relating to a subject of proof. It is prohibited to pose leading questions.

(5) The testimony of a witness concerning such facts relating to a subject of proof of which the witness has become aware through another person are evidence only if the direct source of the evidence cannot be heard.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(6) Questions concerning the moral character and habits of a suspect, accused or victim may be posed to a witness only if the act which is the object of the criminal proceeding must be assessed in inseparable connection with his or her previous conduct.

§ 69. Long-distance hearing

(1) A body conducting the proceedings may organise long-distance hearing of a witness if the direct hearing of the witness is complicated or involves excessive costs or if it is necessary to protect the witness or the victim.

(2) For the purposes of this Code, "long-distance hearing" means hearing:

1) by means of a technical solution as a result of which the participants in the proceeding, see and hear the witness giving testimony outside the investigative body, Prosecutor's Office or court directly via live coverage and may question the witness through the person conducting the proceedings;

2) by telephone, as a result of which the participants in the proceeding directly hear the witness giving testimony outside the investigative body or court and may question the witness through the person conducting the proceedings.

(3) Long-distance hearing by telephone is permitted only with the consent of the person to be heard and the suspect or accused. The consent of the suspect or accused is unnecessary for the long-distance hearing of anonymous witnesses by telephone.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The minutes of a long-distance hearing shall contain a notation that the witness has been warned against refusal to give testimony without a legal basis and giving knowingly false testimony.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) The provisions of § 468 apply to the hearing of witnesses staying in a foreign state.

(6) The Minister of Justice may establish more specific requirements for organising long-distance hearing.

§ 70. Specifications concerning hearing of witnesses who are minors

A witness under 14 years of age shall be heard in the presence of a child protection official, social worker or psychologist. The body conducting the proceedings may involve a child protection official, social worker or psychologist in the hearing of a minor over 14 years of age.

§ 71. Refusal to give testimony for personal reasons

(1) The following persons have the right to refuse to give testimony as witnesses:

1) the descendants and ascendants of the suspect or accused;

2) a sister, stepsister, brother or stepbrother of the suspect or accused, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the suspect or accused;

3) a step or foster parent or a step or foster child of the suspect or accused;

4) an adoptive parent or an adopted child of the suspect or accused;

5) the spouse of or a person permanently living together with the suspect or accused, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended.

(2) A witness may refuse to give testimony also if the testimony may lay blame on him or her or a person listed in subsection (1) of this section for the commission of a criminal offence or a misdemeanour.

§ 72. Refusal to give testimony by reason of professional activities

(1) The following persons have the right to refuse to give testimony as witnesses concerning the circumstances which have become known to them in their professional activities:

1) the ministers of religion of the religious organisations registered in Estonia;

2) counsels and notaries unless otherwise provided by law;

3) health care professionals and pharmacists regarding circumstances concerning the descent, artificial insemination, family or health of a person;

4) persons on whom the obligation to maintain a professional secret has been imposed by law.

(2) The professional support staff of the persons specified in clauses (1) 1)–3) of this section also have the right to refuse to give testimony.

(3) The persons specified in subsection (1) of this section and their professional support staff do not have the right to refuse to give testimony if their testimony is requested by the suspect or accused.

(4) If on the basis of a procedural act the court is convinced that the refusal of a person specified in subsection (1) or (2) of this section to give testimony is not related to his or her professional activities, the court may require the person to give testimony.

§ 73. Refusal to give testimony concerning state secrets

(1) A witness has the right to refuse to give testimony concerning circumstances to which the State Secrets Act (RT I 1999, 16, 271; 82, 752; 2001, 7, 17; 93, 565; 100, 643; 2002, 53, 336; 57, 354; 63, 387; 2003, 13, 67; 23, 147) applies.

(2) If a witness refuses to give testimony in order to protect a state secret, the investigative body, Prosecutor's Office or court shall request the agency in possession of the state secret to confirm classification of the facts as state secret.

(3) If an agency in possession of a state secret does not confirm classification of facts as state secret or does not respond to a request specified in subsection (2) of this section within twenty days, the witness is required to give testimony.

§ 74. Minutes of hearing of witness

(1) The following shall be entered in the minutes of the hearing of a witness:

1) the name, personal identification code or, in the absence thereof, date of birth, citizenship, education, residence and the place of work or the name of the educational institution of the witness;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the relationship between the witness and the suspect or accused;

3) the testimony.

(2) In the minutes of an additional or repeated hearing, the personal data of the person being heard or information concerning the relationship between him or her and the suspect or accused shall not be repeated but reference shall be made to the first hearing.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) At the request of a witness, the residence or place of work or the name of the educational institution of the witness shall not be indicated in the minutes of the hearing of the witness. Such data shall be annexed to the minutes of the hearing in a sealed envelope.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) After a witness being heard has spoken in his or her own words, he or she may write the testimony in the minutes of the hearing in hand-writing, and a corresponding notation shall be made in the minutes.

Division 3

Interrogation of Suspect

§ 75. Interrogation of suspect

(1) Upon application of interrogation of a suspect, his or her name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution shall be ascertained.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) At the beginning of interrogation, it shall be explained to the suspect that he or she has the right to refuse to give statements and that the statements given may be used against him or her.

(3) The suspect shall be asked whether he or she committed the criminal offence of which he or she is suspected and a proposal shall be made to the suspect to give statements in his or her own words concerning the facts relating to the criminal offence on which the suspicion is based.

(4) Subsections 68 (3)–(6) of this Code apply to interrogation of suspects.

§ 76. Record of interrogation of suspect

(1) The following shall be entered in a record of interrogation:

1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the suspect;

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2) marital status of the suspect;

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3) the facts relating to the criminal offence of which the person is suspected and the legal assessment of the criminal offence pursuant to the relevant section, subsection or clause of the Penal Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) statements of the suspect.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) The record of interrogation of a suspect shall be prepared pursuant to subsections 74 (2) and (4) of this Code.

Division 4

Confrontation, Comparison of Statements to Circumstances, and Presentation for Identification

§ 77. Confrontation

(1) Persons may be confronted if a contradiction contained in their statements cannot be eliminated otherwise.

(2) In confrontation, the relationship between the persons confronted shall be ascertained and questions concerning the contradicting facts shall be posed to them in alternative order.

(3) In confrontation, the previous statements of a person confronted may be disclosed and other evidence may be submitted.

(4) With the permission of the official of the investigative body, the persons confronted may pose questions to each other through the official concerning the contradictions contained in their statements. If necessary, the official of the investigative body changes the wording of a question posed.

(5) In the course of confrontation, statements are obtained pursuant to subsections 68 (2)–(6) of this Code.

§ 78. Record of confrontation

(1) A record of confrontation shall set out the course and results of the procedural act in the form of questions and answers in the order of the questions posed and answers given.

(2) The correctness of the answers recorded shall be confirmed by the signatures of the persons confronted.

(3) If the answers of the persons confronted coincide, the answers may be recorded as a single answer.

(4) If the previous statements of a person confronted are disclosed or other evidence is submitted, such disclosure or submission shall be evident from the wording of the questions recorded.

§ 79. Comparison of statements to circumstances

(1) Upon comparison of statements to circumstances, a proposal shall be made to a suspect, accused, victim or witness who has been interrogated or heard to explain and specify the facts relating to the criminal act on the scene of the act and compare his or her statements to the circumstances on the scene.

(2) If it is necessary to compare the statements of several persons to circumstances in a pre-trial proceeding, the comparison shall be conducted separately with each person.

(3) In the course of comparison of statements to circumstances, statements are obtained pursuant to subsections 68 (2)–(6) of this Code.

§ 80. Report on comparison of statements to circumstances

A report on comparison of statements to circumstances shall set out:

1) the proposal made to the suspect, accused, victim or witness to explain and specify the facts relating to the subject of proof on the scene of events;

2) the statements given upon comparison of statements to circumstances;

3) the nature and content of the acts performed by the suspect, accused, victim or witness and the name of the place or object the circumstances relating to which are compared to the statements or acts;

4) whether and to which extent the circumstances on the scene of events have been recreated in the course of the procedural act;

5) the location, on the scene of events, of the object the circumstances relating to which are compared to the statements, and information derived from inspection of the object;

6) the names of the objects which are confiscated in order to be used as physical evidence.

§ 81. Presentation for identification

(1) If necessary, the person conducting a proceeding may present a person, thing or other object for identification to a suspect, accused, victim or witness who has been heard or interrogated.

(2) A person, thing or other object shall be presented for identification with at least two other similar objects.

(3) A set of objects shall not be formed if the object presented for identification is:

1) a body;

2) an area, building, room or other object in the case of which presentation of several objects concurrently is not possible;

3) an object the features of which are substantially different from other objects and therefore a set of similar objects cannot be formed.

(4) If necessary, a photograph, film or audio or video recording of a person, thing or other object shall be presented for identification.

(5) Presentation for identification may be repeated if the object was first presented for identification on a photograph, film or video recording or if there is reason to believe that the object was not recognised because it had changed, and it is possible to restore the former appearance of the object.

(6) If a suspect, accused, victim or witness recognises an object which is presented to him or her for identification or confirms the similarity of the object to the object related to the act under investigation, he or she shall be asked to specify the features on the basis of which he or she reached such conclusion and to explain how the object and the act are related. If the suspect, accused, victim or witness denies equivalence or similarity, he or she shall be asked to explain how the object or objects presented to him or her differ from the object related to the act under investigation.

(7) If an object or a set of objects is presented for identification, it shall be photographed or video recorded.

(8) In the course of presentation for identification, statements are obtained pursuant to subsections 68 (2)–(6) of this Code.

§ 82. Report on presentation for identification

(1) A report on presentation for identification shall set out:

1) the names of the object or objects presented for identification;

2) the essential features which were similar for all the objects presented for identification, and where the object presented for identification was located among the other objects;

3) the place chosen by the person presented for identification among the other persons;

4) the proposal made to the identifier to watch the object or objects presented to him or her and say whether he or she recognises the object related to the act under investigation and whether he or she finds the object similar to or different from the other objects;

5) the features by which the identifier recognised the object.

(2) If a person who has been recognised contests the result of the procedural act, a corresponding notation shall be made in the report.

Division 5

Inspection

§ 83. Objective of inspection and objects of inspection

(1) The objective of an inspection is to collect information necessary for the adjudication of a criminal matter, detect the evidentiary traces of the criminal offence and confiscate objects which can be used as physical evidence.

(2) The objects of inspection are:

1) a scene of events;

2) a body;

3) a document, any other object or physical evidence;

4) in the case of physical examination, the person and the postal or telegraphic item.

§ 84. Inspection of scene of events

(1) Inspection of a scene of events shall be conducted at the place of commission of a criminal offence or a place related to the commission of a criminal offence.

(2) A suspect, accused, witness or victim shall be asked to be present at the inspection of a scene of events if his or her statements help to ensure the thoroughness, comprehensiveness and objectivity of the inspection.

§ 85. Inspection of body

(1) Inspection of a body shall be conducted on a scene of events or at any other location of the body.

(2) The following shall be ascertained upon inspection of a body:

1) the identity of the body or, in the case of an unidentified body, a description of the body;

2) the location and position of the body;

3) the evidentiary traces of a criminal offence and the objects adjacent to the body;

4) the evidentiary traces of a criminal offence on the uncovered parts of the body, clothes, footwear, and covered parts of the body;

5) the signs of death;

6) other characteristics necessary for the adjudication of the criminal matter.

(3) If possible, inspection of a body shall be conducted in the presence of a forensic pathologist or specialist whose task is to:

1) ascertain that the person is dead unless death is evident;

2) assist the official of the investigative body in the conduct of the inspection in order to collect and record the source information necessary for an expert assessment.

§ 86. Inspection of document, other object or physical evidence

(1) Upon inspection of a document or any other object, the evidentiary traces of a criminal offence and other features which are necessary for the adjudication of the criminal matter and form the basis for using the object as physical evidence shall be ascertained.

(2) If additional examination of a document, thing or any other object used as physical evidence is necessary, inspection of the physical evidence shall be conducted.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 87. Inspection report

(1) An inspection report shall set out:

1) a description of the circumstances on the scene of events;

2) the identity of the body or, in the case of an unidentified body, a description of the body;

3) the names and characteristics of the documents or other objects discovered in the course of the inspection;

4) a description of the evidentiary traces of the criminal offence;

5) other information derived from the inspection;

6) the names and numbers of the objects which have been confiscated in the course of the procedural act in order to be used as physical evidence.

(2) The statements of the persons participating in the inspection of a scene of events or information relating to the surveillance activities conducted in the course of the inspection shall not be recorded in the report on the inspection of the scene of events.

§ 88. Physical examination

(1) The following shall be ascertained upon physical examination:

1) whether there are evidentiary traces of a criminal offence on the body, clothes or footwear of the person and whether this gives reason to declare him or her as a suspect;

2) the nature of any health damage and the location and other characteristics of injuries;

3) the specific features of the body of the suspect, accused or victim or the distinctive characteristics on his or her body which need to be recorded in order to adjudicate the criminal matter;

4) whether the person has objects which can be used as physical evidence with him or her or hidden in his or her body;

5) other facts relating to a subject of proof in the criminal matter.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If the objective of a physical examination is to detect the evidentiary traces of a criminal offence on the body of the person, a forensic pathologist, a health care professional or another specialist shall participate in the examination.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) Samples and assessment material may be taken from a person upon physical examination. Samples and assessment material shall be taken in accordance with the provisions of § 100 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) A report on physical examination shall set out:

1) a description of the evidentiary traces of a criminal offence discovered on the body, clothes or footwear of the person;

2) a description of the specific features or distinctive characteristics of the body of the person;

3) the names of the objects which have been discovered in the course of the procedural act and can be used as physical evidence.

(5) A report on physical examination shall not contain conclusions as to the type of health damage, the time of incurring the health damage or the manner in or means by which the health damage was caused.

§ 89. Seizure and examination of postal or telegraphic items

(1) A postal or telegraphic item is seized for the purposes of examination at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) An order or ruling on the seizure of a postal or telegraphic item shall set out:

1) the name of the sender or addressee of the seized item and the residence or seat and address thereof;

2) the reason for the seizure;

3) the procedure for notifying an investigative body of the seized postal or telegraphic item.

(3) A copy of an order or ruling on the seizure of a postal or telegraphic item shall be sent to the head of the provider of the postal or telecommunications service for execution.

(4) In the course of examination of a postal or telegraphic item, information derived from inspection of the circumstances relating to the subject of proof shall be collected and the item to be used as physical evidence in a criminal proceeding shall be confiscated from the provider of the postal or telecommunications service. An object of examination which is not related to the criminal matter, shall be sent to the addressee by the provider of the postal or telecommunications service.

(5) A postal or telegraphic item shall be released from seizure by an order of the Prosecutor's Office. A copy of an order on release from seizure shall be sent to the persons who are not participants in the proceeding but in the case of whom the confidentiality of messages has been violated by the seizure and examination of the postal or telegraphic item.

§ 90. Report on examination of postal or telegraphic items

A report on the examination of a postal or telegraphic item shall set out:

1) a reference to the order or ruling on the seizure of the postal or telegraphic item;

2) the name of the object of seizure;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) information derived from the examination;

4) the name of the postal or telegraphic item which was confiscated in order to be used as physical evidence.

Division 6

Search and Investigative Experiment

§ 91. Search

(1) The objective of a search is to find an object to be confiscated or used as physical evidence, a document, thing or person necessary for the adjudication of a criminal matter, property to be seized for the purposes of compensation for damage caused by a criminal offence, or a body, or to apprehend a fugitive in a building, room, vehicle or enclosed area.

(2) A search shall be conducted on the basis of an order of a Prosecutor's Office or a court ruling. The search of a notary's office or advocate's law office shall be conducted at the

request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) In cases of urgency, an investigative body may conduct a search on the basis of an order of the investigative body without the permission of a Prosecutor's Office, but in such case the Prosecutor's Office shall be notified of the search within twenty-four hours and the Prosecutor's Office shall decide on the admissibility of the search.

(4) A search warrant shall set out:

1) the objective of the search;

2) the reasons for the search.

(5) A person may be searched without a search warrant:

1) in the event of detention of a suspect or arrest;

2) if there is reason to believe that the object to be found is concealed by the person at the place of the search.

(6) If a search is conducted, the search warrant shall be presented for examination to the person whose premises are to be searched or to his or her adult family member, or a representative of the legal person or the state or local government agency whose premises are to be searched, and he or she shall sign the warrant to that effect. In the absence of the appropriate person or representative, the representative of the local government shall be involved.

(7) A notary's office or an advocate's law office shall be searched in the presence of the notary or advocate. If the notary or advocate cannot be present at the search, the search shall be conducted in the presence of the person substituting for the notary or another advocate providing legal services through the same law office, or if this is not possible, any other notary or advocate.

(8) If a search is conducted, the person shall be asked to hand over the object specified in the search warrant or to show where the body is hidden or the fugitive is hiding. If the proposal is not complied with or if there is reason to believe that the person complied with the proposal only partly, a search shall be conducted.

§ 92. Search report

A search report shall set out:

1) a proposal to hand over the object to be found or to show where the body is hidden or the fugitive is hiding;

2) the names of the objects which were handed over voluntarily;

3) the conditions, course and results of the search;

4) the names of the objects found and the characteristics of the objects which are relevant to the adjudication of the criminal matter;

5) the personal data of the apprehended fugitive.

§ 93. Investigative experiment

(1) The objective of an investigative experiment is to ascertain whether circumstances relating to an event under investigation existed or an act was performed at the time of commission of a criminal act or whether their existence or performance was perceptible.

(2) A suspect, accused, victim or witness shall participate in an investigative experiment if:

1) his or her assistance is necessary in order to recreate the circumstances relating to an event;

2) the results of the investigative experiment enable his or her statements or testimony to be verified;

3) the results of the experiment depend on the characteristics, abilities or skills of the participant in the experiment.

(3) Physical evidence may be used in an investigative experiment if:

1) replacement of the physical evidence may influence the results of the investigative activity, and the destruction of the evidence is precluded;

2) it is not necessary to present the physical evidence for identification to a person participating in the investigative experiment.

(4) In the evaluation of the results of an investigative experiment, conclusions based on specific expertise shall not be drawn.

§ 94. Report on investigative experiment

A report on an investigative experiment shall set out:

1) the issue for the resolution of which it is deemed necessary to conduct tests;

2) whether and how the circumstances on the scene of events were recreated for the purposes of the tests;

3) whether the suspect, accused, witness or victim has confirmed the correspondence of the circumstances relating to the investigative experiment to the circumstances relating to the event under investigation;

4) a description of the tests: the number, order, conditions, changes in the number, and the content of the tests;

5) the results of the tests.

Division 7

Expert Assessment

§ 95. Expert

(1) "Expert" means a person who uses his or her specific non-legal expertise in the conduct of an expert assessment in the cases and pursuant to the procedure provided for in this Code.

(2) Upon appointment of an expert, the body conducting the proceedings shall give preference to a forensic expert or an officially certified expert but any other person with the relevant knowledge may also be appointed as an expert.

(3) If an expert assessment is arranged outside a forensic institution, the body conducting the proceedings shall ascertain whether the person to be appointed as expert is impartial with regard to the criminal matter and consents to conduct the expert assessment. The rights and obligations of experts provided for in § 98 of this Code shall be explained to him or her. If a person who has not been sworn in is appointed as an expert, he or she shall be warned about a criminal punishment for rendering a knowingly false expert opinion. The body conducting the proceeding shall determine the term of an expert assessment by agreement with the expert.

(4) The body conducting a proceeding may request an expert assessment to be conducted in a foreign forensic institution and use an expert opinion rendered in a foreign state as evidence in the adjudication of a criminal matter.

§ 96. Grounds for expert to remove himself or herself

(1) An expert is required to remove himself or herself from a criminal proceeding:

1) on the grounds provided for in clauses 49 (1) 3)–5) of this Code;

2) if he or she works in a position subordinate to a participant in the criminal proceeding or an official of an investigative body who is conducting proceedings in the criminal matter or is in any other dependent relationship with such persons.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A committee of experts shall not include persons close to each other as specified in subsection 71 (1) of this Code.

(3) Earlier participation of an expert in a criminal proceeding as an expert or specialist does not constitute a basis for him or her to remove himself or herself.

(4) The removal of an expert by himself or herself shall be formalised on the basis of a reasoned request for removal which shall be included in the criminal file.

§ 97. Removal of expert

(1) If an expert does not remove himself or herself on a basis provided for in § 96 of this Code, the suspect, accused, victim, defendant or counsel may submit a petition of challenge against the expert.

(2) A petition of challenge against an expert shall be adjudicated pursuant to the procedure provided for in subsections 59 (5) and (6) of this Code.

§ 98. Rights and obligations of experts

(1) An expert conducting an expert assessment has the right to:

1) request additions to be made to the materials of the expert assessment;

2) in order to ensure the completeness of the assessment materials, participate in procedural acts at the request of the investigative body or Prosecutor's Office and in court hearing at the request of the court;

3) examine the materials of the criminal matter in so far as this is necessary for the purposes of the expert assessment;

4) refuse to conduct the expert assessment if the assessment materials submitted to him or her are not sufficient or if the expert assignments set out in the ruling on the expert assessment are outside his or her specific expertise or if answering to the questions does not require expert enquiry or conclusions based on specific expertise;

5) request that a person who may provide explanations necessary for the expert enquiries be present at the conduct of the expert assessment with the permission of the body conducting the proceedings;

6) to assume and resolve, on his or her own initiative, expert assignments not set out in the ruling on the expert assessment.

(2) An expert is required to:

1) conduct an expert assessment if he or she has been appointed as an expert;

2) appear when summoned by the body conducting the proceedings;

3) ensure that all expert enquiries are conducted thoroughly, completely and objectively and the expert opinion rendered is scientifically valid;

4) refuse to conduct the expert assessment if he or she is not impartial with regard to the criminal proceeding;

5) maintain the confidentiality of the facts which become known to him or her upon the conduct of the expert assessment and which may be disclosed only with the written permission of the body conducting the proceedings.

(3) If an expert fails to appear without good reason, a fine in the amount of up to two hundred minimum daily rates may be imposed on the expert by the preliminary investigation judge at the request of the Prosecutor's Office or by the court on the basis of a court ruling.

§ 99. Securing of conduct of expert assessment

If necessary, assessment material is taken for the conduct of an expert assessment, compulsory placement in a medical institution is applied with regard to the suspect or accused in order to conduct a forensic psychiatric or forensic medical examination, or a body is exhumed in order to conduct a forensic medical examination or any other expert assessment.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 100. Taking of comparative material for expert assessment

(1) Comparative material is taken in order to collect comparative trace evidence and samples necessary for an expert assessment.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) An order or ruling on the taking of comparative material is necessary if:

1) a suspect or accused refuses to allow comparative material to be taken but the objective of the procedural act can be achieved by force;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the taking of comparative material infringes the privacy of the body of the person;

3) a legal person is required to submit documents as comparative material.

(3) An order or ruling on the taking of comparative material shall set out:

1) the person from whom the comparative material is taken;

2) the type of the comparative material;

3) the reason for the performance of the procedural act.

(4) If the taking of comparative material infringes the privacy of the body of a person, a forensic pathologist, health care professional or any other specialist shall participate in the procedural act.

§ 101. Report on taking of assessment material

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

A report on the taking of assessment material shall set out:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) the names of the comparative trace evidence and samples taken;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the manner and conditions of taking the assessment material;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) the amount or quantity of the assessment material.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 102. Compulsory placement of suspect or accused in medical institution

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(1) If long-term expert enquiries are necessary for a forensic psychiatric or forensic medical examination, the body conducting the proceeding shall order the expert assessment from a committee of experts and apply compulsory placement in a medical institution with regard to the suspect or accused.

(2) A suspect or accused shall be placed in a medical institution at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) A suspect or accused is placed in a medical institution for up to one month. At the request of the Prosecutor's Office, the preliminary investigation judge or court may extend such term by three months.

(4) The period for which a suspect or accused is placed in a medical institution shall be included in the term of his or her arrest.

§ 103. Exhumation from official place of burial

(1) A body or the remains thereof shall be exhumed from their official place of burial if it necessary to ascertain the cause of death or any other facts relating to the subject of proof or collect comparative trace evidence or samples for the purposes of an expert assessment in a criminal proceeding.

(2) A body is exhumed on the basis of an order of a Prosecutor's Office or a court ruling.

(3) A body is exhumed with the participation of a forensic pathologist or other specialist and in the presence of a representative of the city or rural municipality government. If possible, a person close to the deceased is invited to be present at the performance of the procedural act, and the body is presented to him or her for identification if necessary.

(4) If necessary, soil and other samples are taken from a place of burial.

(5) An order or ruling on exhumation shall contain an order addressed to the city or rural municipality government to re-bury the body and restore the grave.

§ 104. Report on exhumation

A report on exhumation shall set out:

1) the name and location of the place of burial and information concerning the location of the grave;

2) a description of the grave and the grave markers;

3) information derived from inspection of the coffin and the body.

§ 105. Arrangement of conduct of expert assessment

(1) The conduct of an expert assessment shall be arranged as the need for proof arises on the basis of an order or ruling of the body conducting the proceedings.

(2) The body conducting a proceeding shall not refuse to order an expert assessment requested by a suspect, accused, counsel, victim or defendant if the facts for the ascertainment of which the assessment is requested may be essential for the adjudication of the criminal matter.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 106. Order or ruling on expert assessment

(1) The main part of an order or ruling on an expert assessment shall set out:

1) the title and number of the criminal matter, the facts relating to the criminal offence, and other source information necessary for the expert assessment;

2) the reason for ordering the expert assessment.

(2) The final part of an order or ruling on an expert assessment shall set out:

1) the class of the expert assessment according to the field of special expertise;

2) whether the expert assessment is to be conducted by a single expert or an expert committee, or whether it is to be a primary assessment, additional assessment or reassessment;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) the name of the expert or state forensic institution who is to execute the order or ruling on the expert assessment;

4) information concerning the objects of expert assessment related to the criminal act and concerning the comparative material and the materials submitted for examination;

5) questions posed to the expert;

6) the term of the expert assessment in the case provided for in subsection 95 (3) of this Code.

(3) If an expert assessment is to be conducted in a state forensic institution, a specific forensic expert may be appointed with the approval of the head of the institution. On the basis of an order or ruling on an expert assessment, experts who do not work at a state forensic institution may also belong to a committee of experts.

(4) The following questions shall not be posed to an expert:

1) questions which are of legal nature or fall outside his or her area of expertise;

2) questions which can be answered without expert enquiry or conclusions based on specific expertise.

§ 107. Preparation of expert's report

(1) The introduction of an expert's report shall set out:

1) the date and place of preparation of the report;

2) the name of the person who ordered the expert assessment, and the date of preparation of the order or ruling on the expert assessment and of sending the order or ruling to the expert;

3) the title and number of the criminal matter;

4) the class of the expert assessment;

5) information concerning the expert;

6) the name of the object of the expert assessment or of the person regarding whom the expert assessment was conducted;

7) whether and when additions to the materials of the expert assessment were requested to be made and the date on which such request was satisfied;

8) the source information necessary for the expert assessment;

9) questions posed to the expert in the order or ruling on the expert assessment and questions formulated by the expert on his or her own initiative;

10) the names of the persons who were present at the conduct of the expert assessment.

(2) If an expert assessment is conducted by a person who has not been sworn in, such expert shall sign a notation in the introduction of the expert's report that he or she has been warned about criminal punishment.

(3) The main part of an expert's report shall set out:

1) a description of the enquiries;

2) information derived from evaluation of the results of the enquiries, and the reasons for the expert opinion.

(4) If questions posed to an expert are of legal nature, fall outside his or her area of expertise or do not require expert enquiry or conclusions based on specific expertise, the expert shall not provide answers to such questions in the expert's report.

(5) The main part of a report on a compound expert assessment shall set out the enquiries conducted by each of the experts separately.

(6) The final part of an expert's report shall set out the expert's opinion based on the enquiries conducted.

(7) If an expert assessment is conducted by an expert committee and the experts reach a common opinion, a common expert's report shall be prepared. In the event of dissenting conclusions, each expert shall prepare a separate expert's report.

(8) An expert's report shall be signed by the expert or, if the expert assessment is conducted by a committee of experts, the experts.

§ 108. Report on refusal to conduct expert assessment

(1) If an expert refuses to conduct an expert assessment on the bases provided for in clause 98 (1) 4) of this Code, the expert shall prepare a report on his or her refusal to conduct the expert assessment.

(2) A report on refusal to conduct an expert assessment shall set out the information specified in subsection 107 (1) of this Code, and the reasons for the refusal.

§ 109. Hearing of experts

If necessary, an expert shall be heard in a pre-trial proceeding in order to specify the content of the expert's report or the report on his or her refusal to conduct the expert assessment. Experts are heard pursuant to §§ 68 and 69 of this Code.

Division 8

Collection of Evidence by Surveillance Activities

§ 110. Admissibility of surveillance activities in collection of evidence

(1) Evidence may be collected by surveillance activities in a criminal proceeding if collection of the evidence by other procedural acts is precluded or especially complicated and the object of the criminal proceeding is a criminal offence in the first degree or an intentionally committed criminal offence in the second degree for which at least up to three years' imprisonment is prescribed as punishment.

(2) Evidence may be collected by the surveillance activities provided for in subsection (1) of this section also on the basis of an international request for assistance.

§ 111. Evidence obtained by surveillance activities

Information obtained by surveillance activities is evidence if such information has been obtained in compliance with the requirements of law.

§ 112. General conditions for collection of evidence by surveillance activities

(1) Surveillance activities shall not endanger the life, health or property of persons or the environment.

(2) Evidence is collected by surveillance activities by the Police Board and the Security Police Board on their own initiative or at the request of an investigative body. The Police Board collects evidence by surveillance activities directly or through the bodies administered by the Police Board. Evidence is collected by the surveillance activities specified in §§ 115 and 117 of this Code also by the Tax and Customs Board and Border Guard Administration.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 590)

(3) The permission of a preliminary investigation judge is necessary for the collection of evidence by the surveillance activities specified in §§ 116, 118 and 119 of this Code. The permission of a prosecutor who directs the proceedings is necessary for the collection of evidence by the surveillance activities specified in §§ 115 and 117 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) If the conduct of surveillance activities is requested by another investigative body, the body which conducts the activities shall give written notification of the compliance with the request to the investigative body and, if necessary, send the photographs, films, audio

and video recordings and other data recordings made in the course of the surveillance activities to the investigative body together with the surveillance report.

(5) A member of the Riigikogu or a rural municipality or city council, a judge, prosecutor, advocate, minister of religion or an official elected or appointed by the Riigikogu may be involved in surveillance activities with his or her consent and with the permission of a preliminary investigation judge only if a criminal offence is directed against him or her or a person close to him or her.

§ 113. Report on surveillance activities

(1) Information obtained by surveillance activities shall be recorded in a surveillance report which shall set out:

1) the name of the body which conducted the surveillance activities;

2) the time and place of the surveillance activities;

3) the name of the person with regard to whom the surveillance activities were conducted;

4) information collected by the surveillance activities.

(2) A report on the surveillance activities specified in § 120 of this Code shall contain the information specified in clauses (1) 1), 2) and 4) of this Code.

(3) A surveillance report shall be signed by the head of the body which conducted the surveillance activities or by an official appointed by him or her.

(4) The photographs, films, audio and video recordings and other data recordings obtained by surveillance activities shall be annexed to a surveillance report if necessary.

§ 114. Grant of permission for surveillance activities

(1) A preliminary investigation judge shall immediately review a reasoned request for the conduct of surveillance activities submitted by a prosecutor who directs the proceedings and grant or refuse to grant permission for the conduct of the surveillance activities by a ruling.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) Permission for surveillance activities is granted for up to two months and the permission may be extended by up to two months at a time at the request of a prosecutor who directs the proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) If covert entry into a dwelling or any other building or a vehicle, computer, computer system or computer network is necessary for the conduct of surveillance activities

specified in §§ 115, 118 or 119 of this Code or in order to install or remove technical appliances necessary for the surveillance activities, separate permission shall be requested therefor pursuant to the procedure provided for in subsections (1)–(2) of this section.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) In cases of urgency, surveillance activities specified in §§ 116, 118 and 119 of this Code may be conducted without the permission specified in subsection (1) of this section on the basis of an order of the head of the Police Board, Central Criminal Police or the Security Police Board or an official appointed by him or her. The Prosecutor's Office shall immediately notify a preliminary investigation judge of the surveillance activities conducted and the judge shall decide on the admissibility of the activities and the grant of permission for continuation of the surveillance activities by a ruling.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 115. Covert surveillance and covert examination and replacement of object

(1) Information obtained by covert surveillance shall be recorded in the surveillance report. If necessary, such information shall be filmed, video-recorded or photographed.

(2) In the course of covert surveillance, a thing or any other object may be covertly examined and, if necessary, replaced.

(3) Information obtained by covert surveillance shall be entered in the surveillance report in so far as is necessary for the adjudication of the criminal matter.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 116. Covert examination of postal or telegraphic items

(1) Upon covert examination of a postal or telegraphic item, information derived from the inspection of the item is collected.

(2) A copy of an order or ruling on the covert examination of a postal or telegraphic item shall be sent to the head of the provider of the postal or telecommunications service in order for the item to be seized. After the covert examination of the postal or telegraphic item, the item shall be sent to the addressee.

(3) A representative of the provider of postal or telecommunications services shall be present at the covert examination of a postal or telegraphic item and the representative shall sign the surveillance report to that effect.

(4) In the course of covert examination of a postal or telegraphic item, the item may be replaced.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 117. Collection of information concerning messages transmitted through commonly used technical communication channels

(1) Upon collection of information concerning messages transmitted by the public telecommunications network, information is collected from the operator of the telecommunications network or the provider of the postal or telecommunications service in order to ascertain the fact that a message has been transmitted, the duration and manner of transmission of the message, and the personal data and location of the sender or receiver.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) Information collected pursuant to the procedure provided for in subsection (1) of this section shall be recorded in the surveillance report.

§ 118. Wire tapping or covert observation of information transmitted through technical communication channels or other information

(1) Information obtained by wire-tapping or covert observation of messages or other information transmitted by the public telecommunications network shall be recorded and entered in the surveillance report.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) Information recorded upon wire-tapping or covert observation shall be entered in the surveillance report in so far as is necessary for the adjudication of the criminal matter.

(3) Information communicated by a person specified in § 72 of this Code which is subject to wire-tapping or covert observation shall not be used as evidence if such information contains facts which have become known to the person in his or her professional activities, unless the person has already given testimony with regard to the same facts or if the facts have been disclosed in any other manner.

§ 119. Staging of criminal offence

(1) A criminal offence may be staged in order to detect a criminal offence or ascertain or apprehend a criminal offender.

(2) If necessary, a staged criminal offence shall be photographed, filmed or audio or video recorded.

§ 120. Police agent

(1) "Police agent" means an official who collects evidence in a criminal proceeding by using a false identity. Identity documents and other documents may be issued in order to change the identity of a person.

(2) A police agent may participate in legal relationships under a false identity. A police agent has all the obligations of an official of an investigative body in so far as the obligations do not require disclosure of the false identity.

(3) A police agent may be involved on the basis of an order of the Public Prosecutor's Office. Permission for the involvement of a police agent is granted for up to six months and the permission may be extended by six months at a time.

(4) Permission for the involvement of a police agent with regard to a specific suspect or accused is granted pursuant to the provisions of subsection 114 (1) of this Code.

(5) Information collected by a police agent shall be recorded pursuant to the procedure provided for in § 74 of this Code. The statements of a police agent are used as evidence pursuant to the provisions of this Code concerning witnesses.

(6) The identity of a police agent shall remain confidential also after completion of the surveillance activities if disclosure of his or her identity may endanger his or her life or health or his or her further engagement as a surveillance officer, or if confidentiality is necessary for any other reason.

§ 121. Submission of information collected by surveillance activities for examination

(1) A body which has conducted surveillance activities or the investigative body which requested the conduct of the surveillance activities shall immediately give notification of such activities to the person with regard to whom the activities were conducted and the persons whose private or family life was violated by the activities. With the permission of the prosecutor, conduct of the surveillance activities need not be given notification of until the corresponding bases cease to exist if this may:

1) damage the rights and freedoms of another person which are guaranteed by law;

2) endanger the right of a person who has been recruited for surveillance activities to maintain the confidentiality of co-operation;

3) endanger the life, health, honour, dignity and property of an employee of a surveillance agency, a person who been recruited for surveillance activities or another person who has been engaged in surveillance activities and of persons connected with them;

4) prejudice a criminal proceeding or induce crime.

(2) At the request of a person specified in subsection (1) of this section, he or she is permitted to examine the materials of the surveillance activities conducted with regard to him or her, and the photographs, films, audio and video recordings and other data recordings obtained as a result of the surveillance. With the permission of the prosecutor, the following information may need not be submitted until the corresponding bases cease to exist:

1) information concerning the private life of other persons;

2) information the submission of which may damages the rights and freedoms of another person which are guaranteed by law;

3) information which contains state secrets or secrets of another person that are protected by law;

4) information the submission of which may endanger the right of a person who has been recruited for surveillance activities to maintain the confidentiality of co-operation;

5) information the submission of which may endanger the life, health, honour, dignity and property of an employee of a surveillance agency, a person who been recruited for surveillance activities or another person who has been engaged in surveillance activities and of persons connected with them;

6) information the submission of which may prejudice a criminal proceeding or induce crime;

7) information which cannot be separated or disclosed without information specified in clauses 1)-6) of this subsection becoming evident.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 122. Storage and destruction of data recordings collected by surveillance activities

(1) The photographs, films, audio and video recordings and other data recordings necessary for the adjudication of a criminal matter and made in the course of surveillance activities shall be stored in the criminal file or together with the criminal matter. The rest of the materials on surveillance activities shall be stored in a surveillance file.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If preservation of a data recording made in the course of surveillance activities and added to a criminal file is not necessary, the person subject to the surveillance activities or any other person whose private or family life was violated by such activities may request destruction of the data recording after the entry into force of the court judgment.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) A body which conducted surveillance activities destroys a data recording at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge of a court which granted permission for the surveillance activities and in the presence of the prosecutor and the preliminary investigation judge.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) A report shall be prepared on the destruction of a data recording and included in the criminal file.

Division 9

Document and Physical Evidence

§ 123. Document

(1) A document containing information concerning the facts relating to a subject of proof may be used for the purposes of proof.

(2) A document is physical evidence if the document has the characteristics specified in subsection 124 (1) of this Code.

§ 124. Physical evidence

(1) "Physical evidence" means a thing which is the object of a criminal offence, the object used for the commission of a criminal offence, a thing bearing the evidentiary traces of a criminal offence, the impression or print made of the evidentiary traces of a criminal offence, or any other essential object relating to a criminal act, which can be used in ascertaining the facts relating to a subject of proof.

(2) If an object used as physical evidence has not been described in the report on the investigative activity as exactly as necessary for the purposes of proof, inspection of the object shall be carried out in order to record the characteristics of the physical evidence.

(3) Physical evidence may be returned to the owner or former lawful possessor thereof if this does not hinder the criminal proceeding.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 125. Storage of physical evidence

(1) Physical evidence shall be stored in the criminal file, the physical evidence storage facility of the body conducting the proceedings or in any other room in the possession of or a territory guarded by the body or in a forensic institution, or the measures prescribed in § 126 of this Code shall be applied with regard to the physical evidence if this does not damage the interests of the criminal matter.

(2) Physical evidence which cannot be stored pursuant to the procedure provided for in subsection (1) of this section and with regard to which the measures prescribed in § 126 of this Code cannot be applied in the interests of the criminal proceeding prior to the entry into force of the court judgment or termination of the criminal proceeding shall be deposited into storage with liability on the basis of a contract.

(3) A person with whom physical evidence is deposited shall ensure the inviolability and preservation of the evidence.

(4) A person with whom physical evidence is deposited but who is not the owner or legal possessor thereof has the right to receive compensation for the storage fee which shall be included in the procedure expenses. The storage costs shall be compensated for on the basis of the contract between the body conducting the proceedings and the depositary.

(5) If physical evidence is a document which is necessary for the owner in the future economic or professional activity thereof or for any other good reason, the body conducting the proceedings shall make a copy of the document for the owner. The authenticity of the copy shall be certified by the signature of the person conducting the proceedings on the copy.

(6) Subsections (1)–(5) of this section are applied also with regard to confiscated objects which are not physical evidence.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 126. Measures applicable to physical evidence and confiscated property

(1) Highly perishable physical evidence which cannot be returned to its lawful possessor shall be granted to a state or local government health care of social welfare institution free of charge, transferred, or destroyed in the course of the criminal proceeding on the basis of an order or ruling of the body conducting the proceedings. The money received from the sale shall be transferred into public revenues.

(2) Property subject to confiscation the lawful possessor of which has not been ascertained may be confiscated in the course of the criminal proceeding at the request of a Prosecutor's Office and on the basis of a court ruling.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) An order or ruling of the body conducting a proceeding or a court judgment shall prescribe the following measures applicable to physical evidence:

1) a thing bearing evidentiary traces of criminal offence, a document, or an impression or print made of evidentiary traces of a criminal offence may be stored together with the criminal matter, included in the criminal file or stored in the physical evidence storage facility or any other room in the possession of the body conducting the proceeding or in a forensic institution;

2) other physical evidence the ownership of which has not been contested shall be returned to the owner or lawful possessor thereof;

3) physical evidence of commercial value the owner or lawful possessor of which has not been ascertained shall be transferred into state ownership;

4) things of no value and pirated or counterfeit goods shall be destroyed or, in the cases provided by law, recycled;

5) objects which were used for staging a criminal offence shall be returned to the owners or lawful possessors thereof;

6) property which was obtained by the criminal offence and the return of which is not requested by the lawful possessor shall be transferred into state ownership or transferred in order to cover the costs of the civil action.

(4) If the ownership relations pertaining to physical evidence specified in clause (3) 2) of this section are not apparent, the measures applicable to the physical evidence in the pre-trial proceeding shall be decided by a ruling of the preliminary investigation judge at the request of the Prosecutor's Office.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) Subsections (1)–(3) of this section are applied also with regard to objects confiscated in a criminal proceeding which are not physical evidence.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(6) The procedure for the transfer and destruction of confiscated property and physical evidence transferred into state ownership and for the refund of the money received from the transfer to the lawful possessor of the property from the budget shall be established by the Government of the Republic.

(7) The procedure for registration, storage, transfer and destruction of physical evidence and for evaluation, transfer and destruction of highly perishable physical evidence by the bodies conducting the proceedings shall be established by the Government of the Republic.

Chapter 4

Securing of Criminal Proceedings

Division 1

Preventive Measure

§ 127. Choice of preventive measure

(1) A preventive measure shall be chosen taking into account the probability of absconding from the criminal proceeding or execution of the court judgment, continuing commission of criminal offences, or destruction, alteration or falsification of evidence, the degree of the punishment, the personality of the suspect, accused or convicted offender, his or her state of health and marital status, and other circumstances relevant to the application of preventive measures.

(2) A preventive measure is altered pursuant to the provisions of this Code concerning application of preventive measures.

§ 128. Prohibition on departure from residence

(1) "Prohibition on departure from the residence" means the obligation of a suspect or accused not to leave his or her residence for more than twenty-four hours without the permission of the body conducting the proceedings.

(2) A prohibition on departure from the residence shall be applied by a ruling which shall be signed by the suspect or accused.

§ 129. Supervision over members of Defence Forces

A suspect or accused who is a member of the Defence Forces serving in compulsory military service may, by way of a preventive measure, be subjected to the supervision of the command staff of his or her military unit on the basis of an order or ruling.

§ 130. Arrest and grounds for arrest

(1) Arrest is a preventive measure which is applied with regard to a suspect, accused or convicted offender and which means deprivation of a person of his or her liberty on the basis of a court ruling.

(2) A suspect or accused may be arrested at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if he or she is likely to abscond from the criminal proceeding or continue to commit criminal offences.

(3) In pre-trial procedure, a suspect or accused shall not be kept under arrest for more than six months. The term shall not include the time spent under provisional arrest in a foreign country by a person whose extradition has been applied for by the Republic of Estonia.

(19.05.2004 entered into force 01.01.2005 - RT I 2004, 46, 329)

(3^1) In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in a criminal proceeding, a preliminary investigation judge may extend the term for keeping under arrest for more than six months at the request of the Chief Public Prosecutor.

(19.05.2004 entered into force 01.01.2005 - RT I 2004, 46, 329)

(4) The accused who has been prosecuted and is at large may be arrested on the basis of a ruling of a city, county or circuit court if he or she has failed to appear when summoned by the court and may continue absconding from the court proceeding.

(5) A convicted offender who is at large may be arrested by the court pursuant to the procedure provided for in § 429 of this Code in order to secure execution of the court judgment.

(6) A member of the Defence Forces who is a suspect and does not stay in the territory of the Republic of Estonia may, at the request of a Prosecutor's Office, be arrested on the bases provided for in subsection (2) of this section in order to bring him or her to the Republic of Estonia on the basis of an order of a preliminary investigation judge.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 131. Procedure for arrest

(1) At the request of a suspect or accused, the Prosecutor's Office shall immediately notify his or her counsel of preparation of an application for an arrest warrant.

(2) On the order of a Prosecutor's Office, an investigative body shall convey a suspect or accused with regard to whom an application for an arrest warrant has been prepared to a preliminary investigation judge for the hearing of the application.

(3) In order to issue an arrest warrant, a preliminary investigation judge shall examine the criminal file and interrogate the person to be arrested with a view to ascertaining whether the application for an arrest warrant is justified. The prosecutor and, at the request of the person to be arrested, his or her counsel shall be summoned before the preliminary investigation judge and their opinions shall be heard.

(4) For the purposes of arresting a person who has been declared a fugitive or a member of the Defence Forces who is a suspect and stays outside the territory of the Republic of Estonia, a preliminary investigation judge shall issue an arrest warrant without interrogating the person. Not later than on the second day following the date of apprehension of the fugitive or bringing the member of the Defence Forces who is a suspect into Estonia, the arrested person shall be taken to the preliminary investigation judge for interrogation.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) If there are no grounds for arrest, the person shall be released immediately.

§ 132. Arrest warrant

(1) An arrest warrant shall set out:

1) the name and residence of the person to be arrested;

2) the facts relating to the criminal offence of which the person is suspected or accused, and the legal assessment of the act;

3) the grounds for the arrest with a reference to §§ 130 or 429 of this Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) the reason for the arrest.

(2) An arrest warrant shall be included in the criminal file and a copy of the warrant shall be sent to the arrested person.

§ 133. Notification of arrest

(1) A preliminary investigation judge or court shall immediately give notification of the arrest of a person to a person close to the arrested person and his or her place of employment or study.

(2) Notification of an arrest may be delayed in order to prevent a criminal offence or ascertain the truth in a criminal proceeding.

(3) If a foreign citizen is arrested, a copy of the arrest warrant or court judgment shall be sent to the Ministry of Foreign Affairs.

§ 134. Refusal of arrest and release of arrested person

(1) A preliminary investigation judge or court shall set out the reasons for a refusal to arrest a person in a ruling on the refusal of arrest.

(2) If the grounds for arrest cease to exist before a statement of charges is sent to a court pursuant to the procedure provided for in subsection 226 (3) of this Code, the preliminary investigation judge or Prosecutor's Office shall release the arrested person by an order.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 135. Bail

(1) At the request of a suspect or accused, a preliminary investigation judge or court may impose bail instead of arrest.

(2) "Bail" means a sum of money paid as a preventive measure by a suspect, accused or another person on behalf of him or her to the deposit account of the court. Bail shall not be imposed on a suspect or accused in the case of the criminal offences prescribed in §§ 89, 90, 96, 114, 214, 237, 244, 246, 255, 256 and 405 of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 82, 480; 105, 612; 2003, 4, 22; 83, 557; 90, 601).

(3) A suspect or accused shall be released from custody after the bail has been received into the bank account of the court.

(4) A court shall determine the amount of bail on the basis of the degree of the potential punishment, the extent of the damage caused by the criminal offence, and the financial situation of the suspect or accused. The minimum amount of bail shall be five hundred days' wages.

(5) Bail is imposed by a court ruling. For the purposes of adjudication of an application for bail, the arrested person shall be taken to the preliminary investigation judge; the prosecutor and, at the request of the arrested person, his or her counsel shall be summoned to the judge and their opinions shall be heard.

(6) If a suspect or accused absconds from criminal proceedings or intentionally commits another criminal offence, the bail shall be transferred into public revenues on the basis of the court judgment or the ruling on termination of the criminal proceeding after deduction of the amount necessary for reimbursement of the expenses relating to the criminal proceeding.

(7) Bail shall be refunded if:

1) the suspect or accused does not violate the conditions for bail;

2) the criminal proceeding is terminated;

3) the accused is acquitted.

§ 136. Contestation of arrest or refusal of arrest

A Prosecutor's Office, a person under arrest or his or her counsel may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against a court ruling by which arrest was imposed or refused, extension of the term for keeping under arrest or refusal to extend the term for keeping under arrest.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 137. Verification of reasons for arrest

(1) An arrested person or his or her counsel may, within two months after the arrest, submit a request to the preliminary investigation judge or court to verify the reasons for the arrest. A new request may be submitted two months after the review of the previous request.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A preliminary investigation judge shall hear a request within five days as of the receipt of the appeal. The prosecutor, the counsel and, if necessary, the arrested person shall be summoned before the preliminary investigation judge.

(3) In order to adjudicate a request, a preliminary investigation judge shall examine the criminal file. A request shall be adjudicated by a court ruling which is not subject to appeal.

(4) If the term for keeping a person under arrest has been extended for more than six months pursuant to the procedure provided for in subsection 130 (4) of this Code, the preliminary investigation judge shall verify the reasons for the arrest at least once a month by examining the criminal file regardless of whether verification of the reasons has been requested and shall appoint a counsel for the arrested person if he or she does not have a counsel.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

Division 2

Other Means of Securing Criminal Proceedings

§ 138. Consequences of failure to appear when summoned by body conducting proceedings

(1) A fine of up to two hundred minimum daily rates or detention for up to fourteen days shall be imposed by a preliminary investigation judge at the request of a Prosecutor's Office or by a court on its own initiative on the basis of a court ruling on a person who has failed to appear when summoned by the body conducting the proceedings. If the suspect or accused who fails to appear is a minor, the court shall impose the fine on his or her parent, guardian or carer.

(2) On the basis of a complaint submitted by a person on whom a fine or detention has been imposed, a court may annul the fine or detention imposed on the person for failure to appear if the person proves that he or she failed to appear for a good reason provided for in § 170 of this Code.

(3) Compelled attendance may be imposed, pursuant to the provisions of § 139 of this Code, on a suspect, accused, convicted offender, victim, civil defendant or witness who failed to appear when summoned by the body conducting the proceedings or such person may be declared a fugitive pursuant to the provisions of § 140 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 139. Compelled attendance

(1) "Compelled attendance" means conveyance of a suspect, accused, convicted offender, victim, civil defendant or witness to an investigative body, Prosecutor's Office or court for the performance of a procedural act.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) Compelled attendance may be applied if:

1) a person who has received a summons fails to appear without a good reason specified in § 170 of this Code;

2) prior summoning of the person may hinder the criminal proceeding, or if the person refuses to come voluntarily at the order of the investigative body or Prosecutor's Office;

3) the person absconds from the execution of the court judgment.

(3) A person shall be conveyed to a Prosecutor's Office or court on the basis of an order of the Prosecutor's Office or court ruling which shall set out:

1) the name of the person subjected to compelled attendance, his or her status in the proceeding, residence and place of employment or name of the educational institution;

2) the reason for compelled attendance;

3) the time of execution of the order or ruling and the place where the person is to be taken.

(4) An order or ruling on compelled attendance shall be sent to a police prefecture for execution.

(5) A person subjected to compelled attendance may be detained for as long as is necessary for the performance of the procedural act which is the basis for application of compelled attendance but not for longer than forty-eight hours.

§ 140. Search

(1) A body conducting the proceedings may declare a suspect, accused, victim, civil defendant or witness a fugitive by an order or ruling if he or she has failed, without a good reason specified in § 170 of this Code, to appear when summoned and if his or her whereabouts are unknown, and a body conducting the proceedings may declare a convicted offender a fugitive if he or she absconds from the execution of the court judgment.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) An order or ruling on declaring a person a fugitive shall set out:

1) the facts relating to the criminal offence;

2) the name of the fugitive, his or her status in the proceeding, residence and place of employment or name of the educational institution.

(3) An order or ruling on declaring a person a fugitive shall be sent to a police prefecture for execution. If a suspect, accused or convicted offender is declared a fugitive, the arrest warrant shall be sent to the police prefecture together with the order or ruling on declaring the person a fugitive.

§ 141. Exclusion of suspect or accused from office

(1) A suspect or accused shall be excluded from office at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) he or she may continue to commit criminal offences in case he or she remains in the office;

2) his or her remaining in the office may prejudice the criminal proceeding.

(2) A copy of a ruling on exclusion of a suspect or accused from office shall be submitted to the suspect or accused and sent to the head of his or her place of employment.

§ 142. Seizure of property

(1) The objective of seizure of property is to secure a civil action, confiscation or fine to the extent of assets. "Seizure of property" means recording the property of a suspect, accused or civil defendant or the property which is the object of money laundering and preventing the transfer of the property.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) Property is seized at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) In cases of urgency, property, except property which is the object of money laundering, may be seized without the permission of a preliminary investigation judge. The preliminary investigation judge shall be notified of the seizure of the property within twenty-four hours after the seizure and the judge shall immediately decide whether to grant or refuse permission. If the preliminary investigation judge refuses to grant permission, the property shall be released from seizure immediately.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) Upon seizure of property in order to secure a civil action, the extent of the damage caused by the criminal offence shall be taken into consideration.

(5) A ruling on the seizure of property shall be submitted for examination to the person whose property is to be seized or to his or her adult family member upon the performance of the procedural act. The person or family member shall sign the ruling to that effect.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(6) If necessary, an expert or specialist who participates in a procedural act shall ascertain the value of the seized property on site.

(7) Seized property shall be confiscated or deposited into storage with liability.

(8) An immovable may be seized at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling. For the seizure of an immovable, a Prosecutor's Office shall submit an order on seizure to the land registry department of the location of such immovable in order for a prohibition on the disposal of the immovable to be made in the land register.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(9) A building which is a movable or a vehicle may be seized at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling. For the seizure of a building which is a movable, a Prosecutor's Office shall submit an order on seizure to the building register of the location of the building; for the seizure of a vehicle, the order shall be submitted to the motor vehicle register.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(10) Property which pursuant to law must not be subject to a claim for payment shall not be seized.

§ 143. Report of seizure of property

(1) The report of seizure of property shall set out:

1) the names and characteristics of the seized objects and the number, volume or weight and value of the objects;

2) a list of confiscated property and property deposited into storage with liability;

3) lack of property to be seized if such property is missing.

(2) A list of seized property may be annexed to the report of seizure of property and a notation concerning the list is made in the report. In such case, the report shall not contain the information listed in clause (1) 1) of this section.

Chapter 5

Procedural Documents, Translation, Interpretation and Summoning

Division 1

Procedural Documents

§ 144. Language of procedural documents

Procedural documents shall be prepared in Estonian. If a procedural document is prepared in another language, a translation into Estonian shall be annexed thereto.

§ 145. Order and ruling

(1) An order or ruling is:

1) a reasoned procedural decision which shall be prepared in writing by a body conducting the proceedings and included in the criminal file;

2) in a court proceeding, a procedural decision which is made pursuant to the procedure provided for in § 137 of this Code and entered in the minutes of the court session upon adjudication of a single issue and which is not reasoned.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) The introduction of a reasoned order or ruling shall set out:

1) the date and place of preparation;

2) the official title and name of the person who prepared the order or ruling;

3) the title of the criminal matter, the number of the criminal matter and the legal assessment of the criminal offence or the name of the suspect or accused.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) The main part of a reasoned order or ruling shall set out:

1) the reasons for the order or ruling;

2) the basis for the order or ruling under procedural law.

(4) The final part of a reasoned order or ruling shall set out the decision made in the adjudication of the criminal matter or a single issue relating thereto.

(5) An order or ruling shall be prepared in accordance with the additional requirements for the content thereof.

(6) In the cases provided for in this Code, a reasoned order or ruling shall be submitted for examination to a participant in the proceedings and his or her rights and obligations shall be explained to him or her and the participant shall sign the order or ruling to this effect.

(7) An order or ruling made by a body conducting the proceedings in a criminal matter heard by the body is binding on everyone.

§ 146. Report of investigative activities and other procedural acts

(1) Report of the conditions, course and results of investigative activities or other procedural acts shall be made in typewritten form or in clearly legible handwriting. If necessary, the assistance of a secretary shall be used.

(2) The introduction of the report shall set out:

1) the date and place of the investigative activity or other procedural act;

2) the official title and name of the person preparing the report;

3) the number of the criminal matter and the title of the investigative activity or other procedural act;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) in the cases provided by law, a reference to the order or ruling on the basis of which the investigative activity or other procedural act is conducted;

5) the status in the proceeding of the person subject to the investigative activity or other procedural act, the person's name, residence or seat, address, and telecommunications numbers or electronic mail address;

6) the status in the proceeding, name, residence or seat and address of any other person who participated in the investigative activity or other procedural act;

7) the time of commencement and end of the investigative activity or other procedural act and other information relating thereto;

8) the performance of the investigative activity or other procedural act pursuant to § 8 of this Code;

9) the basis of the investigative activity or other procedural act under procedural law.

(3) If a witness who gives testimony in the course of investigative activities is at least fourteen years of age, the introduction of the report of the activities shall set out that the witness has been warned that, pursuant to the Penal Code, refusal to give testimony without a legal basis or giving knowingly false testimony may result in a criminal punishment.

(4) A participant in the proceedings shall sign the introduction of the report in confirmation that his or her rights and obligations have been explained to him or her.

(5) The main part of the report shall set out:

1) the course and results of the investigative activity or other procedural act in such detail as is necessary for the purposes of proof and in compliance with the additional requirements provided for the content of procedural acts by this Code;

2) the technical equipment used.

(6) The final part of the report shall set out:

1) the names of the objects confiscated in the course of the investigative activity or other procedural act and the manner of packaging of the objects;

2) submission of the report for examination to the persons who participated in the investigative activity or other procedural act;

3) the annexes to the report.

(7) The report shall not contain conclusions the comprehension of which requires specific expertise.

(8) If a witness participates in a procedural act under a fictitious name, a copy shall be made of the report of the procedural act wherein no other personal data than the fictitious name shall be indicated and the witness shall not sign the copy. The original report shall be placed in an envelope specified in subsection 67 (4) of this Code which is kept separately from the criminal file.

§ 147. Secretary

An investigative body or Prosecutor's Office may use the assistance of a secretary when making report of the conditions, course and results of procedural acts.

§ 148. Annex to report of investigative activities or other procedural acts

(1) If necessary, evidentiary information may be recorded, in addition to the report of the investigative activity or other procedural act, on a photograph, on film, as an audio or video recording, drawing or in any other illustrative manner.

(2) Photographs, drawings and other illustrative material shall be included in the criminal file together with the report, and films and audio and video recordings shall be packaged and stored with the criminal matter.

§ 149. Photographs

(1) The conditions, course and results of investigative activities or other procedural acts shall be photographed if this is considered necessary by the official of the investigative body or if the obligation to take photographs is provided by this Code.

(2) If negatives are used in photographing, the negatives shall be annexed to the report of the investigative activity or other procedural act.

(3) Digital photographs shall be included in the report of a procedural act or presented as an annex thereto and preserved in the form of computer files. Digital photographs may also be created of single shots of a video recording.

§ 150. Films and audio and video recordings

(1) An investigative activity or any other procedural act or a distinct part thereof may be filmed or recorded on audio or video. The witness or the participant in the proceedings shall be notified thereof before the commencement of the investigative activity or other procedural act.

(2) The information specified in subsections 146 (2) and (3) of this Code shall be set out at the beginning of an audio or video recording. After the completion of an investigative

activity or other procedural act, the recording shall be submitted to the participants in the investigative activity or procedural act for listening or watching.

(3) Report shall be made of an investigative activity or any other procedural act on the basis of an audio or video recording of the activity or act pursuant to the procedure provided for in this Code.

(4) An audio or video recording shall be annexed to the criminal file. Later changes to an audio or video recording are prohibited.

§ 151. Drawings

(1) Drawings may be annexed to the report of an investigative activity in order to illustrate the conditions, course and results of the activity and clarify and supplement the content of the report.

(2) A drawing shall contain a reference to the report of the investigative activity and the time of preparing the report.

(3) A drawing shall be signed by a body conducting the proceedings. If a drawing is made by a specialist or a person subject to an investigative activity, he or she shall also confirm the authenticity of the drawing by a signature.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) If necessary, a body conducting the proceedings shall have another person who participated in an investigative activity sign a drawing in order to confirm the authenticity of the drawing.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 152. Submission of report of investigative activities or other procedural acts for examination

(1) The report of an investigative activity or any other procedural act shall be submitted for reading to the person subject to the activity or act and to other persons who participated therein or the report shall be read to the persons at their request and a notation to that effect shall be made in the report.

(2) Petitions concerning the conditions, course and results of an investigative activity or any other procedural act or concerning the report of the activity or act, the requests for amendment of the report and other requests made upon examination of the report shall be entered in the same report.

(3) A copy of a search report or of a report of seizure of property shall be submitted to the person subject to the procedural act or to his or her adult family member or, if the person is a legal person, state or local government agency, to the representative thereof who participated in the procedural act. In the absence of such persons, a copy of the report shall be submitted to the representative of a local government agency.

(4) The report shall be signed by the person conducting the proceedings, specialists, persons subject to the act and the persons participating in the act.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) If a person specified in subsection (4) of this section refuses to sign the report or if a person is unable to sign the report due to a physical disability, a notation concerning the refusal and the reasons therefor or concerning the person's inability to sign the report shall be made in the report and confirmed by the official of the investigative body.

§ 153. Summary of pre-trial proceedings

(1) The summary of pre-trial proceedings shall set out:

1) the date and place of its preparation;

2) the official title and name of the official of the investigative body;

3) the title of the criminal matter;

4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the suspect;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) the suspect's criminal record;

6) the preventive measures applied with regard to the suspect and the duration thereof;

7) facts relating to the subject of proof which have been ascertained in the pre-trial proceedings, as listed in clause 62 1) of this Code;

8) a list of evidence;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

9) a list of physical evidence and recordings, and information concerning the location thereof;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

10) information concerning the objects seized in order to secure the confiscation thereof;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

11) information concerning a civil action and the measures for securing the action;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

12) information concerning property which was obtained by the criminal offence.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) The summary of pre-trial proceedings shall be signed and dated by the official of the investigative body.

§ 154. Statement of charges

(1) The introduction of a statement of charges shall set out:

1) the date and place of its preparation;

2) the official title and name of the prosecutor;

3) the title of the criminal matter;

4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) the criminal record of the accused.

(2) The main part of a statement of charges shall set out:

1) the facts relating to the criminal offence;

2) the nature and extent of the damage caused by the criminal offence;

3) information concerning property which was obtained by the criminal offence;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) a list of the evidence in proof of the charges;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) the preventive measures applied with regard to the accused and the duration thereof.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) The final part of a statement of charges shall set out:

1) the name of the accused;

2) the content of the charges;

3) the legal assessment of the criminal offence pursuant to the relevant section, subsection or clause of the Penal Code;

(4) A statement of charges shall be signed and dated by the prosecutor.

§ 155. Minutes of court session

(1) The minutes of a court session of a court of first instance or a court of appeal is a procedural document which is prepared in typewritten form and where the clerk of the court session records the conditions and course of the hearing of a criminal matter in his or her own wording or as summarised by the judge.

(2) The minutes of a court session shall set out:

1) the date and place of the session and the time of commencement and end of the session;

2) the name of the court and the composition of the panel of the court;

3) the names of the parties to the court proceeding, the clerk of the court session, translators, interpreters and experts;

4) the title of the criminal matter to be heard;

5) explanation of the rights and obligations to the accused and the other participants in the court proceeding;

6) the names of the court activities, and their conditions, course and results in chronological order;

7) the questions posed by parties to the court proceeding in a cross-examination and the testimony of the person being cross-examined;

8) the petitions and requests and the results of adjudication thereof;

9) the titles of the rulings made in the court session;

10) the requests submitted by the parties in the summations;

11) the requests submitted in the final statement of the accused;

12) whether the court judgment or ruling was made in chambers;

13) pronouncement of the court judgment or ruling and explanation of the procedure and term for appeal.

(3) The minutes shall be signed and dated by the presiding judge and the clerk of the court session.

§ 156. Audio and video recording of court sessions

(1) A court may make an audio or video recording of a court session. A notation to this effect shall be made in the minutes of the court session.

(2) If a court session or court activity is audio or video recorded, the court may use the recording in order to supplement and specify the minutes of the court session.

(3) Changes to an audio or video recording are prohibited.

§ 157. Court session clerk

(1) The clerk of a court session is a court officer whose duty it is to conduct the technical preparations for the court session and take minutes of the conditions, course and results of the court session.

(2) The clerk of a court session is required to remove himself or herself from the criminal proceedings on the bases provided for in clauses 49 (1) 3)–5) of this Code.

(3) If the clerk of a court session does not remove himself or herself on a basis provided for in clauses 49 (1) 3)-5) of this Code, the prosecutor, accused, counsel, victim or civil defendant may submit a petition of challenge against the clerk. Petitions of challenge shall be adjudicated pursuant to the procedure prescribed in subsection 59 (6) of this Code.

§ 158. Request for amendment of minutes of court session

(1) Within three days after the minutes of a court session have been signed, the parties to the court proceeding may submit written requests for amendment of the minutes of the session and the requests shall be included in the criminal file.

(2) Requests shall be heard by a judge or the presiding judge. If the judge or presiding judge consents to a request, he or she shall amend the minutes and the correctness of the amendments shall be confirmed by the signatures of the judge or presiding judge and the clerk of the court session.

(3) If a presiding judge does not consent to a request for amendment, the request shall be heard in a court session held within five days as of the receipt of the request. If possible, the audio or video recording of a court session shall be heard in order to adjudicate the request. The request shall be adjudicated by a ruling of the judge or presiding judge.

§ 159. Court judgment

(1) A court judgment is a court decision made in chambers in the name of the Republic of Estonia as a result of court proceedings.

(2) A court judgment shall be prepared pursuant to §§ 311-314 of this Code.

§ 160. Restoration of document

(1) If a procedural document or any other document relevant to the adjudication of a criminal matter is destroyed, lost or removed and restoration thereof is impossible, a copy of the document which has been authenticated by a court or a notary is deemed to be equal to the original.

(2) If a procedural document cannot be replaced by an authenticated copy, the procedural document shall be restored on the basis of a draft of the document if such draft exists. A restored procedural document is deemed to be valid if the person conducting the proceedings who initially prepared the document confirms by a signature that the restored document corresponds to the original.

Division 2

Translation and Interpretation

§ 161. Translators and interpreters

(1) If a text in a foreign language needs to be translated or interpreted or if a participant in a criminal proceeding is not proficient in Estonian, a translator or interpreter shall be involved in the proceeding.

(2) A translator or interpreter is a person proficient in language for specific purposes or a person interpreting for a deaf or dumb person. Other subjects to a criminal proceeding shall not perform the duties of a translator or interpreter.

(3) A translator or interpreter who is not a sworn translator or interpreter shall be warned that he or she may be punished pursuant to criminal procedure for a knowingly false translation or interpretation.

(4) If a translator or interpreter does not participate in a procedural act where the participation of a translator or interpreter is mandatory, the act is null and void.

(5) In order to ensure the correctness of a translation or interpretation, the translator or interpreter has the right to pose questions to the participants in the proceedings, examine the report of procedural acts and make statements concerning the report, and record shall be made of such statements.

(6) A translation or interpretation of any aspect of a procedural act rendered by a translator or interpreter shall be precise and complete. If a non-staff translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.

§ 162. Bases for interpreters and translators to remove themselves and removal of translators or interpreters

(1) A translator or interpreter is required to remove himself or herself from criminal proceedings on the bases provided for in clauses 49 (1) 3)–5) of this Code.

(2) If a translator or interpreter does not remove himself or herself on a basis provided for in clauses 49 (1) 3)-5) of this Code, the prosecutor, suspect, accused, counsel, victim or civil defendant may submit a petition of challenge against the translator or interpreter.

(3) Petitions of challenge shall be adjudicated pursuant to the procedure prescribed in subsections 59 (5)-(6) of this Code.

Division 3

Summoning

§ 163. Summons

(1) A summons shall set out:

1) the name of the person summoned;

2) the official title, name and details of the person issuing the summons;

3) the reason for summoning the person, and the capacity in which the person is summoned;

4) if a legal person is summoned, whether the summons is addressed to a legal representative or a representative;

5) whether appearance is mandatory;

6) the place and time of appearance;

7) the number of the criminal matter;

8) the obligation to give notice of failure to appear and of the reasons for such failure;

9) the consequences of failure to appear.

(2) The final part of a summons shall contain a notice which shall be completed if the summons is served on the person against signature. The notice shall set out the name of the person who received the summons, his or her signature confirming the receipt of the summons, the date of receipt of the summons and the obligation of the person who receives the summons in the absence of the summoned to deliver the summons to the summoned at the earliest opportunity or give notification to the person who issued the summons if forwarding the summons is impossible. If a person refuses to accept the

summons, the person serving the summons shall make a notation on the notice in the final part of the summons and confirm the notation by his or her signature.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) If a person is summoned to a body conducting proceedings pursuant to the procedure provided for in § 164 of this Code, the notice provided for in subsection (2) of this section shall set out the number of the telephone, facsimile or other means of communication to which the summons was sent.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 164. General procedure for service of summonses

(1) A person shall be summoned to an investigative body, Prosecutor's Office or court by a summons communicated by telephone, facsimile or other means of communication.

(2) If there is reason to believe that a person absconds appearance at a body conducting proceedings or a person has expressed a wish to receive a written summons, the person shall be summoned to an investigative body, Prosecutor's Office or court by a written summons.

(3) The notices read by an official of an investigative body, prosecutor or court to the persons present are deemed to be equal to summonses served against signature within the meaning of subsection 165 (2) of this Code if a corresponding notation is made in the report.

(4) A summons shall be communicated to or served on a person in sufficient time for the appearance.

(5) Summonses may be served on any day and at any time.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 165. Procedure for service of written summonses

(1) A written summons may be served against signature on a notice, as a registered letter sent by post with advice of delivery or using electronic means.

(2) A written summons shall be served on an adult or minor of at least 14 years of age against signature on a notice. The written summons addressed to a person who is less than 14 years of age or suffers from a mental disorder shall be served on his or her parent or any other legal representative or guardian against signature on a notice. If a summons cannot be served on the person summoned, the summons shall be served against signature on a notice on an adult family member living together with the summoned or shall be sent to the place of employment or educational institution of the summoned for forwarding to him or her.

(3) A summons sent by post is deemed to be received by the person on the date indicated in the notice of delivery of the post office.

(4) Upon service of a summons by electronic means, the summons shall be sent at the electronic mail address indicated in a procedural document or published on the Internet. The summons shall be accompanied by a digital signature and shall be protected from third persons. Upon sending the summons, the obligation to certify receipt of the summons immediately by an electronic mail addressed to the sender shall be indicated. A summons sent by electronic means is deemed to be received by the person on the date of the certification. If receipt of the summons is not certified within three days as of the date of sending the summons, the summons shall be sent in the form of a registered letter with advice of delivery or shall be served on the person summoned against signature.

(5) Notices concerning the serving of a summons against signature, notices of delivery issued by post offices, the printouts of electronic mails concerning the issue of the summons and the printouts of electronic mails confirming the receipt of the summons shall be included in the criminal file.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 166. Sending of summonses to detained persons

A summons shall be sent to an arrested or imprisoned person through the head of the custodial institution who shall arrange for the appearance of the summoned.

§ 167. Sending of summonses to persons serving in Defence Forces

A summons shall be sent to a person serving in the Defence Forces through the commanding officer of his or her military unit who shall arrange for the appearance of the summoned.

§ 168. Communication of summonses through notice in newspaper

(1) If there are several victims or civil defendants or if their identities cannot be established, an investigative body, Prosecutor's Office or court may summon such persons through a notice in a newspaper. A summons published in such manner is deemed to be served as of the publication of the notice.

(2) A notice in a newspaper shall set out the information listed in subsection 162 (2) of this Code.

(3) A notice shall be published in the newspaper prescribed for the publication of court notices at least twice with an interval of at least one week.

(4) The text of a notice published in a newspaper shall be included in the criminal file.

§ 169. Communication of summons to persons whose whereabouts are unknown

If a summons cannot be served on a person pursuant to the procedure provided for in §§ 164-167 of this Code, he or she shall be declared a fugitive by an order of an investigative body or Prosecutor's Office or by a court ruling pursuant to the provisions of § 140 of this Code.

§ 170. Good reason for failure to appear when summoned

(1) If a person summoned cannot appear on the specified date, he or she shall immediately give notice thereof.

(2) Good reason for failure to appear is:

1) absence which is not related to absconding from the criminal proceeding;

2) failure to receive a summons or belated receipt of the summons;

3) a serious illness of the person summoned or a sudden serious illness of a person close to him or her which prevents the person from appearing at the body conducting the proceedings;

4) any other circumstances which the investigative body, Prosecutor's Office or court deems to be a good reason.

(3) If an eyewitness to a criminal offence who has not been identified refuses to participate in a criminal proceeding as a witness, an official of the investigative body may detain the person for identification for up to twelve hours and a report shall be prepared thereon.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) A person shall submit a certificate concerning the occurrence of an impediment specified in clause (2) 3) of this section to the body conducting proceedings. The format and the procedure for the issue of certificates shall be established by the Minister of Social Affairs.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

Chapter 6

Terms in Proceedings

§ 171. Calculation of terms

(1) Terms shall be calculated in hours, days and months. A term shall not include the hour or day as of which the beginning of the term is calculated.

(2) If a person is detained as a suspect or arrested, the term shall be calculated as of the moment of his or her detention.

(3) Upon the calculation of a term in days, the term shall end on the last working day at twenty-four hours. If the end of a term calculated in days falls on a day off, the first working day following the day off shall be deemed to be the last day of the term.

(4) Upon the calculation of a term in months, the term shall end on the corresponding date of the last month. If the ending of a term falls on a calendar month which lacks a corresponding date, the term shall end on the last date of the month.

(5) If the end of a term calculated in months falls on a day off, the first working day following the day off shall be deemed to be the last day of the term.

(6) If an act is performed by an investigative body, Prosecutor's Office or court, the term shall end at the time of the end of the working hours in the corresponding agency.

(7) A term shall be deemed not to have been allowed to expire, if an appeal is posted or forwarded by commonly used technical communication channels before the expiry of the term. A term shall be deemed not to have been allowed to expire, if a person held in custody submits an appeal to the administration of the custodial institution before the expiry of the term.

§ 172. Restoration of term for appeal

(1) A term for appeal expired with good reason shall be restored by an order of the investigative body or Prosecutor's Office or a ruling of the court which conducts proceedings in the criminal matter.

(2) The following are good reasons for allowing a term for appeal to expire:

1) absence which is not related to absconding from the criminal proceeding;

2) any other circumstances which the investigative body, Prosecutor's Office or court deems to be a good reason.

Chapter 7

Expenses Relating to Criminal Proceedings

Division 1

Types of Expenses Relating to Criminal Proceedings

§ 173. Expenses relating to criminal proceedings

(1) Expenses relating to criminal proceedings are:

1) procedural expenses;

2) specific expenses;

3) additional expenses.

(2) Procedural expenses shall be compensated for by the obligated person pursuant to this Act to the extent determined by the body conducting proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) Specific expenses shall be compensated for by the person by whose fault the expenses are incurred.

(4) Additional expenses shall be borne by the person who incurs such expenses.

§ 174. Non-compensation of expenses of third party

Expenses incurred by a person who is not a participant in a proceeding, except procedural expenses specified in clauses 175 (1) 1)–3) of this Code, shall not be deemed to be procedural expenses.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 175. Procedural expenses

(1) The following are procedural expenses:

1) reasonable remuneration paid to the chosen counsel or representative and other necessary expenses incurred by a participant in a proceeding in connection with the criminal proceeding;

2) amounts paid to victims, witnesses, experts and specialists pursuant to § 178 of this Code, except expenses specified in clause 176 (1) 1) of this Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) expenses incurred by a state forensic institution or any other state agency or legal person in connection with conducting expert analysis or establishment of intoxication;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) remuneration paid to an appointed counsel;

5) expenses incurred in the making of copies of the materials of the criminal file for a counsel pursuant to subsection 224 (5) of this Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

6) storage fees and expenses relating to the forwarding and destruction of evidence;

7) expenses relating to the storage, transfer and destruction of confiscated property:

8) expenses incurred as a result of securing a civil action;

9) compensation levies paid upon a judgment of conviction;

10) other expenses incurred by a body conducting proceedings in the course of conducting criminal proceedings, except expenses considered to be specific or additional expenses pursuant to this Code.

(2) If a participant in a proceeding has several counsels or representatives, procedural expenses shall cover remuneration paid to the counsels or representatives in an amount not exceeding reasonable remuneration normally paid to one counsel or representative.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) If a suspect or the accused defends himself or herself, necessary defence expenses shall be included in procedural expenses. Excessive expenses which would not have occurred, had a counsel participated, shall not be included in procedural expenses.

(4) Expenses related to the conduct of expert analyses incurred by agencies and legal persons shall be compensated for in the amount and pursuant to the procedure determined by the Government of the Republic.

§ 176. Specific expenses

(1) The following are specific expenses:

1) expenses incurred as a result of the adjournment of a court session due to the failure of a participant in the proceeding to appear;

2) expenses relating to compelled attendance.

(2) The procedure for the calculation and the amount of specific expenses shall be determined by the Government of the Republic.

§ 177. Additional expenses

The following are additional expenses:

1) remuneration payable to a person not participating in proceedings for information concerning facts relating to a subject of proof;

2) the costs of keeping a suspect or the accused in custody;

3) amounts paid to interpreters or translators pursuant to § 178 of this Code;

4) amounts paid in criminal proceedings pursuant to the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act (RT I 1997, 48, 775; 2001, 47, 260; 2002, 56, 350; 61, 375).

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) expenses which have been incurred by state and local government agencies in connection with a criminal proceeding and which are not specified in clauses 175 (1) 1) and 10) of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 178. Compensation for expenses of victims, witnesses, interpreters, translators, experts and specialists

(1) The following expenses incurred in connection with a criminal proceeding shall be reimbursed to a victim, witness, non-staff translator or interpreter and an expert or specialist not employed by a state forensic institution:

1) unreceived income in accordance with subsection (4) of this section;

2) daily allowance;

3) travel and overnight accommodation expenses.

(2) Translators and interpreters, experts and specialists shall receive remuneration for the performance of their duties, unless they performed their duties as official duties.

(3) Expenses specified in subsection (1) of this section shall also be compensated for in case the court session is adjourned. Neither remuneration nor compensation shall be paid to the person who causes the adjournment.

(4) Victims, witnesses, translators and interpreters, experts and specialists whose salaries or wages are not retained shall receive compensation in the amount of their average wages, on the basis of a certificate from the employer, for the full time of their absence from work when summoned by the body conducting the proceedings. If a victim, witness, translator or interpreter, expert or specialist fails to submit a certificate from the employer, compensation for the time of absence from work shall be calculated based on the established minimum wage.

(5) The amount of remuneration payable to victims, witnesses, translators and interpreters, experts and specialists and the amount of compensations specified in subsection (1) of this section shall be established by a regulation of the Government of the Republic.

§ 179. Compensation levies

(1) The amount of compensation levies paid upon a judgment of conviction is:

1) in the case of conviction in a criminal offence in the first degree, two and a half times the amount of the minimum wage;

(17.12.2003 entered into force 01.07.2004 - RT I 2003, 83, 558)

2) in the case of conviction in a criminal offence in the second degree, one and a half times the amount of the minimum wage.

(17.12.2003 entered into force 01.07.2004 - RT I 2003, 83, 558)

(2) If a person is convicted on the basis of several sections of the Penal Code, the person shall pay compensation levies corresponding to the degree of the most serious criminal offence.

Division 2

Compensation for Expenses Relating to Criminal Proceedings

§ 180. Compensation for procedural expenses in case of conviction

(1) In the case of a conviction, procedural expenses shall be compensated for the convicted offender. In such case, the exceptions provided for in § 182 of this Code shall be taken into consideration.

(2) If several persons are convicted in a criminal matter, the distribution of expenses shall be decided by the court, taking into account the extent of the liability and financial situation of each convicted offender.

(3) When determining procedural expenses, a court shall take into account the financial situation and chances of re-socialisation of a convicted offender. If a convicted offender is obviously unable to reimburse procedural expenses, the court shall order a part of the expenses to be borne by the state.

§ 181. Compensation for procedural expenses in case of acquittal

(1) In the case of an acquittal, procedural expenses shall be compensated for by the state, taking into account the exceptions provided in § 182 of this Code.

(2) A person who has been acquitted shall reimburse any procedural expenses caused by the person's wrongful failure to perform his or her obligations or false admission of guilt.

§ 182. Compensation for procedural expenses related to civil action

(1) If a civil action is dismissed, procedural expenses related to the securing of the civil action shall be compensated for by the victim.

(2) If a civil action is satisfied in full, procedural expenses related to the securing of the civil action shall be compensated for by the convicted offender or defendant.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) If a civil action is satisfied in part, the court shall divide the procedural expenses related to the securing of the civil action between the victim and the convicted offender or defendant, taking into consideration all the circumstances.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) Upon refusal to review a civil action, procedural expenses related to the securing of the civil action shall be compensated for by the state.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 183. Compensation for procedural expenses upon termination of criminal proceedings

If criminal proceedings are terminated, procedural expenses shall be compensated for by the state, unless otherwise provided for in this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 184. Compensation for procedural expenses in case of false report of criminal offence

If criminal proceedings are commenced on the basis of a knowingly false report of a criminal offence, procedural expenses shall be reimbursed by the person who reported the criminal offence.

§ 185. Compensation for procedural expenses in appeal proceedings

(1) If a decision specified in clauses 337 (1) 2)-4) or subsection 337 (2) of this Code is made in appeal proceedings, procedural expenses shall be borne by the state.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If a decision specified in clause 337 (1) 1) of this Code is made in appeal proceedings, procedural expenses shall be borne by the person who incurred the expenses. If the appeal was filed by a Prosecutor's Office, procedural expenses shall be borne by the state.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 186. Compensation for procedural expenses in cassation proceedings and review procedure

(1) If a decision specified in clauses 361 2)-7) of this Code is made in cassation proceedings, procedural expenses shall be borne by the person who incurred the expenses.

(2) If a decision specified in clause 361 1) of this Code is made in cassation proceedings, procedural expenses shall be reimbursed by the person who filed the appeal in cassation. If the appeal in cassation was filed by a Prosecutor's Office, procedural expenses shall be borne by the state.

(3) If a petition for review is dismissed, the reimbursement of procedural expenses may be imposed on the petitioner.

§ 187. Compensation for procedural expenses in proceedings for adjudication of appeals against court rulings

(1) If a court ruling is annulled in the course of proceedings for the adjudication of an appeal against the court ruling, procedural expenses shall be borne by the state.

(2) If an appeal against a court ruling is dismissed, procedural expenses shall be borne by the person who incurred the expenses.

§ 188. Obligation of minor to compensate for expenses relating to criminal proceedings

If a minor is required to reimburse the expenses relating to a criminal proceeding, the body conducting the proceedings may impose the reimbursement of expenses on his or her parent, guardian or child care institution.

Division 3

Decision Concerning Compensation for Expenses Relating to Criminal Proceedings

§ 189. Decision concerning compensation for expenses relating to criminal proceedings

(1) In pre-trial proceedings, compensation for expenses relating to criminal proceedings shall be decided by an order of the investigative body or Prosecutor's Office.

(2) In court proceedings, compensation for expenses relating to criminal proceedings shall be decided by a court ruling or judgment.

(3) If compensation for expenses relating to criminal proceedings is prescribed by a court judgment, this may be contested separately from the court judgment pursuant to Chapter 15 of this Code.

§ 190. Content of decision concerning compensation for expenses relating to criminal proceedings

In a decision concerning compensation for the expenses relating to criminal proceedings, the body conducting the proceedings shall determine:

1) who shall reimburse the procedural expenses and the size of each part of the procedural expenses required to be paid expressed as an absolute amount or, if this is impossible, as a fraction;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the amount of specific expenses and the person required to reimburse the specific expenses;

3) the number of days during which a person was kept under arrest without bases, the justification of and bases for the receipt of compensation.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 191. Contestation of decision concerning compensation for expenses relating to criminal proceedings

(1) A Prosecutor's Office or participant in a proceeding who is required to compensate for the expenses relating to the criminal proceeding on the basis of a decision concerning compensation for the expenses relating to criminal proceedings may contest the decision in accordance with the provisions of §§ 228 or 229 of this Code, by an appeal or appeal in cassation or pursuant to Chapter 15 of this Code.

(2) When hearing an appeal filed against a court ruling ordering compensation for the expenses relating to a criminal proceeding, a court may extend the limits of the hearing of the appeal to the entire decision concerning compensation for the expenses relating to the criminal proceeding regardless of the content of the appeal.

(3) When hearing an appeal or an appeal in cassation filed against a court judgment, a circuit court or the Supreme Court may make a new decision concerning compensation for the expenses relating to criminal proceedings regardless of contestation.

§ 192. Determination of compensation for expenses

(1) Compensation for expenses is a sum of money payable by a person on the basis of a decision concerning compensation for the expenses relating to criminal proceedings.

(2) A body conducting proceedings shall determine the amount of compensation for expenses on the basis of a decision concerning compensation for the expenses relating to a criminal proceeding and at the request of a participant in the proceeding or the Prosecutor's Office, if:

1) the distribution of procedural expenses is expressed in fractions in the decision concerning compensation for the expenses relating to the criminal proceeding;

2) the distribution of expenses as set out in the decision concerning compensation for the expenses relating to the criminal proceeding is contradictory;

3) expenses the amount of which is not known at the time of determination of the expenses are to be compensated according to the decision concerning compensation for the expenses relating to the criminal proceeding.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) A ruling specified in subsection (1) of this section may be contested pursuant to the procedure provided for in subsection 191 (1) of this Code.

Chapter 8

Pre-trial Procedure

Division 1

Commencement and Termination of Criminal Proceedings

§ 193. Commencement of criminal proceedings

(1) An investigative body or a Prosecutor's Office commences criminal proceedings by the first investigative activity or other procedural act if there is reason and grounds therefor and the circumstances provided for in subsection 199 (1) of this Code do not exist.

(2) If criminal proceedings are commenced by an investigative body, the body shall immediately notify the Prosecutor's Office of the commencement of the proceedings.

(3) If criminal proceedings are commenced by a Prosecutor's Office, the Office shall forward the materials of the criminal matter pursuant to investigative jurisdiction.

§ 194. Reasons and grounds for criminal proceedings

(1) The reason for the commencement of criminal proceedings is a report of a criminal offence or other information indicating that a criminal offence has taken place.

(2) The grounds for a criminal proceeding are constituted by ascertainment of criminal elements in the reason for the criminal proceeding.

§ 195. Report of criminal offence

(1) A report of a criminal offence shall be submitted to an investigative body or a Prosecutor's Office orally or in writing.

(2) A report in which a person is accused of a criminal offence is a complaint of crime.

(3) An oral report of a criminal offence which is submitted directly on site of the commission of the offence shall be recorded in a report, and a report of a criminal offence communicated by telephone shall be recorded in writing or audio-recorded.

§ 196. Report of violent death

(1) If there is reason to believe that a person has died as a result of a criminal offence or if an unidentifiable body is found, an investigative body or a Prosecutor's Office shall be immediately notified thereof.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If a health care professional conducting an autopsy suspects that the person died as a result of a criminal offence, he or she is required to notify an investigative body or Prosecutor's Office of such suspicion immediately.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 197. Other information referring to criminal offence

(1) If a Prosecutor's Office or an investigative body receives information released in the press indicating that a criminal offence has taken place, such information may be the reason for the commencement of criminal proceedings.

(2) If an investigative body or a Prosecutor's Office, in the performance of the duties thereof, receives information indicating that a criminal offence has taken place, such information may be the reason for the commencement criminal proceedings.

§ 198. Response to report of criminal offence

(1) An investigative body or Prosecutor's Office shall, within ten days as of the receipt of a report of a criminal offence, notify the person who submitted the report of the refusal to commence criminal proceedings pursuant to subsection 199 (1) or (2) of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If a complaint of crime is submitted, the investigative body or Prosecutor's Office shall, pursuant to the procedure provided for in subsection (1) of this section, notify also the person concerning whom the complaint was submitted of refusal to commence criminal proceedings.

§ 199. Circumstances precluding criminal proceedings

(1) Criminal proceedings shall not be commenced if:

1) there are no grounds for criminal proceedings;

2) the limitation period for the criminal offence has expired;

3) an amnesty precludes imposition of a punishment;

4) the suspect or the accused is dead or the suspect or accused who is a legal person has been dissolved;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) a decision or a ruling on termination of criminal proceedings has entered into force in respect of a person in the same charges on the bases provided for in § 200 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) Criminal proceedings shall not be commenced if detention of the suspect is substituted for pursuant to § 219 of this Code.

(3) Criminal proceedings shall be continued if commencement of the proceedings is requested for the purposes of rehabilitation by:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) a suspect or accused in the cases provided for in clause (1) 2) or 3) of this section;

2) the representative of a deceased suspect or accused in the case provided for in clause (1) 4) of this section.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 200. Termination of criminal proceedings upon occurrence of circumstances precluding criminal proceedings

If circumstances specified in § 199 of this Code which preclude criminal proceedings become evident in pre-trial proceedings, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office.

§ 200[1]. Termination of criminal proceedings due to failure to identify person who committed criminal offence

(1) If, in pre-trial proceedings, a person who committed a criminal offence has not been identified and it is impossible to collect additional evidence, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office. The proceedings may also be terminated partially in respect of a suspect or a criminal offence.

(2) Where the bases prescribed in subsection (1) cease to exist, proceedings shall be resumed pursuant to the procedure prescribed in § 193 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 201. Referral of materials to juvenile committee

(1) If commencement of criminal proceedings is refused or a criminal proceeding is terminated for the reason that the unlawful act was committed by a minor who was incapable of guilt on the grounds of hid or her age, the investigative body or Prosecutor's Office shall refer the materials of the criminal matter to the juvenile committee of the place of residence of the minor.

(2) If a Prosecutor's Office finds that a minor who has committed a criminal offence in the age of 14 to 18 can be influenced without imposition of a punishment or a sanction prescribed in § 87 of the Penal Code, the Prosecutor's Office shall terminate the criminal proceeding by a ruling and refer the criminal file to the juvenile committee of the place of residence of the minor.

(3) Prior to referral of materials to a juvenile committee, the nature of the act with the elements of a criminal offence and the grounds for termination of the criminal proceeding shall be explained to the minor and his or her legal representative.

§ 202. Termination of criminal proceedings in event of lack of public interest in proceedings and in case of negligible guilt

(1) If the object of criminal proceedings is a criminal offence in the second degree and the guilt of the person suspected or accused of the offence is negligible, and he or she has remedied or has commenced to remedy the damage caused by the criminal offence or has paid the expenses relating to the criminal proceedings, or assumed the obligation to pay such expenses, and there is no public interest in the continuation of the criminal proceedings, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused.

(2) In the event of termination of criminal proceedings, the court may impose the following obligation on the suspect or accused at the request of the Prosecutor's Office and with the consent of the suspect or the accused within the specified term:

1) to pay the expenses relating to the criminal proceedings or compensate for the damage caused by the criminal offence;

2) to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public;

3) to perform 10 to 240 hours of community service. The provisions of subsections 69 (2) and (5) of the Penal Code apply to community service.

(3) The term for the performance of obligations listed in subsection (2) of this section shall not exceed six months.

(4) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the prosecutor and the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.

(5) If the judge does not consent to the request submitted by the Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(6) If a person with regard to whom criminal proceedings have been terminated pursuant to subsection (2) of this section fails to perform the obligation imposed on him or her, the Prosecutor's Office or the court, at the request of the Prosecutor's Office, shall resume the criminal proceedings by an order. In imposition of a punishment, the part of the obligations performed by the person shall be taken into consideration.

(7) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor's Office may terminate the criminal proceedings and impose the obligations on the grounds specified in subsections (1) and (2) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the grounds specified in subsection (6) of this section.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 203. Termination of criminal proceedings due to lack of proportionality of punishment

(1) If the object of criminal proceedings is a criminal offence in the second degree, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim if:

1) the punishment to be imposed for the criminal offence would be negligible compared to the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence;

2) imposition of a punishment for the criminal offence cannot be expected during a reasonable period of time and the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence is sufficient to achieve the objectives of the punishment and satisfy the public interest in the proceeding.

(2) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the prosecutor and the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.

(3) If the judge does not consent to the request submitted by the Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(4) If criminal proceedings were terminated taking into consideration a punishment imposed on the suspect or the accused for another criminal offence and the punishment is

subsequently annulled, the court may, at the request of the Prosecutor's Office, resume the criminal proceedings by an order.

(5) If criminal proceedings were terminated taking into consideration a punishment which will presumably be imposed on the suspect or the accused for another criminal offence, the court may, at the request of the Prosecutor's Office, resume the criminal proceedings if the punishment imposed does not meet the criteria specified in clauses (1) 1) and 2) of this section.

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor's Office may terminate the criminal proceedings on the grounds specified in subsection (1) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the grounds specified in subsections (4) and (5) of this section.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 204. Termination of criminal proceedings concerning criminal offences committed by foreign citizens or in foreign states

(1) A Prosecutor's Office may terminate criminal proceedings by an order if:

1) the criminal offence was committed outside the territorial applicability of this Code;

2) the criminal offence was committed by a foreign citizen on board a foreign ship or aircraft located in the territory of the Republic of Estonia;

3) an accomplice to the criminal offence committed the criminal offence in the territory of the Republic of Estonia but the consequences of the criminal offence occurred outside the territorial applicability of this Code;

4) a decision concerning extradition of the alleged criminal offender to a foreign state has been made;

5) the person has been convicted and has served the sentence in a foreign state and the punishment applicable in Estonia is not significantly more severe than the punishment served, or if the person has been acquitted in a foreign state.

(2) A Prosecutor's Office may, by an order, terminate criminal proceedings concerning a criminal offence which was committed in a foreign state but the consequences of which occurred in the territory of the Republic of Estonia if the proceedings may result in serious consequences for the Republic of Estonia or are in conflict with other public interests.

§ 205. Termination of criminal proceedings in connection with assistance received from person upon ascertaining facts relating to subject of proof

(1) The Public Prosecutor's Office may, by its order, terminate criminal proceedings with regard to a person suspected or accused with his or her consent if the suspect or the accused has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence which is important from the point of view of public interest in the proceedings and if, without the assistance, detection of the criminal offence and collection of evidence would have been precluded or especially complicated. Criminal proceedings shall not be terminated in respect of the suspect or the accused who has committed a criminal offence for which the lightest punishment is prescribed as at least six years' imprisonment or the most severe punishment is prescribed as life imprisonment in the Penal Code.

(2) The Public Prosecutor's Office may, by its order, resume proceedings if the suspect or the accused has discontinued facilitating the ascertaining of facts relating to a subject of proof of a criminal offence or if he or she has intentionally committed a new criminal offence within three years after termination of the proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 206. Order on termination of criminal proceedings

(1) An order on the termination of criminal proceedings shall set out:

1) the basis for termination of the criminal proceedings pursuant to §§ 200–205 of this Code;

2) annulment of the preventive measures applied;

3) how to proceed with the physical evidence or confiscated objects;

4) duration of the arrest;

5) a decision concerning compensation for the expenses relating to the criminal proceedings;

6) the procedure for appeal against the order on termination of the criminal proceedings.

(2) A copy of an order on termination of criminal proceedings shall be immediately sent to:

1) the person who reported the criminal offence;

2) the suspect or accused and the counsel thereof;

3) the victim or the representative thereof;

4) the civil defendant or the representative thereof.

(3) A victim has the right to examine the criminal file within ten days as of receipt of a copy of the order on termination of the criminal proceedings.

(4) A copy of an order on termination of criminal proceedings may be sent, by way of subordination, to a relevant agency which is to decide on the commencement of a misdemeanour or disciplinary proceeding.

§ 207. Contestation of refusal to commence or termination of criminal proceedings in Public Prosecutor's Office

(1) A victim may file an appeal with a Prosecutor's Office on the bases provided for in subsection 199 (1) or (2) of this Code against refusal to commence criminal proceedings.

(2) A victim may file an appeal with the Public Prosecutor's Office on the basis provided for in § 200 of this Code against termination of criminal proceedings or dismissal of an appeal provided for in subsection (1) of this section by a Prosecutor's Office.

(3) An appeal specified in subsection (1) or (2) of this section may be filed within ten days as of receipt of a notice on refusal to commence criminal proceedings, a copy of an order prepared by a Prosecutor's Office on adjudication of an appeal or a copy of an order on termination of the criminal proceedings.

(4) A Prosecutor's Office shall adjudicate an appeal specified in subsection (1) of this section within fifteen days as of the receipt of the appeal. The Public Prosecutor's Office shall adjudicate an appeal specified in subsection (2) of this section within one month as of the receipt of the appeal.

(5) A Prosecutor's Office or the Public Prosecutor's Office shall prepare a reasoned order on dismissal of an appeal and shall send a copy of the order to the appellant.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 208. Contestation of refusal to commence or termination of criminal proceedings in circuit court

(1) If an appeal specified in subsection 207 (1) or (2) of this Code is dismissed by an order of the Public Prosecutor's Office, the appellant may file an appeal against the order with the circuit court through an advocate within one month as of the receipt of a copy of the order.

(2) An appeal filed with a circuit court shall set out:

1) the facts relating to the criminal offence;

2) the legal assessment of the criminal offence;

3) the evidence collected in support of the suspicion of criminal offence;

4) in the event of termination of criminal proceedings, a short description of the proceedings;

5) the procedural acts the performance of which was according to the appellant refused without basis.

(3) An appeal specified in subsection (2) of this section shall be adjudicated by a circuit court judge sitting alone within ten days as of the receipt of the appeal. Before making a decision, the judge has the right to:

1) demand that the materials of the criminal file be submitted;

2) issue orders to the Public Prosecutor's Office to perform additional procedural acts.

(4) If a judge finds on the basis of the information at his or her disposal that commencement or continuation of criminal proceedings is unfounded, he or she shall make a ruling on refusal to commence or continue the criminal proceedings which shall set out:

1) the reasons for dismissal of the appeal;

2) an order requiring payment of the procedure expenses by the appellant.

(5) If a judge has information to conclude that commencement or continuation of the criminal proceedings is justified, he or she shall annul the order of the Public Prosecutor's Office and require the Public Prosecutor's Office to commence or continue criminal proceedings.

§ 209. Archiving of criminal file upon termination of criminal proceedings

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(1) If criminal proceedings are terminated on a basis provided for in §§ 200–205 of this Code, the criminal file shall be archived.

(2) The procedure for archiving criminal files and the terms for preservation of the files shall be established by a regulation of the Government of the Republic.

§ 210. State register of criminal matters

(1) The state register of criminal matters contains information concerning the criminal matters in which the proceedings are conducted by investigative bodies, Prosecutors' Offices or courts.

(2) The state register of criminal matters shall be founded and the chief processor and authorised processor thereof shall be appointed by the Government of the Republic.

(3) The Minister of Justice may issue regulations concerning organisation of the activities of the state register of criminal matters.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) On the basis of data in the state register of criminal matters, the Ministry of Justice shall publish, by 1 March each year, a report on crime during the previous year.

(19.05.2004 entered into force 01.09.2005 - RT I 2004, 46, 329)

(5) Statistical forms relating to crime and the procedure for the completion and publication thereof for investigative bodies, Prosecutors' Offices and courts shall be established by a regulation of the Government of the Republic.

(19.05.2004 entered into force 01.01.2005 - RT I 2004, 46, 329)

Division 2

General Conditions for Pre-trial Procedure

§ 211. Objective of pre-trial procedure

(1) The objective of pre-trial procedure is to collect evidentiary information and create other conditions necessary for court procedure.

(2) In pre-trial procedure, an investigative body and a Prosecutor's Office shall ascertain the facts vindicating or accusing the suspect or the accused.

§ 212. Investigative jurisdiction

(1) Pre-trial proceedings shall be conducted by the Police Board, the agencies administered thereby, and the Security Police Board, unless otherwise provided for in subsection (2) of this section.

(2) In addition to the investigative bodies specified in subsection (1) of this section, pre-trial proceedings are conducted by:

1) the Border Guard Administration in the case of criminal offences relating to illegal crossing of the state border or temporary border line or illegal conveyance of persons across the state border or temporary border line;

2) the Tax and Customs Board in the case of tax fraud and criminal offences involving violation of customs rules;

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 590)

3) the General Staff of the Defence Forces in the case of criminal offences relating to service in the Defence Forces and war crimes;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) (Repealed - 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 590)

5) the Competition Board in the case of criminal offences relating to competition.

(3) In addition to the investigative bodies listed in subsection (1) of this section, urgent procedural acts specified in subsection 31 (3) of this Code shall be performed by:

1) the Environmental Inspectorate in the case of criminal offences relating to violation of the requirements for the protection and use of the environment and the natural resources;

2) the Rescue Board in the case of criminal offences relating to violation of the fire safety requirements;

3) the Technical Inspectorate in the case of criminal offences relating to violation of the rules for industrial, construction and mining operations, the rules for driving or operation of machinery or safety rules for machinery;

4) the Labour Inspectorate in the case of criminal offences relating to violation of the occupational health and safety rules;

5) the captains of sea-going vessels or aircraft during voyages, in the case of criminal offences committed on board the ship under their navigation or on board of the aircraft under their operation;

6) the Prisons Department of the Ministry of Justice and prisons in the case of criminal offences committed in prisons and criminal offences committed by imprisoned persons.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The division of investigative jurisdiction between the Police Board, the agencies administered thereby, and the Security Police Board shall be established by a regulation of the Government of the Republic.

(5) For reasons of expediency, the head of the Police Board may, by an order, alter the investigative jurisdiction of the Police Board and the agencies administered thereby. For reasons of expediency, a Prosecutor's Office may alter the investigative jurisdiction provided for in subsections (1) or (2) of this section in a particular criminal matter by an order.

§ 213. Prosecutor's Office in pre-trial proceedings

(1) Prosecutors' Offices shall direct pre-trial procedure and ensure the legality and efficiency thereof and are competent to:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) perform procedural acts when necessary;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) be present at the performance of procedural acts and intervene in the course thereof;

3) terminate criminal proceedings;

4) demand that the materials of a criminal file and other materials be submitted for examination and verification;

5) issue orders to investigative bodies;

6) annul and amend orders of investigative bodies;

7) remove an official of an investigative body from a criminal proceeding;

8) alter the investigative jurisdiction over a criminal matter;

9) declare a pre-trial proceeding completed;

10) demand that an official of an investigative body submit oral or written explanations concerning the circumstances relating to a proceeding;

11) assign the head of the probation supervision department with the duty to appoint a probation officer;

12) perform other duties arising from this Code in pre-trial proceedings.

(2) When exercising the rights specified in clauses (1) 1) and 2) of this section, a Prosecutor's Office has the rights of an investigative body.

(3) If a Prosecutor's Office finds elements of a disciplinary offence in the conduct of an official of an investigative body in a pre-trial proceeding, the Prosecutor's Office shall submit a written proposal to the person entitled to impose disciplinary penalties that disciplinary proceedings be commenced against the official of the investigative body. The person entitled to impose disciplinary penalties is required to notify the Prosecutor's Office in writing of the results of resolution of the proposal and of the bases for the resolution within one month as of the receipt of the proposal.

(4) In the case of a suspect who is a minor, a Prosecutor's Office is required to assign the head of the probation supervision department with the duty to appoint a probation officer.

(5) The Chief Public Prosecutor may give general instructions for Prosecutors' Offices and investigative bodies in order to ensure the legality and efficacy of pre-trial procedure. Instructions for an investigative body shall be approved by the head of the investigative body at which the instructions are directed.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(6) A higher ranking prosecutor may, by his or her order, revoke an unlawful or unjustified ruling, order or demand of a prosecutor.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(7) If an investigative body finds that compliance with an order issued by a Prosecutor's Office is inexpedient due to lack of funds or for another good reason, the head of the investigative body shall inform the Chief Public Prosecutor who decides on compliance with the order thereof and shall inform the Minister of Justice thereof.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 214. Conditions for disclosure of information concerning pre-trial proceedings

(1) Information concerning pre-trial proceedings shall be disclosed only with the permission of and to the extent specified by the Prosecutor's Office and under the conditions provided for in subsection (2) of this section.

(2) Information concerning a pre-trial proceeding shall not be disclosed if disclosure thereof may:

1) damage the interests of the Republic of Estonia;

2) prejudice the detection of a criminal offence;

3) prejudice a criminal proceeding or induce crime;

4) violate a business secret or the activities of a legal person;

5) jeopardise the inviolability of private and family life, or discredit a person;

6) damage the interests of a minor.

(3) In the event of violation of the prohibition on disclosure of information concerning pre-trial proceedings, a preliminary investigation judge may impose a fine of up to sixty minimum daily rates on the participants in the procedural act by a court ruling at the request of the Prosecutor's Office. The suspect and the accused shall not be fined.

§ 215. Obligation to comply with orders and demands of investigative bodies and Prosecutors' Offices

(1) The orders and demands issued by investigative bodies and Prosecutors' Offices in the criminal proceedings conducted thereby are binding on everyone and shall be complied with throughout the territory of the Republic of Estonia.

(2) An investigative body conducting a criminal proceeding has the right to submit written requests to other investigative bodies for the performance of specific procedural

acts and for other assistance. Such requests of investigative bodies shall be complied with immediately.

(3) A preliminary investigation judge may impose a fine of up to sixty minimum daily rates on a participant in a proceeding, other persons participating in criminal proceedings or persons not participating in the proceedings who have failed to perform an obligation provided for in subsection (1) of this section by a court ruling at the request of a Prosecutor's Office. The suspect and the accused shall not be fined.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 216. Joinder and severance of criminal matters

(1) Several criminal matters may be joined for a joint proceeding if:

1) persons are suspected or accused of committing a criminal offence together;

2) a person is suspected or accused of committing several criminal offences;

3) a person is suspected or accused of concealment of a criminal offence without prior authorisation or of failure to report a criminal offence.

(2) A criminal matter may be severed into a new file if this does not prejudice the comprehensiveness, thoroughness and objectivity of the criminal proceeding.

(3) Criminal matters shall be joined and severed by an order of an investigative body or Prosecutor's Office or by a court ruling. A copy of an order or ruling on the severance of a criminal matter shall be included in the new file.

(4) If a minor is suspected or accused of committing a criminal offence together with an adult, an investigative body, Prosecutor's Office or court may, by an order or ruling, sever the criminal matter concerning the minor for a separate criminal proceeding if severance does not prejudice the comprehensiveness, thoroughness or objectivity of the criminal proceeding and is in the interests of the minor.

Division 3

Detention of Suspect

§ 217. Detention of suspect

(1) Detention of a suspect is a procedural act whereby a person is deprived of liberty for up to forty-eight hours. A report shall be prepared on a detention.

(2) A person shall be detained as a suspect if:

1) he or she is apprehended in the act of committing a criminal offence or immediately thereafter;

2) an eyewitness to a criminal offence or a victim indicates such person as the person who committed the criminal offence;

3) the evidentiary traces of a criminal offence indicate that he or she is the person who committed the criminal offence.

(3) A suspect may be detained on the basis of other information referring to a criminal offence if:

1) he or she attempts to escape;

2) he or she has not been identified;

3) he or she may continue to commit criminal offences;

4) he or she may abscond criminal proceedings or impede the criminal proceedings in any other manner.

(4) A person who is apprehended in the act of committing a criminal offence or immediately thereafter in an attempt to escape may be taken to the police by anyone for detention as a suspect.

(5) An advocate may be detained as a suspect under the circumstances relating to his or her professional activities only at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(6) Section 377 of this Code applies to the detention of the President of the Republic, a member of the Government of the Republic, a member of the Riigikogu, the Auditor General, the Chancellor of Justice, or the Chief Justice or a justice of the Supreme Court as a suspect.

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

(8) If a Prosecutor's Office is convinced of the need to arrest a person, the Prosecutor's Office shall prepare an application for an arrest warrant and, within forty-eight hours as of the detention of the person as a suspect, organise the transport of the detained person to a preliminary investigation judge for the adjudication of the application.

(9) If the basis for the detention of a suspect ceases to exist in pre-trial proceedings, the suspect shall be released immediately.

(10) A person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. If the notification prejudices a criminal proceeding, the opportunity to notify may be refused with the permission of the Prosecutor's Office.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 218. Report on detention of suspect

(1) A report on the detention of a suspect shall set out:

1) the basis for the detention and a reference to subsection 217 (2) or (3) of this Code;

2) the date and time of the detention;

3) the criminal offence for the commission of which the suspect is detained;

4) explanation of the rights and obligations provided for in § 34 of this Code to the suspect;

5) the names and characteristics of the objects confiscated from the suspect upon detention;

6) a description of the clothing and bodily injuries of the detained person;

7) the petitions and requests of the detained person.

(2) A report on the detention of a suspect shall be sent to a Prosecutor's Office immediately.

§ 219. Substitution of detention of suspect

(1) If a person has committed a criminal offence in the second degree for which a pecuniary punishment may be imposed and the person does not have a permanent or temporary place of residence in Estonia, an investigative body may, with the consent of the person, substitute the detention of the person as a suspect by a payment covering the procedure expenses, the potential pecuniary punishment and the damage caused by the criminal offence into the public revenues.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A statement a copy of which is sent to the Prosecutor's Office shall be prepared on the substitution of the detention of a suspect and on the receipt of a payment into the public revenues.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

Division 4

Completion of Pre-trial Proceedings

§ 220. Demand to submit information necessary for calculating average daily income

(1) Before the completion of pre-trial proceedings, an investigative body shall demand that the Tax and Customs Board or, if necessary, an employer or any other person or agency submit information necessary for calculating the average daily income of the suspect or accused.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 590)

(2) If necessary, Prosecutors' Offices and courts may demand submission of additional information necessary for calculating average daily income.

(3) A person or agency from whom a body conducting proceedings demands information necessary for calculating average daily income shall respond to the inquiry within seven days as of the receipt thereof.

(4) A suspect or accused has the right to submit information concerning his or her income and debts to the body conducting the proceedings.

§ 221. Demand to submit information necessary for imposing fines to extent of assets

(1) If a person is accused of a criminal offence for which a fine to the extent of the assets of the person may be imposed pursuant to law, the investigative body shall prepare an order setting out the reasons for ascertaining the financial situation of the suspect or accused, and the name of the bailiff charged with the duty to collect information necessary for determining the amount of the fine before the completion of the pre-trial proceedings.

(2) If necessary, Prosecutors' Offices and courts may demand submission of additional information necessary for calculating the amount of a fine to the extent of the assets of a person.

(3) A bailiff shall ascertain the assets of a suspect or accused and assess the value thereof. Within thirty days as of the receipt of the order, the bailiff shall prepare a statement concerning the financial situation of the person and shall submit the statement together with the evidence on the basis of which the statement was prepared to the body conducting the proceedings.

(4) A suspect or accused has the right to submit information concerning his or her income and debts to the body conducting the proceedings.

§ 222. Preparation of summary of pre-trial proceedings

(1) If an official of an investigative body is convinced that the evidence necessary to proceed with a criminal matter has been collected, he or she shall immediately prepare a summary of the pre-trial proceedings pursuant to the provisions of § 153 of this Code and add the summary to the criminal file. The summary of the criminal proceedings shall be sent to the Prosecutor's Office also in electronic form. The materials of the criminal file shall be systematised and the pages thereof shall be numbered, and the file together with the physical evidence, recordings and a sealed envelope containing the personal data of anonymous witnesses shall be sent to the Prosecutor's Office.

(2) If there are several suspects in one and the same criminal matter, a joint summary of the pre-trial proceedings shall be prepared setting out the personal data of each suspect separately.

(3) The following shall be annexed to the summary of pre-trial proceedings:

1) an extract from the punishment register containing the information concerning the suspect;

2) the names and residences of the persons whom the investigative body considers necessary to summon to the court session , and references to the pages of the criminal file which contain information concerning their participation in the pre-trial proceedings;

3) a calculation of the expenses relating to the criminal procedure;

4) information concerning the average daily income of the suspect;

5) information concerning the circumstances on the basis of which a fine to the extent of assets is calculated.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 223. Acts performed by Prosecutor's Office upon receipt of criminal files

(1) A Prosecutor's Office which receives a criminal file shall declare the pre-trial proceedings completed, require the investigative body to perform additional acts or terminate the criminal proceeding on the bases and pursuant to the procedure provided for in §§ 200–205 of this Code.

(2) If necessary, a Prosecutor's Office which receives a criminal file shall perform additional acts after the receipt of the file. A Prosecutor's Office has the right to eliminate materials insignificant from the point of view of the criminal matter from a criminal file and, if necessary, re-systemise the criminal file.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) If a Prosecutor's Office declares a pre-trial proceeding completed, the Prosecutor's Office shall give a copy of the criminal file to the criminal defence counsel and submit the criminal file for examination pursuant to § 224 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) If necessary, a Prosecutor's Office shall perform the acts provided for in § 240 of this Code for the application of settlement procedure.

§ 224. Submission of criminal file to criminal defence counsel and submission of criminal file to victim and civil defendant for examination

(1) A copy of the criminal file shall be given to the defendant against signature.

(2) A Prosecutor's Office shall submit a criminal file to a victim or civil defendant for examination at the request thereof.

(3) A recording made in a criminal proceeding or physical evidence shall be submitted to the counsel, victim or civil defendant for examination at the request thereof.

(4) If examination of a criminal file, recording or physical evidence is obviously delayed, the Prosecutor's Office shall set a term for the examination.

(5) A victim and civil defendant have the right to make excerpts from the materials of the criminal file and request that copies be made of the materials of the criminal file by the Prosecutor's Office for a charge.

(6) A notation shall be made in a criminal file concerning examination of the criminal file, a recording made in the criminal matter or physical evidence by the counsel, victim or civil defendant.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(7) At the request of a defendant, a medium containing a state secret which is used as evidence in a criminal matter and which is not added to the criminal file shall be submitted to him or her for examination. A notation shall be made in a criminal file concerning examination of a medium containing a state secret.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 225. Submission and adjudication of requests

(1) The participants in a proceeding may submit requests to the Prosecutor's Office within ten days as of the date of submission of the criminal file to the participants for examination. If a criminal matter is especially extensive or complicated, the Prosecutor's Office may extend such term to up to fifteen days.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A Prosecutor's Office shall review a request within ten days as of the receipt of the request.

(3) Dismissal of a request shall be formalised by an order a copy of which shall be sent to the person who submitted the request. Dismissal of a request in pre-trial procedure shall not prevent re-submission of the request in court procedure.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The materials of a criminal matter which are collected by additional acts shall be submitted for examination pursuant to § 224 of this Code.

(5) The request of a suspect or accused for application of alternative proceedings shall be reviewed pursuant to the procedure provided for in § 235 of this Code.

§ 226. Preparation of statement of charges and sending statement of charges to court

(1) If a Prosecutor's Office has submitted a criminal file for examination and is thereafter convinced that the necessary evidence in the criminal matter has been collected, the Prosecutor's Office shall prepare the statement of charges pursuant to § 154 of this Code.

(2) A list of the persons to be summoned to a court session at the request of the Prosecutor's Office shall be annexed to a statement of charges. The list shall contain the given names, surnames and places of residence of the persons to be summoned. In the case of an anonymous witness, his or her fictitious name shall be indicated in the list. An extract of the list shall contain only the given names and surnames of the persons to be summoned.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) A Prosecutor's Office shall send extracts of a statement of charges and of a list provided for in subsection (2) of this section to the accused and the counsel and the statement of charges to the court. The statement of charges shall be sent to the court also in electronic form.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) The following shall be annexed to a statement of charges sent to a court:

1) a copy of the report of the criminal offence or another document listed in § 195 or 197 of this Code on the basis of which criminal proceedings were commenced;

2) an extract from the punishment register containing the information concerning the accused;

3) a copy of an order on application or alteration of preventive measures;

4) a notation concerning appointment of a probation officer.

(5) If a statement of charges is sent to a court, an envelope specified in subsection 67 (4) of this Code shall remain in the Prosecutor's Office. The envelope shall be submitted to the court at the request thereof.

§ 227. Acts performed by counsel upon completion of pre-trial proceeding

(1) Within five days as of the receipt of a copy of a statement of charges, a counsel shall submit his or her requests and a list of the persons whom the counsel requests to be summoned to a court session to the court.

(2) A counsel shall send copies of the requests and the list specified in subsection (1) of this section to the Prosecutor's Office.

Division 5

Appeal Against Activities of Investigative Body or Prosecutor's Office

§ 228. Appeal against activities of investigative body or Prosecutor's Office

(1) Before a statement of charges is prepared, a participant in a proceeding or a person not participating in the proceeding has the right to file an appeal with the Prosecutor's Office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights.

(2) Before preparation of a statement of charges, a person specified in subsection (1) of this section has the right to file an appeal with the Public Prosecutor's Office against an order or procedural act of the Prosecutor's Office.

(3) An appeal specified in subsection (1) or (2) of this section shall be filed directly with the body who is to adjudicate the appeal or through the person whose order or procedural act is contested.

(4) An appeal shall set out:

1) the name of the Prosecutor's Office with which the appeal is filed;

2) the given name and surname, status in the proceedings, residence or seat and address of the appellant;

3) the order or procedural act contested, the date of the order or procedural act, and the name of the person with regard to whom the order or procedural act is contested;

4) which part of the order or procedural act is contested;

5) the content of and reasons for the requests submitted in the appeal;

6) a list of the documents annexed to the appeal.

(5) An appeal filed against the activities of an investigative body or Prosecutor's Office shall not suspend the execution of the contested order or performance of the procedural act.

(6) If a Prosecutor's Office receives an appeal specified in subsections (1) and (2) of this section after the statement of charges is sent to a court according to subsection 226 (3) of this Code, the appeal shall be communicated to the court which hears the criminal matter.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 229. Adjudication of appeals by Prosecutor's Office or Public Prosecutor's Office

(1) An appeal filed with a Prosecutor's Office or the Public Prosecutor's Office shall be adjudicated within thirty days as of the receipt of the appeal.

(2) In the adjudication of an appeal filed against an order or procedural act of an investigative body or a Prosecutor's Office, a Prosecutor's Office or the Public Prosecutor's Office may, by an order:

1) dismiss the appeal;

2) satisfy the appeal in whole or in part, and recognise violation of the rights of the person if the violation can no longer be eliminated;

3) annul the contested order or suspend the contested procedural act in whole or in part, thereby eliminating the violation of the rights.

(3) An appellant shall be notified of the right to file an appeal with the county or city court pursuant to § 230 of this Code.

(4) An order prepared in the adjudication of an appeal shall be immediately sent to the body conducting extra-judicial proceedings which prepared the contested order or performed the contested procedural act and a copy of the order shall be sent to the appellant.

§ 230. Appeal to county or city court

(1) If the activities of an investigative body or Prosecutor's Office in violation of the rights of a person are contested and the person does not agree with the order prepared by the Public Prosecutor's Office who reviewed the appeal, the person has the right to file an appeal with the preliminary investigation judge of the county or city court in whose territorial jurisdiction the contested order was prepared or the contested procedural act was performed.

(2) An appeal shall be filed within ten days as of the date when the person became or should have become aware of the contested ruling.

(3) Appeals shall be filed in writing in accordance with the requirements of clauses 228 (4) 2)–5) of this Code.

§ 231. Adjudication of appeals by county and city courts

(1) A preliminary investigation judge shall review an appeal within thirty days as of the receipt of the appeal.

(2) An appeal shall be reviewed by way of a written proceeding within the limits of the appeal and with regard to the person in respect of whom the appeal was filed.

(3) In the adjudication of an appeal, a court may:

1) dismiss the appeal;

2) satisfy the appeal in whole or in part, and recognise violation of the rights of the person if the violation can no longer be eliminated;

3) annul the contested order or suspend the contested procedural act in whole or in part, thereby eliminating the violation of the rights.

(4) A court which receives an appeal may suspend the execution of the contested order or procedural act.

(5) A ruling of a preliminary investigation judge is final and not subject to appeal.

§ 232. Withdrawal of appeal

An appeal filed against the activities of an investigative body, Prosecutor's Office or the Public Prosecutor's Office may be withdrawn until the adjudication of the appeal.

Chapter 9

Simplified Proceedings

Division 1

Alternative Proceedings

§ 233. Grounds for application of alternative proceedings

(1) At the request of the accused and with the consent of the Prosecutor's Office, the court may adjudicate a criminal matter by way of alternative proceedings on the basis of the materials of the criminal file without summoning the witnesses or experts.

(2) Alternative proceedings shall not be applied:

1) in the case of a criminal offence for which life imprisonment is prescribed as punishment by the Penal Code;

2) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of alternative proceedings.

(3) Alternative proceedings shall be applied pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Division.

§ 234. Request for application of alternative proceedings

(1) A suspect or accused may submit a written request to the Prosecutor's Office for the application of alternative proceedings.

(2) The requests shall be submitted pursuant to the procedure provided for in § 225 of this Code.

(3) The accused may withdraw a request for the application of alternative proceedings until the completion of examination by the court. If the accused withdraws a request for application of alternative proceedings in the course of the court hearing, the court shall make a decision provided for in clause 238 (1) 1) of this Code.

§ 235. Acts performed by Prosecutor's Office upon receipt of request for application of alternative proceedings

(1) If a Prosecutor's Office consents to the application of alternative proceedings, a statement of charges shall be prepared pursuant to § 154 of this Code and the statement shall set out that the Prosecutor's Office has granted consent to the application of alternative proceedings. The request of the suspect or accused and the statement of charges shall be included in the criminal file and the file shall be sent to the court.

(2) If a Prosecutor's Office refuses to apply alternative proceedings, the criminal proceeding shall be continued pursuant to the general procedure.

§ 236. Participants in court session

(1) The prosecutor, the accused, his or her counsel, the victim and the civil defendant shall be summoned to a court session.

(2) The failure of a victim or civil defendant to appear in a court session shall hinder neither the court hearing of the criminal matter nor the hearing of the civil action.

§ 237. Examination by court in alternative proceedings

(1) A judge shall announce the commencement of examination by the court and make a proposal to the prosecutor to present the statement of charges.

(2) After presentment of a statement of charges, the judge shall explain the content of the statement of charges to the accused and ask whether the accused understands the charges, whether he or she confesses to the charges and whether he or she consents to the adjudication of the criminal matter by way of alternative proceedings.

(3) The judge shall make a proposal to the counsel to submit his or her opinion as to whether the charges are justified. Thereafter, the victim and the civil defendant or their representatives shall be given the floor.

(4) In examination by the court, the participants in the court session shall rely only on the materials of the criminal file. The court shall intervene if the participants in the proceedings refer to circumstances outside the criminal file.

(5) The accused may request that he or she be interrogated. Upon interrogation, the prosecutor is the first to question the accused, followed by the other participants in the

proceedings in the order specified by the judge. The accused shall be interrogated pursuant to § 293 of this Code.

(6) The judge may question the participants in the proceedings.

(7) At the end of examination by the court, the judge shall ask the participants in the proceedings whether they would like to submit requests. The court shall adjudicate the requests pursuant to § 298 of this Code.

§ 238. Court decisions in alternative proceedings

(1) The court shall make one of the following decisions in chambers:

1) a ruling on the return of the criminal file to the Prosecutor's Office if there are no grounds for the application of alternative proceedings;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) a ruling on the return of the criminal file to the Prosecutor's Office if the materials of the criminal file are not sufficient for the adjudication of the criminal matter by way of alternative proceedings;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) a judgment of conviction or acquittal with regard to the accused.

(2) If a judgment of conviction is made by way of alternative proceedings, the court shall reduce the principal punishment to be imposed on the accused by one-third after considering all the facts relating to the criminal offence. If a punishment is imposed pursuant to § 64 of the Penal Code, the aggregate punishment to be imposed on the accused shall be reduced by one-third.

Division 2

Settlement Proceedings

§ 239. Grounds for application of settlement proceedings

(1) A court may adjudicate a criminal matter by way of settlement proceedings at the request of the accused or the Prosecutor's Office.

(2) Settlement proceedings shall not be applied:

1) in the case of criminal offences in the first degree for which the lightest punishment is prescribed as at least four years' imprisonment or the most severe punishment is prescribed as life imprisonment in the Penal Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) if the accused, his or her counsel or the Prosecutor's Office does not consent to the application of settlement proceedings;

3) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of settlement proceedings;

4) if the victim or the civil defendant does not consent to the application of settlement proceedings.

(3) The accused and the prosecutor may submit a request for the application of settlement proceedings to the court until the completion of examination by the court in the county or city court.

(4) Settlement proceedings shall be applied pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Division.

§ 240. Settlement proceedings commenced by Prosecutor's Office

If a Prosecutor's Office considers application of settlement proceedings possible, the Office shall perform the following acts:

1) explain the option of applying settlement proceedings, the rights of the suspect or accused in settlement proceedings and the consequences of application of settlement proceedings to the suspect or accused;

2) explain the option of applying settlement proceedings, the rights of the victim or civil defendant in settlement proceedings and the consequences of application of settlement proceedings to the victim or defendant;

3) prepare a report pursuant to § 243 of this Code concerning the consent of the victim or civil defendant to the application of settlement proceedings;

4) prepare a report pursuant to § 241 of this Code concerning the consent of the suspect or accused and his or her counsel to the application of settlement proceedings.

§ 241. Report concerning consent granted by suspect or accused and his or her counsel to application of settlement proceedings

(1) A report concerning the consent granted by a suspect or accused and his or her counsel to the application of settlement proceedings shall set out:

1) the time and place of preparation of the report;

2) the official title and name of the person preparing the report;

3) the name of the suspect or accused;

4) a notation that the rights of the suspect or accused in settlement proceedings and the consequences of settlement proceedings have been explained to him or her;

5) the consent of the suspect or accused and his or her counsel to the commencement of negotiations in the settlement proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A report shall be signed by the prosecutor, the suspect or accused and his or her counsel.

§ 242. Commencement of settlement proceedings at request of suspect or accused

(1) If a suspect or accused wishes that settlement proceedings be applied, he or she shall submit a written request pursuant to § 225 of this Code to the Prosecutor's Office.

(2) If a Prosecutor's Office consents to the application of settlement proceedings, the Office shall perform the acts provided for in §§ 240–241 and 243 of this Code. If a Prosecutor's Office refuses to apply settlement proceedings, the criminal proceeding shall be continued pursuant to the general procedure.

§ 243. Report concerning consent granted by victim or civil defendant to application of settlement proceedings

(1) A report concerning the consent granted by a victim or civil defendant to the application of settlement proceedings shall set out:

1) the time and place of preparation of the report;

2) the official title and name of the person preparing the report;

3) the name of the suspect or accused;

4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship and the place of work or educational institution of the victim and the civil defendant;

5) whether the rights of the victim or defendant in settlement proceedings and the consequences of settlement proceedings have been explained to him or her;

6) the opinion of the victim concerning the type and the category or term of the punishment;

7) the consent of the victim or defendant to the application of settlement proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) The report shall be signed by the prosecutor and the victim or defendant.

(3) A victim or defendant does not have the right to revoke a consent granted.

§ 244. Negotiations in settlement proceedings

(1) After preparation of the reports specified in § 241 and 243 of this Code, the Prosecutor's Office shall commence negotiations with the suspect or accused and his or her counsel in order to conclude a settlement.

(2) If a Prosecutor's Office and the suspect or accused and his or her counsel reach a settlement concerning the legal assessment of the criminal offence and the nature and extent of the damage caused by the criminal offence, negotiations shall be commenced concerning the type and the category or term of the punishment which the prosecutor requests in court for the commission of the criminal offence.

(3) If a Prosecutor's Office and the suspect or accused and his or her counsel fail to reach a settlement concerning the legal assessment of the criminal offence and the nature and extent of the damage caused by the criminal offence or the type or the category or term of the punishment, the criminal proceeding shall be continued pursuant to the general procedure.

§ 245. Settlement

(1) A settlement shall set out:

1) the time and place of conclusion of the settlement;

2) the official title and name of the prosecutor;

3) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) the name of the counsel;

5) the criminal record of the accused;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

6) the preventive measures applied with regard to the accused and the duration thereof;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

7) the facts relating to the criminal offence;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

8) the legal assessment of the criminal offence and the nature and extent of the damage caused by the criminal offence;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

9) the type and the category or term of the punishment.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If a punishment is imposed on the accused for several criminal offences, the settlement shall set out the type and the category or term of each of the punishments and the type and the category or term of the aggregate punishment.

(3) If punishments are imposed on the accused pursuant to several court judgments, the settlement shall set out also the type and the category or term of the aggregate punishment.

(4) A settlement is deemed to be concluded when the prosecutor, the accused and his or her counsel have signed the settlement.

(5) A Prosecutor's Office shall send copies of a settlement to the accused and his or her counsel and the criminal file to the court.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 246. Participants in court session

A prosecutor, the accused and his or her counsel shall be summoned to a court session and their participation therein is mandatory.

§ 247. Court hearing in settlement proceedings

(1) A judge shall announce the commencement of the hearing of a settlement and make a proposal to the prosecutor to present the settlement.

(2) After the presentment of a settlement, the judge shall ask whether the accused understands the settlement and consents thereto. The judge shall make a proposal to the accused to explain the circumstances relating to the conclusion of the settlement and shall ascertain whether conclusion of the settlement was the actual intention of the accused.

(3) The judge shall ask the opinions of the counsel and the prosecutor concerning the settlement and whether they will adhere to the settlement.

(4) The judge may question the participants in the proceedings.

(5) After completion of the hearing of a settlement, the court shall announce the time of pronouncement of the court decision and withdraw to the chambers.

§ 248. Court decisions in settlement proceedings

(1) The court shall make one of the following decisions in chambers:

1) a ruling on the return of the criminal file to the Prosecutor's Office granting the possibility to conclude a new settlement if the court does not consent to the legal assessment of the criminal offence, the amount of the civil action or the type or the category or term of the punishment;

2) a ruling on refusal to apply settlement proceedings and on the return of the criminal file to the Prosecutor's Office if the court has doubts regarding the circumstances specified in § 306 of this Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) a ruling on termination of the criminal proceeding if the grounds listed in clauses 199 (1) 1)–5) of this Code become evident;

4) a court judgment on the conviction of the accused and on imposition of the punishment agreed upon in the settlement on the accused.

(2) After a court has made a ruling specified in clause (1) 1) or 2) of this section, the court shall return the criminal file to the Prosecutor's Office for continuation of the criminal proceeding.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 249. Main part of judgment of conviction in settlement proceedings

The main part of a court judgment shall set out:

1) the charges on which the court convicts the accused;

2) the content of the settlement.

§ 250. Commencement of settlement proceedings during court hearing

(1) If a judge receives the reports specified in §§ 241 and 243 of this Code and a settlement specified in § 245 of this Code, he or she shall continue the court hearing pursuant to the procedure provided for in § 247 of this Code. If the court hearing has been commenced before the submission of the settlement, only the settlement shall be presented.

(2) If application of settlement proceedings is refused on the basis of clause 248 (1) 1) or 2) of this Code, the court shall continue the proceeding pursuant to the general procedure.

Division 3

Summary Proceedings

§ 251. Grounds for application of summary proceedings

(1) If the facts relating to a subject of proof are explicit in the case of a criminal offence in the second degree and the prosecutor considers application of a pecuniary punishment as the principal punishment, the court may adjudicate the criminal matter by way of summary proceedings at the request of the Prosecutor's Office.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) Summary proceedings shall not be applied if the suspect is a minor.

§ 252. Main part of statement of charges in summary proceedings

(1) In summary proceedings, the Prosecutor's Office shall prepare a statement of charges the main part of which shall set out:

1) the facts relating to the criminal offence;

2) the legal assessment of the criminal offence;

3) the nature and extent of the damage caused by the criminal offence;

4) the evidence in proof of the charges;

5) a proposal concerning the type and the category or term of the punishment.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A statement of charges and the materials of the criminal matter shall be sent to the court and copies of the statement of charges to the accused and his or her counsel.

§ 253. Court decisions in summary proceedings

Upon receipt of a criminal matter by the court, the judge shall verify the jurisdiction over the criminal matter and make one of the following decisions:

1) a court judgment in summary proceedings pursuant to § 254 of this Code;

2) a ruling on termination of the criminal proceeding if the grounds provided for in clauses 199 (1) 1)–5) of this Code become evident;

3) a ruling on refusal to apply summary proceedings and on the return of the criminal file to the Prosecutor's Office.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 254. Court judgment in summary proceedings

(1) If a judge consents to the conclusions presented in a statement of charges concerning the proof of the charges and the category or term of the punishment, he or she shall prepare a court judgment.

(2) The introduction of a court judgment made by way of summary proceedings shall set out:

1) that the court judgment is made on behalf of the Republic of Estonia;

2) the date and place of making the court judgment;

3) the name of the court which made the judgment and the name of the judge;

4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth and the place of work or educational institution of the accused;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) the criminal record of the accused.

(3) The main part of a court judgment made by way of summary proceedings shall set out:

1) the facts relating to the criminal offence;

2) the legal assessment of the criminal offence;

3) the nature and extent of the damage caused by the criminal offence;

4) the reasons for the punishment to be imposed on the accused.

(4) The conclusion of a court judgment made by way of summary proceedings shall set out:

1) the conviction of the accused pursuant to the corresponding section, subsection or clause of the Penal Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the category or term of the punishment;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) a decision concerning the expenses relating to the criminal procedure;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) the procedure and term for appeal against the summary judgment.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) A copy of a court judgment made by way of summary proceedings shall be delivered to the accused and the Prosecutor's Office in accordance with the provisions of subsections 164 (3) and (6) of this Code within three days as of the making of the judgment.

(6) Within ten days as of the receipt of a court judgment made by way of summary proceedings, the accused has the right to request that the court hear the criminal matter pursuant to the general procedure.

(7) If the accused does not request that the court hear the criminal matter pursuant to the general procedure, the court judgment made by way of summary proceedings shall enter into force.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 255. Contestation of court judgment made by way of summary proceedings and court hearing pursuant to general procedure

(1) If a convicted offender contests a court judgment made by way summary proceedings and requests that the court hear the criminal matter pursuant to the general procedure, the judge shall prepare a ruling on the return of the criminal file to the Prosecutor's Office and the ruling shall serve as a basis for preparation of a new statement of charges pursuant to § 154 of this Code and for continuation of the proceeding pursuant to the general procedure.

(2) A court hearing shall be conducted pursuant to the general procedure in accordance with the provisions of Chapter 10 of this Code.

§ 256. Commencement of summary proceedings during court hearing

(1) In the cases provided for in clause 269 (2) 2) of this Code, a prosecutor may submit a request for application of summary proceedings to the court and make a proposal concerning the category or term of the punishment to be imposed on the accused.

(2) If a request is satisfied, the court shall conduct the summary proceedings pursuant to §§ 253 and 254 of this Code.

(3) If a request is dismissed, the court hearing shall be continued pursuant to the general procedure.

Chapter 10

Court Procedure in County and City Courts

Division 1

Judicial Pre-proceeding

§ 257. Prosecution

(1) A judge who receives a statement of charges shall verify the jurisdiction over the criminal matter pursuant to the provisions of §§ 24–27 of this Code and shall prosecute the accused by a ruling.

(2) If the grounds listed in § 258 of this Code become evident, a judge shall hold a preliminary hearing for deciding on the prosecution of the accused.

§ 258. Grounds for holding preliminary hearings

(1) A preliminary hearing shall be held in order to decide on:

1) application or alteration of preventive measures;

2) return of the statement of charges to the Prosecutor's Office if the statement is not in compliance with the requirements of § 154 of this Code;

3) termination of the criminal proceedings on the grounds provided for in clauses 199 (1) 2)–5) of this Code.

(2) Summonses to a preliminary hearing shall be served on the parties to the court proceedings pursuant to the procedure provided for in §§ 163–169 of this Code.

§ 259. Participants in preliminary hearing

(1) A preliminary hearing shall be held by a judge sitting alone.

(2) The participation of a prosecutor in a preliminary hearing is mandatory.

(3) If necessary, other participants in the proceeding may be summoned to a preliminary hearing.

(4) Minutes shall be taken of a preliminary hearing by a court session clerk.

§ 260. Consequences of failure to appear at preliminary hearing

(1) If a prosecutor fails to appear at a preliminary hearing, the hearing shall be adjourned and the Prosecutor's Office shall be notified of the failure of the prosecutor to appear.

(2) The failure of other parties to the court proceedings to appear shall not hinder the preliminary hearing.

§ 261. Preliminary hearing

(1) After opening a preliminary hearing, the judge shall:

1) announce the title of the criminal matter prepared for a court hearing and the issues to be adjudicated at the preliminary hearing and, in the case of involvement

of an interpreter or translator, perform the acts required in subsection 161 (3) of this Code;

2) ascertain who has appeared at the preliminary hearing and, if necessary, identify of the persons who have appeared;

3) adjudicate the petitions of challenge.

(2) Following the application of a preliminary hearing, the judge shall explain the grounds for holding the hearing and hear the opinions of the parties who have appeared regarding the issues to be adjudicated in the preliminary hearing.

§ 262. Competence of judge in preliminary hearing

In a preliminary hearing, a judge may make rulings on:

1) the prosecution of the accused;

2) the return of the statement of charges to the Prosecutor's Office if the statement of charges is not in compliance with the requirements of § 154 of this Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) termination of the criminal proceeding in the cases specified in clauses 199 (1) 2)–5) of this Code;

4) application or alteration of preventive measures.

§ 263. Ruling on prosecution

A ruling on prosecution shall set out:

1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the number of the criminal matter;

3) the time and place of the court session;

4) whether the criminal matter will be heard in a public court session or *in camera*;

5) the given names and surnames of the persons to be summoned to the court session;

6) hearing of a witness or victim under a fictitious name pursuant to subsection 67 (5) of this Code;

7) application or alteration of preventive measures;

8) adjudication of requests.

§ 264. Involvement of probation officers

(1) If necessary, a judge shall assign the head of the probation supervision department with the duty to appoint a probation officer.

(2) A judge shall verify whether a pre-trial report has been prepared in the criminal matter of the accused who is a minor. At the order of a judge, a probation officer shall amend a pre-trial report.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) At the order of a judge, a probation officer shall ascertain the facts relevant to the imposition of duties or community service and submit to the court a pre-trial report which shall be included in the materials of the criminal matter.

§ 265. Summoning of prosecutor and participants in proceedings to court session

(1) The prosecutor and the participants in the proceedings shall be summoned to a court session by a summons pursuant to the procedure provided for in §§ 163–169 of this Code.

(2) A court shall send a copy of a ruling on prosecution to the accused, the Prosecutor's Office and the counsel together with a summons.

Division 2

General Conditions for Court Hearing

§ 266. Chairing of and order in court sessions

(1) A court session shall be chaired by the judge. In the criminal matters specified in subsections 18 (1) and (3) of this Code, the session shall be chaired by the presiding judge.

(2) The parties to a court proceeding and other persons present in a courtroom shall comply with the orders of the judge without argument. When the court panel enters or leaves the courtroom, the persons present in the room shall rise.

(3) All persons shall rise when addressing the court. With the permission of the judge, a person may sit when addressing the court.

(4) A judge has the right to limit the number of the persons present in the courtroom if the room is overcrowded.

§ 267. Measures applicable to persons who violate order in court session

(1) If the accused violates order in a court session and fails to comply with the orders of the judge, the following measures may be applied on the basis of a court ruling:

1) removal of the accused from the courtroom temporarily or for the duration of the whole session;

2) imposition of detention for up to ten days or a fine of up to sixty minimum daily rates on the accused.

(2) When the accused is asked to return to the courtroom, he or she shall be notified of the court activities performed in his or her absence.

(3) If the accused is removed from the courtroom for the duration of a whole session due to violation of order, a copy of the court judgment or, in the case provided for in subsection 315 (4) of this Code, of the conclusion of the court judgment shall be served on the accused immediately after pronouncement of the court judgment.

(4) If a prosecutor or counsel violates order in a court session, fails to comply with the orders of a judge or acts in contempt of court, a fine of up to one hundred minimum daily rates may be imposed on him or her by a court ruling. If order is violated by a prosecutor, a copy of the court ruling shall be sent to the Prosecutor's Office, if order is violated by an advocate, the copy shall be sent to the Board of the Bar Association.

(5) If any other participant in a proceeding or a person present in a courtroom violates order in a court session, fails to comply with the orders of the judge or acts in contempt of court, he or she may be removed from the courtroom, or a fine of up to one hundred minimum daily rates or detention for up to five days may be imposed on him or her on the basis of a court ruling.

(6) If there are elements of a criminal offence in the conduct of a person who violates order, the prosecutor shall initiate criminal proceedings with regard to him or her, or the court shall send a report on the criminal offence to the police. If necessary, the court shall detain such person as a suspect on the basis of the minutes.

(7) A judge performing his or her functions in the court outside a court session may, by a court ruling, impose detention for up to ten days or a fine of up to one hundred minimum daily rates on a person who fails to comply with the orders of the judge or acts in contempt of court.

(8) At the request of a person who has violated order, the court ruling in the form of an excerpt from the minutes of the court session shall be submitted to him or her.

§ 268. Limits of court hearing

(1) A court shall hear a criminal matter with regard to the accused only pursuant to the statement of charges unless otherwise provided for in subsections (2)–(6) of this section.

(2) In a court hearing, the prosecutor may amend or supplement the charges until the completion of examination by court. If the charges are supplemented or substantially amended, the prosecutor shall prepare a new statement of charges pursuant to § 154 of this Code. A new statement of charges need not be prepared if the prosecutor amends the charges brought so as to mitigate the situation of the accused.

(3) At the request of the accused or the counsel, the court shall call a recess or adjourn the court hearing in order to protect the right of defence in the case provided for in subsection (2) of this section.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) If it becomes evident in the hearing of a criminal matter that a person against whom charges have not been brought in the criminal matter has committed an act with criminal elements, the prosecutor shall initiate criminal proceedings with regard to the criminal offence.

(5) If comprehensive, thorough and objective hearing of a criminal matter is impossible or complicated due to ascertainment of another criminal offence during a court session, the court shall adjourn the court hearing of the criminal matter.

(6) If it is suspected during a court hearing that a witness has given knowingly false testimony or an expert has submitted a knowingly false expert opinion, the court shall send a notice to this effect and a copy of the court judgment or a ruling on termination of the criminal proceeding to the police.

(7) A prosecutor may amend the legal assessment of a criminal offence during the summations on the basis of the same facts relating to the criminal offence if this mitigates the situation of the accused. In such case, the court shall resume examination by the court or call a recess at the request of the accused or the counsel.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(8) A court making a judgment may amend the legal assessment of a criminal offence on the basis of the same facts relating to the criminal offence if this mitigates the situation of the accused.

§ 269. Participation of accused in court hearing

(1) A criminal matter shall be heard in the presence of the accused. If the accused fails to appear, the court hearing shall be adjourned.

(2) As an exception, a criminal matter may be heard in the absence of the accused if:

1) he or she has been removed from the courtroom on the basis and pursuant to the procedure provided for in subsection 267 (1) of this Code;

2) he or she is outside the territory of the Republic of Estonia and absconds court proceedings, and court hearing is possible without the him or her;

3) after his or her interrogation at a court session, the accused has caused himself or herself to be in a state which precludes his or her participation in the court hearing, and court hearing is possible without him or her;

4) it is complicated to take him or her to the court, and he or she has consented to participation in the court hearing in audio-visual form pursuant to clause 69 (2) 1) of this Code.

(3) If the accused absconds court proceedings or if the hearing of the criminal matter is hindered by a serious illness of the accused due to which he or she is not able to appear in court, the court may make a ruling on the conduct of separate proceedings concerning his or her charges, adjourn the hearing of the severed charges until apprehension or recovery of the accused, and continue the court hearing of the criminal matters concerning the other accused.

(4) Upon court hearing of a criminal matter involving several accused persons, the hearing of those criminal offences included in the criminal matter which do not involve a specific accused may be conducted without the presence of such accused and his or her criminal defence counsel.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 270. Participation of prosecutors and counsels in court sessions

(1) The participation of a prosecutor in a court session is mandatory. If a prosecutor fails to appear, the court hearing shall be adjourned and the Prosecutor's Office shall be notified of such failure.

(2) If a counsel fails to appear in a court session, the court hearing shall be adjourned. If the counsel is an advocate, the Board of the Bar Association shall be notified of the counsel's failure to appear.

§ 271. Court hearing in absence of witness, victim or expert

If a witness, victim or expert fails to appear in a court session, the court shall hear the opinions of the parties to the court proceeding and thereafter make a ruling on the continuation or adjournment of the court hearing.

§ 272. Court hearing in absence of defendant

(1) The failure of a defendant to appear in a court session shall hinder neither the court hearing nor the hearing of the civil action.

(2) If a court finds that a civil action cannot be heard in the absence of the defendant, the hearing of the civil action in the criminal proceeding shall be refused.

§ 273. Adjournment of court hearing

(1) The court hearing of a criminal matter shall be adjourned by a ruling if:

1) a person not specified in §§ 269–271 of this Code has failed to appear in the court session and the participation of such person is necessary;

2) it is necessary to collect additional evidence;

3) continuation of the court session is impossible for any other reason.

(2) Before the adjournment of a court hearing, the witnesses, victims, experts and defendants who have appeared in the court session may be heard and they need not be summoned to another court session.

(3) If the court hearing of a criminal matter is adjourned due to the failure of a participant in the proceedings or another person to appear, the court may apply the measures provided for in §§ 139 and 140 of this Code.

(4) If a counsel is not familiar with the criminal matter, the court may adjourn the court session for up to ten days, order that the expenses relating to the criminal proceedings due to the adjournment of the session be paid by the counsel, and notify the Board of the Bar Association of such conduct of the counsel.

§ 274. Termination of criminal proceedings in court session

(1) If circumstances which pursuant to clauses 199 (1) 2)–5) of this Code preclude criminal procedure are ascertained in the court hearing of a criminal matter, the court shall terminate the criminal proceedings by a ruling. On the grounds specified in subsection 199 (1) 1) of this Code, a judgment of acquittal shall be made.

(2) Criminal proceedings shall not be terminated if continuation of the proceedings is for the purposes of rehabilitation requested by:

1) the accused in the cases provided for in clause 199 (1) 2) or 3) of this Code;

2) a person close to the accused, in the case provided for in clause 199 (1) 4) of this Code.

(3) If criminal proceedings are terminated with regard to a minor who at the time of commission of the unlawful act was not capable of guilt on the grounds of age or who can be influenced without the imposition of a punishment or the application of a sanction prescribed in § 87 of the Penal Code, subsection 201 (1) or (2) of this Code respectively applies.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) If the hearing of a civil action is refused due to termination of the criminal proceedings, the action may be filed pursuant to the procedure provided for in the Code of Civil Procedure.

(5) A court may terminate criminal proceedings on the grounds provided for in § 202 or 203 of this Code at the request of the prosecutor or the accused.

(6) A court may terminate criminal proceedings on the grounds provided for in § 204 of this Code at the request of the prosecutor.

§ 275. Decision concerning application of preventive measures

In the court hearing of a criminal matter, the court has the right to choose, by a ruling, a preventive measure or alter or annul the preventive measures previously chosen with regard to the suspect or accused.

§ 276. Adjudication of request and formalisation of court ruling

(1) The court may dismiss a request for the collection of additional evidence submitted by a party to the court proceeding if the court finds that:

1) the additional evidence is irrelevant to the adjudication of the criminal matter in question;

2) the party to the court proceeding has not sufficiently justified his or her failure to submit the request earlier;

3) the relevance of the request is disproportionate to the time necessary for or the complexity of collecting the evidence.

(2) A court shall formalise the termination of criminal proceedings, compelled attendance, the choice, alteration or annulment of preventive measures, petitions of challenge, ordering of expert assessments and removal of the accused from the courtroom by a ruling made pursuant to the provisions of § 145 of this Code.

(3) Other court rulings shall be formalised as procedural documents and included in the criminal file, or shall be made orally and recorded in the minutes of the court session.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Division 3

Application of Court Session

§ 277. Opening of court session

(1) After opening a court session, the judge shall:

1) announce the title of the criminal matter to be heard;

2) ascertain who of the parties to the court proceeding have appeared in the session;

3) ascertain whether the persons absent have received their summonses and why they have failed to appear.

(2) The clerk of the court session shall report to the court on whether the witnesses, experts, translators and interpreters summoned have appeared in the court session.

§ 278. Translators and interpreters in court sessions

(1) If a translator or interpreter participates in a court session, the court shall announce his or her name. In the case of a staff translator or interpreter, it shall be explained that he or she has taken the oath of office and is aware of a criminal punishment for a knowingly false translation or interpretation.

(2) The judge shall explain the rights provided for in subsection 161 (5) of this Code to a non-staff translator or interpreter.

(3) Before a non-staff translator or interpreter commences translation or interpretation, he or she shall be warned about a criminal punishment for a knowingly false translation or interpretation.

§ 279. Identification of accused and explanation of rights and obligations to accused

(1) A judge shall identify the accused and ascertain whether he or she has received a copy of the statement of charges.

(2) If the accused has not received a copy of the statement of charges or of the ruling on prosecution, the court shall serve such documents on the accused and, at the request of the accused or the counsel, grant a term for examination of the documents or, if necessary, adjourn the court session.

(3) The rights and obligations provided for in subsection 35 (2) of this section shall be explained to the accused.

§ 280. Identification and warning of witnesses and removal of witnesses from courtroom

(1) A judge shall identify a witness and ascertain the relationship between the witness and the accused and the victim and the relationship between the victim and the accused.

(2) The personal data of a witness shall not be disclosed if the witness has been declared anonymous pursuant to § 67 of this Code in order to ensure the safety of the witness.

(3) A judge shall explain the rights and obligations provided for in §§ 71–73 of this Code to the witnesses.

(4) A judge shall warn a witness of at least 14 years of age that a criminal punishment shall be imposed on him or her for refusal to give testimony or for giving knowingly false testimony.

(5) Witnesses under 14 years of age shall not be warned about a criminal punishment but the obligation to speak the truth in court shall be explained to them.

(6) Witnesses shall be removed from the courtroom after they have been warned. Communication between the witnesses who have been heard and those who have not been heard shall be avoided.

§ 281. Explanation of rights and obligations to victims and civil defendants

A judge shall explain the rights and obligations provided for in §§ 38 and 40 of this Code to victims and civil defendants.

§ 282. Verification of authority of counsels and representatives

The judge shall verify the authority of the counsels and representatives participating in a court hearing.

§ 283. Explanation of rights and obligations to experts

If an expert assessment is arranged outside a state forensic institution, the judge shall explain the rights and obligations provided for in subsections 98 (1) and (2) of this Code to the expert. An expert who has not been sworn in shall be warned about a criminal punishment for rendering a knowingly false expert opinion and his or her signature shall be obtained in proof thereof unless this has been done already in the same criminal matter.

§ 284. Announcing composition of court, explanation of right to file petitions of challenge, and adjudication of requests

(1) A judge shall announce the composition of the court and the names of the prosecutor, counsels, representatives, experts, translators, interpreters and the clerk of the court session and explain the right to file petitions of challenge on the bases and pursuant to the procedure provided for in §§ 49–59, 97, 157 and 162 of this Code to the parties to the court proceeding.

(2) After adjudication of petitions of challenge, a judge shall ask whether the parties have other requests before examination by the court.

(3) The court shall adjudicate requests by a ruling.

Division 4

Examination by Court

§ 285. Commencement of examination by court

(1) A judge announces the commencement of examination by the court and make a proposal to the prosecutor to present the statement of charges.

(2) The prosecutor presents the statement of charges and gives a concise overview of the evidence which corroborates the charges and which the prosecutor requests to be examined by the court. Thereafter, the prosecutor submits the criminal file to the court.

(3) After the presentation of the prosecutor, the judge shall ask whether the accused has understood the charges and whether he or she confesses thereto. Thereafter, the judge shall make a proposal to the counsel to present his or her opinion as to whether the charges are justified.

§ 286. Order of examination of evidence

(1) Examination of evidence is commenced by examination of the evidence submitted by the prosecutor, followed by the evidence submitted by the counsel and other parties to the court proceeding.

(2) The parties to a court proceeding may agree between themselves that evidence is examined in a different order than the order prescribed in subsection (1) of this section. In such case, the court shall determine the order of examination of evidence according to the agreement of the parties to the court proceeding by a ruling which shall be recorded in the minutes of the court session.

§ 287. Hearing of witnesses

(1) Section 288 of this Code applies to the hearing of witnesses.

(2) A witness shall be heard in the absence of the witnesses who have not been heard.

(3) If the hearing of a victim has been requested, the victim shall be heard before the witnesses.

(4) A witness bearing a fictitious name shall be heard by telephone pursuant to the procedure provided for in subsection 67 (5) and clause 69 (2) 2) of this Code. The participants in the proceeding shall submit their questions to the person bearing a fictitious name through the judge.

(5) At the request of a party or on its own initiative, the court may allow a long-distance hearing to be conducted pursuant to the procedure provided for in § 69 of this Code or use a partition to hide the witness form the accused.

(6) Witnesses who have been heard shall leave the courtroom only with the permission of the court.

§ 288. Cross-examination

(1) In a cross-examination, the party to the court proceeding at whose request the witness has been summoned to the court is the first to examine the witness. If several participants in the proceeding have requested a witness to be summoned and they fail to reach an agreement concerning the right of first examination, the court shall determine who is the first to examine the witness.

(2) It is prohibited to pose leading questions during a first examination. A first examination is followed by the second examination by the counter-party.

(3) Leading questions may be posed in the second examination in order to verify the testimony given in the first examination. In the second examination, leading questions shall not be posed concerning new facts.

(4) The person who was the first to examine a witness may examine the witness again in order to clarify the answers given in the second examination. Leading questions may be posed only concerning the new facts treated in the second examination.

(5) The court intervenes in a cross-examination in order to overrule prohibited, irrelevant or defamatory questions posed to the witness.

(6) The court has the right to pose additional questions to a witness who has been cross-examined.

(7) Taking into consideration the mental or physical condition of a witness, the court may prohibit cross-examination and examine the witness on its own initiative or on the basis of the written questions prepared by the parties to the court proceeding.

(8) Subsections 68 (3), (5) and (6) of this Code apply to cross-examination.

§ 289. Disclosure in cross-examination of testimony given by witness in pre-trial procedure

(1) In order to verify the credibility of the testimony of a witness, the court may, at the request of a party to the court proceeding, order that the testimony given by the witness in pre-trial procedure be disclosed during the cross-examination if such testimony is in conflict with the testimony given in the cross-examination.

(2) Testimony given by a witness in pre-trial procedure concerning which the witness has already given testimony in cross-examination may be disclosed.

§ 290. Specifications concerning hearing of witnesses who are minors

(1) In the hearing of a witness under 14 years of age, he or she shall not be cross-examined.

(2) A witness who is a minor of less than 14 years shall be heard in the presence of a child protection official, social worker or psychologist who may question the witness with the permission of the judge. The body conducting the proceeding may involve a child protection official, social worker or psychologist in the hearing of a minor over 14 years of age.

(3) A judge shall make a proposal to a witness who is a minor of less than 14 years of age to tell the court everything he or she knows concerning the criminal matter.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) After a witness who is a minor of less than 14 years of age has given testimony, he or she shall be examined by the parties to the court proceeding in the order determined by the court.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) The court shall overrule leading and irrelevant questions.

(6) If the presence of a minor is not necessary after he or she has been heard, the court shall ask him or her to leave the courtroom.

§ 291. Disclosure in court proceeding of testimony given by witness in pre-trial procedure

At the request of a party to a court proceeding, the court may order that the testimony given by a witness in pre-trial procedure be disclosed if:

1) the witness is dead;

2) the witness refuses to give testimony in the course of examination by the court, except upon refusal to give testimony on the bases provided for in § 71 of this Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) the witness suffers from a serious illness and therefore he or she cannot appear at a court session;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) the whereabouts of the witness cannot be ascertained;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

5) the witness fails to appear in court due to other impediment.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 292. Disclosure of expert's report and hearing of expert

(1) At the request of a party to a court proceeding, the court may order the disclosure of an expert's report.

(2) At the request of a party to a court proceeding, the court may order the hearing of an expert in order to clarify or supplement the content of the expert's report.

(3) In the hearing of an expert in court, he or she shall not be cross-examined. An expert is heard in court pursuant to subsections 290 (4) and (5) of this Code.

§ 293. Interrogation of accused

(1) The accused shall be interrogated in court pursuant to §§ 288–289 of this Code.

(2) The prosecutor is the first to interrogate the accused. Thereafter, the accused is interrogated by the other parties to the court proceeding. Finally, the accused may be questioned by the other persons accused and their counsels.

(3) The court may interrogate the accused throughout the examination by the court.

§ 294. Disclosure of testimony given by accused in pre-trial procedure

At the request of a party to a court proceeding, the court may order that the testimony given by the accused in pre-trial procedure be disclosed if:

1) the accused refuses to give testimony in the course of examination by the court;

2) the court hearing is held in the absence of the accused;

3) (Repealed - 19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 295. Expert assessment in court

(1) The court may order an expert assessment at the request of a party to the court proceeding or on its own initiative.

(2) The parties to a court proceeding shall pose questions to an expert through the court and in writing. The court shall review the questions, overrule the questions which are irrelevant or outside the specific expertise of the expert, and prepare the final questions to be submitted to the expert.

(3) The court shall disclose the final questions to be submitted to the expert and prepare a ruling on the expert assessment pursuant to § 106 of this Code.

(4) An expert may participate in the examination of the evidence relating to the object of an expert assessment in court and, with the permission of the court, submit questions to the participants in the proceeding with regard to the facts relevant to the conduct of the expert assessment.

(5) An expert assessment shall be conducted in accordance with §§ 99–104 and 107–108 of this Code.

§ 296. Disclosure of minutes of investigative activities or other documents contained in criminal file

(1) A party to a court proceeding may request the court to disclose, in part or in whole, the minutes taken of investigative activities in pre-trial procedure or other documents contained in the criminal file, taking into account the exceptions provided for in §§ 289, 291, 292 and 294 of this Code.

(2) A party to a court proceeding may examine the minutes of investigative activities or any other document which is contained in the criminal file and the disclosure of which is requested, and submit his or her position regarding the disclosure of the minutes or the document and the use thereof as evidence.

(3) If after the hearing of the positions of the parties the court finds that the minutes of investigative activities or any other document contained in the criminal file may be disclosed and that such minutes or document can be used as evidence, the court shall order the disclosure thereof.

§ 297. Collection of additional evidence in examination by court

(1) After examination of the evidence submitted by the parties to a court proceeding, the court may order collection of additional evidence at the request of a party to the court proceeding or on its own initiative.

(2) In a request, a party to a court proceeding shall set out the reasons for the need to collect additional evidence and for the failure to request collection of additional evidence earlier. The court shall adjudicate collection of additional evidence by a ruling.

(3) The court may dismiss a request for the collection of additional evidence on the bases provided for in subsection 276 (1) of this Code.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 298. Completion of examination by court

(1) At the end of examination by the court, the judge shall ask the participants in the proceedings whether they would like to submit requests to supplement the examination by the court. The court shall adjudicate the requests by a ruling.

(2) After performance of additional court activities, examination by the court shall be completed and the summations shall be commenced.

(3) At the request of a party to a court proceeding, the court shall call a recess before the summations.

Division 5

Summations and final statement of Accused

§ 299. Procedure for summations

(1) The summations commence by the prosecution speech of the prosecutor. The victims, civil defendants and counsels shall be given the floor in the summations.

(2) The parties to court proceedings have the right to rebut. The counsel or the accused has the right to the final rebuttal.

§ 300. Content of summations

(1) In summations, the parties to the court proceedings may rely only on evidence examined in the examination by the court.

(2) The duration of the closing arguments is not limited. The judge may interrupt the closing arguments if the arguments refer to circumstances outside the limits of the criminal matter.

(3) Before the court withdraws to the chambers, the parties to the court proceedings may submit the texts of their closing arguments for annexing to the minutes of the court session.

§ 301. Withdrawal of charges by prosecutor

If a prosecutor withdraws the charges during the summations, the court shall make a judgment of acquittal without continuing the proceedings.

§ 302. Resumption of examination by court

(1) If, during the summations, it is necessary to submit new evidence which may have a material effect on the adjudication of the criminal matter, the court may resume the examination by the court by a ruling at the request of a party or on its own initiative.

(2) After completion of a resumed examination by the court, the summations shall be recommenced.

§ 303. Final statement of accused

(1) After the summations, the judge shall give the floor to the accused for his or her final statement.

(2) The duration of the final statement is not limited. The judge may interrupt the speech of the accused if the final statement refers to circumstances outside the limits of the criminal matter.

(3) Questions shall not be posed to the accused during his or her final statement.

(4) If the final statement of the accused reveals new facts relevant to the criminal matter, the court shall resume examination by the court. After completion of the resumed examination by the court and the new summations, the accused has again the right to the final statement.

(5) In the case specified in subsection 267 (3) of this Code, the accused does not have the right to the final statement.

§ 304. Withdrawal of court to chambers

After the final statement of the accused, the court announces the time of pronouncement of the court judgment and withdraws to the chambers.

Division 6

Making of Court Judgment

§ 305. Confidentiality of deliberations by court

(1) During the making of a court judgment, only the court panel which heard the criminal matter and the court official who is to formalise the court judgment may be present in the chambers.

(2) The deliberations held in the chambers during the making of a court judgment shall not be disclosed.

§ 306. Issues to be adjudicated upon making of court judgment and signing of court judgment

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(1) When making a court judgment, the court shall adjudicate the following issues:

1) whether the act of which the accused is accused occurred;

2) whether the act was committed by the accused;

3) whether the act is a criminal offence and on which section, subsection and clause of the Penal Code the legal assessment of the act is based;

4) whether the accused is guilty of the commission of the criminal offence;

5) whether mitigating or aggravating circumstances exist;

6) the punishment to be imposed on the accused;

7) whether the accused is to be released from punishment or whether a substitutive punishment is to be imposed;

8) whether the accused who is a minor is to be punished for the criminal offence committed or whether non-punitive sanctions are to be applied against him or her;

9) whether new preventive measures are to be chosen or the valid preventive measure is to be maintained, altered or annulled in the case of conviction;

10) the measures to be applied with regard to the minor children of the accused who are left unsupervised, and to his or her property, if he or she is convicted and sentenced to imprisonment;

11) whether and to which extent to satisfy the civil action or compensate for the damage caused by the criminal offence;

12) whether it is necessary to apply measures to secure the civil action;

13) how to proceed with regard to physical evidence and other objects confiscated or seized in the criminal procedure;

14) the expenses relating to the criminal proceeding and the person who is to bear the expenses.

(2) The issues listed in subsection (1) of this section shall be adjudicated separately with respect to each of the accused and each criminal offence.

(3) After adjudication of the issues listed in subsection (1) of this section, a court judgment or the conclusion thereof shall be prepared and all the members of the court panel shall sign the judgment. The assistance of a court official may be used in the formalisation of a court judgment.

(4) A judge who maintains a minority position shall submit his or her dissenting opinion in writing and the opinion shall be included in the file but shall not be disclosed upon the pronouncement of the court judgment.

(5) After signing a court judgment, a court may, on its own initiative or at the request of a party to the court proceeding, correct spelling or calculation mistakes or obvious inaccuracies in the court judgment if such corrections do not affect the content of the judgment. The mistakes shall be corrected by a ruling the copy of which is sent to persons to whom a copy of the judgment containing mistakes was issued.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 307. Resumption of examination by court upon making of court judgment

If the court, when making a court judgment in chambers, finds that it is necessary to further ascertain facts relevant to the adjudication of the criminal matter, the court shall resume examination by the court by a ruling.

§ 308. Application of sanctions against minors

If a court finds as a result of the hearing of a criminal matter that a minor can be influenced without imposing a punishment, the court may, upon the making of the court judgment, release the convicted offender from punishment and apply the sanctions provided for in § 87 of the Penal Code with regard to him or her.

§ 309. Types and preparation of court judgment

(1) A court judgment is either a judgment of acquittal or a judgment of conviction.

(2) A judgment of acquittal is made if a criminal act or a criminal offence is not established in the court hearing, commission of the criminal offence by the accused is not proved or the prosecutor withdraws the charges.

(3) A judgment of conviction is made if the court finds as a result of the court hearing that commission of the criminal offence by the accused is proved.

§ 310. Decision concerning civil action

(1) If a court makes a judgment of conviction, the court shall satisfy the civil action in full or in part or dismiss or refuse to hear the action.

(2) If a court makes a judgment of acquittal, the court shall refuse to hear the civil action.

(3) If the hearing of a civil action is refused, the right to file the same action pursuant to civil procedure shall be explained to the victim.

§ 311. Introduction of court judgment

The introduction of a court judgment shall set out:

1) that the court judgment is made on behalf of the Republic of Estonia;

2) the date and place of making the court judgment;

3) the name of the court which made the judgment, the composition of the court and the given names and surnames of the prosecutor, counsels, interpreters, translators and the clerk of the court session;

4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth and the place of work or educational institution of the accused;

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5) the criminal record of the accused;

6) the section, subsection or clause of the Penal Code which provides for the criminal offence for which the accused has been prosecuted or of which he or she is accused according to the charges amended pursuant to § 268 of this Code.

§ 312. Main part of court judgment

The main part of a court judgment shall set out:

1) the facts found to be proved in the court hearing, and the evidence relied upon;

2) the evidence which the court deems to be unreliable and the reasons therefor;

3) the facts which the court has deemed to be a matter of common knowledge and on which the court relied when making the judgment;

4) the mitigating and aggravating circumstances;

5) the reasons for the punishment imposed on the accused;

6) the reasons for the amendment of the charges, release from punishment, imposition of a substitutive punishment, imposition of a punishment lesser than the minimum rate or term provided for in the Penal Code or for deferral of the execution of the court judgment;

7) the reasons for application, alteration or annulment of preventive measures;

8) the decision concerning the civil action;

9) the provisions of procedural law pursuant to which the judgment was made.

§ 313. Conclusion of judgment of conviction

(1) The conclusion of a judgment of conviction shall set out:

1) the name of the accused;

2) the conviction of the accused pursuant to the corresponding section, subsection or clause of the Penal Code;

3) the categories and the rates or terms of the punishments imposed on the accused for each of the criminal offences, and the aggregate punishment to be served;

4) in the case of probation, the duration of the period of probation and a list of the duties imposed on the accused;

5) reduction of the imposed punishment by one-third pursuant to subsection 238 (2) of this Code in the event of application of alternative proceedings;

6) the time of commencement of the service of the sentence;

7) circumstances relating to the execution of the court judgment;

8) the preventive measures chosen by the court, or alteration or annulment of the preventive measures applied previously;

9) the measures to be applied with regard to the unsupervised children and property of the convicted offender;

10) the decision concerning adjudication of the civil action and the measures to secure the civil action;

11) the measures to be applied with regard to the physical evidence and other objects confiscated or seized in the criminal proceedings;

12) the decision concerning the expenses relating to the criminal proceedings;

13) the procedure and term for appeal against the court judgment.

(2) If charges have been brought against the accused for several criminal offences or pursuant to several sections of the Penal Code, the conclusion of the court judgment shall set out the charges on which the accused is acquitted and the charges on which he or she is convicted.

§ 314. Conclusion of judgment of acquittal

The conclusion of a judgment of acquittal shall set out:

1) the name of the person acquitted;

2) the acquittal of the accused pursuant to the relevant section, subsection or clause of the Penal Code;

3) annulment of the preventive measures;

4) annulment of the measures to secure the civil action;

5) the measures to be applied with regard to the physical evidence and other objects confiscated or seized in the criminal proceedings;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

6) the extent of the damage which the criminal proceeding has caused to the person acquitted;

7) the procedure and term for appeal against the court judgment.

§ 315. Pronouncement of court judgment and explanation of right of appeal

(1) A judge or, in the case specified in subsection 18 (1) or (3) of this Code, the presiding judge shall pronounce a court judgment at the time announced pursuant to § 304 of this Code.

(2) If the accused is not proficient in the language of the criminal proceeding, the court judgment shall be interpreted or translated for him or her after the pronouncement of the judgment.

(3) The judge shall ask whether the person acquitted or convicted understands the court judgment and explain the content of the judgment to him or her if necessary.

(4) A court may decide to pronounce only the conclusion of the judgment, in which case the court shall explain the main reasons for the court judgment orally upon the pronouncement of the judgment.

(5) After the pronouncement of a court judgment or the conclusion thereof the judge or presiding judge shall:

1) upon the pronouncement of the conclusion of the court judgment, give notification of the date on which the court judgment will be available in court for examination by the parties to the court proceedings and shall make a corresponding notation in the minutes of the court session;

2) give notification of the term for appeal against the court judgment and explain the procedure for appeal provided for in § 318 of this Code and the possibility to waive the right of appeal;

3) explain that the county or city court must be notified of the intention to exercise the right of appeal in writing within seven days as of the pronouncement of the court judgment or of the conclusion thereof.

(6) Waiver of the right of appeal shall be recorded in the minutes of the court session. A counsel may waive the right of appeal only with the written consent of the person defended.

(7) If all parties to the court proceedings waive the right of appeal or if during the term provided for in clause (5) 2) of this section none of the parties to the court proceedings gives notification of the intention to exercise the right of appeal, only the information provided for in § 311, 313 or 314 of this Code shall be set out in the court judgment.

(8) If the parties to the court proceedings do not waive the right of appeal, the full court judgment shall be prepared within fifteen days as of the date on which the county or city court is notified of an intention to exercise the right of appeal.

§ 316. Release of accused under arrest upon making of court judgment

The accused who is under arrest shall be released immediately in the courtroom if he or she is:

1) acquitted;

2) released from punishment;

3) he or she is not sentenced to imprisonment.

§ 317. Service of copies of court judgment

(1) A court judgment may be examined in court after the judgment has been pronounced or communicated. At the request of a party to the court proceedings, a copy of the court judgment shall be submitted to him or her. A court shall send a copy of the decision to a

party to the court proceeding who did not participate in the pronouncement of the decision.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If the accused is under arrest, a copy of the court judgment shall be sent to or served on him or her immediately after the court judgment has been pronounced or communicated through the court.

Chapter 11

Appeal Proceedings

Division 1

Appeal to Circuit Court

§ 318. Right of appeal

(1) If a party to a court proceeding does not consent to the judgment of the court of first instance, the party has the right to file an appeal. The party to a court proceeding who files an appeal is the appellant in the appeal proceedings.

(2) A defendant may file an appeal concerning the civil action.

(3) An appeal shall not be filed:

1) by the accused against a judgment of acquittal made by way of alternative proceedings;

2) by a Prosecutor's Office against a judgment of conviction made by way of alternative proceedings;

3) against a judgment made by way of summary proceedings;

4) against a judgment made by way of settlement proceedings except in the event of a violation of the provisions of Division 2 of Chapter 9 of this Code;

5) by a Prosecutor's Office against a judgment of acquittal made on a basis provided for in § 301 of this Code.

§ 319. Term for appeal

(1) The court which made a judgment shall be notified in writing of a wish to exercise the right of appeal within seven days as of the pronunciation of the judgment or the conclusion of the judgment. Notice of the wish to exercise the right of appeal may also be given to the court which made the judgment by facsimile.

(2) An appeal against a court judgment shall be filed with the court which made the judgment in writing within fifteen days as of the date when the party to the court proceeding had the opportunity to examine the judgment in court. An appeal may also be filed with the court which made the judgment by facsimile.

(3) The accused under arrest or his or her counsel may file an appeal within fifteen days as of the date following the date of service of a copy of the court judgment on the accused.

(4) The hearing of an appeal shall be refused and the appeal shall be returned on the basis of a court ruling if the term for appeal has expired.

(5) If, upon adjudication of a criminal matter, a court declares legislation of general application subject to application in the conclusion of a court judgment to be in conflict with the Constitution and refuses to apply the legislation of general application, an appeal shall be filed in writing to the court who made the judgment within fifteen days as of the day following pronunciation of the judgment made concerning the legislation of general application which is not applied by way of constitutional review of the Supreme Court.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(6) A court may restore a term for appeal at the request of the appellant if the court finds that the term was allowed to expire for good reason. The court shall make a ruling on the restoration of or refusal to restore the term.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(7) If the criminal file has been forwarded to the circuit court before the submission of a request for the restoration of the term for appeal, restoration of the term shall be decided by the circuit court.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 320. Prohibition on disclosure of criminal file, and access to criminal file

(1) During a term for appeal, the criminal file shall be kept in the county or city court and shall not be disclosed.

(2) The accused has the right to examine the criminal file through his or her counsel.

§ 321. Appeal

(1) Appeals shall be prepared in typewritten form. The accused under arrest may prepare an appeal also in clearly legible handwriting. Appeals prepared by a Prosecutor's Office or a counsel shall be forwarded to a court also in electronic form.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) An appeal shall set out:

1) the name of the circuit court with which the appeal is filed;

2) the name, status in the proceedings, residence or seat and address and the telephone or fax number of the appellant;

3) the name of the court which made the judgment, the date of the judgment, and the name of the accused with regard to whom the judgment is contested;

4) which part of the court judgment is contested, the content of and reasons for the claims of the appellant, and the requests of the appellant;

5) the evidence to be examined in the circuit court at the request of the appellant, and the name and residence or seat and address of the person requested to be summoned to a session of the court of appeal;

6) whether the accused wishes to participate in the hearing of the criminal matter in the circuit court or requests that the criminal matter be heard without his or her participation;

7) whether the accused chooses his or her counsel in the appeal proceeding himself or herself or requests the court to appoint a counsel;

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8) a list of the documents annexed to the appeal.

(3) An appeal shall be signed and dated by the appellant.

(4) If the accused chooses his or her counsel himself or herself, the address and the telephone or fax number of the counsel shall be indicated in the appeal.

(5) Copies of an appeal for the accused whose interests are concerned by the appeal shall be annexed to the appeal. The accused under arrest is not required to annex copies of the appeal.

(6) In an appeal, the appellant may rely on evidence not examined in the court of first instance only if the appellant substantiates the failure to submit the evidence to the court of first instance.

§ 322. Notification of appeal

(1) A court of first instance shall give notification of the filing of an appeal to such parties to a court proceeding whose interests are concerned by the appeal within three days as of the receipt of the appeal.

(2) Together with the notice, a copy of the appeal shall be sent to the accused whose interests are concerned by the appeal.

(3) A party to a court proceeding has the right to submit written explanations and objections concerning an appeal to the circuit court within seven days as of the receipt of a notice concerning the filing of the appeal.

§ 323. Refusal to accept or hear appeal by court which made judgment

(1) If an appeal is not in compliance with the requirements provided in § 321 of this Code, the court shall, by a ruling, refuse to accept the appeal and set a term for the elimination of deficiencies.

(2) A judge shall prepare a ruling on refusal to hear an appeal and return the appeal to the appellant if:

1) the appeal was filed after the expiry of the term for appeal provided for in § 319 of this Code and a request for restoration of the term has not been filed or the court has refused to restore the term;

2) the appeal was filed by a person who, pursuant to § 318 of this Code, does not have the right of appeal;

3) the appellant has failed to eliminate the deficiencies contained in the appeal within the specified term or to substantiate such failure.

§ 324. Referral of criminal file to circuit court

If a term for appeal has expired, the criminal file and the appeal shall be sent to the circuit court.

Division 2

Pre-trial Proceedings in Circuit Court

§ 325. Preparation for court hearing in circuit court

(1) In the course of preparations for the court hearing of a criminal matter, a court shall:

1) verify the jurisdiction over the criminal matter and compliance with the requirements provided for in §§ 318, 319, 321 and 322 of this Code;

2) hold a preliminary hearing if the grounds provided for in § 327 of this Code become evident.

(2) If the requirements provided for in §§ 319, 319, 321 and 322 of this Code are complied with and there are no grounds for holding a preliminary hearing, the judge shall determine the time of the court session and perform the acts provided for in §§ 329 and 330 of this Code.

§ 326. Refusal to accept or hear appeal in circuit court

(1) If an appeal is not in compliance with the requirements provided in § 321 of this Code, the court shall, by a ruling, refuse to accept the appeal and set a term for the elimination of deficiencies.

(2) A judge shall prepare a ruling on refusal to hear an appeal and return the appeal to the appellant on the grounds provided in clauses 323 (2) 1)-3) of this Code or if the appeal is discontinued before the beginning of the court session. A circuit court may also refuse to hear an appeal if the court panel hearing the criminal matter unanimously finds that the appeal is clearly unfounded.

§ 327. Grounds for holding preliminary hearings in circuit court

(1) A preliminary hearing shall be held:

1) if a material violation of criminal procedural law provided for in subsection 339 (1) of this Code is ascertained;

2) in other cases where the judge considers the holding of a preliminary hearing necessary.

(2) Preliminary hearings shall be held pursuant to subsections 259 (2)–(4) and §§ 260 and 261 of this Code by a panel of at least three judges.

§ 328. Jurisdiction of court in pre-trial proceedings

(1) A judge or, in a preliminary hearing, a court shall:

1) make a ruling ordering the hearing of the criminal matter by way of appeal proceedings if there are no circumstances which may hinder the proceedings or if such circumstances can be eliminated;

2) annul the court judgment by a ruling and send the criminal matter for a new hearing to the court of first instance on the grounds provided for in subsection 339 (1) of this Code;

3) adjudicate other issues relating to preparations for the court hearing by a ruling.

(2) Within three days after a court ruling is made, a copy of the ruling shall be sent to the parties of the court proceeding whose interests are concerned by the ruling.

§ 329. Ordering of hearing of criminal matter in circuit court

(1) A ruling ordering the hearing of a criminal matter by way of appeal proceedings shall set out:

1) the date and place of the court session;

2) the names of the persons summoned to the court session;

3) whether the criminal matter is to be heard in a public court session or *in camera*.

(2) A ruling shall set out any requests that were dismissed. Appeals shall not be filed against the dismissal of a request but the request may be re-submitted in the court hearing.

§ 330. Summoning to court session

The parties to a court proceeding shall be summoned to a session by a summons pursuant to §§ 163-169 of this Code.

Division 3

Court Hearing in Circuit Court

§ 331. Procedure and limits for hearing of criminal matter by way of appeal proceedings

(1) A circuit court shall hear a criminal matter by way of appeal proceedings pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Division.

(2) A circuit court shall hear a criminal matter within the limits of the appeal filed.

(3) A circuit court shall extend the limits of hearing a criminal matter to all the persons accused regardless of whether an appeal has been filed with regard to them, if a material violation of criminal procedural law or incorrect application of substantive law which has aggravated the situation of the accused becomes evident.

(4) An appellant or the other parties to a court proceeding do not have the right to exceed the limits of the appeal in the court hearing of the criminal matter.

§ 332. Application of court session in circuit court

(1) Upon application of a court session in a circuit court, the presiding judge shall:

1) open the court session and announce the criminal matter to be heard and the name of the person who filed the appeal;

2) ascertain whether the persons summoned have appeared in the session;

3) ascertain the reasons for failure to appear when summoned;

4) involve an interpreter, if necessary, pursuant to subsection 161 (1) of this Code;

5) identify the accused and explain the rights prescribed in § 35 of this Code to him or her and verify whether the accused and his or her counsel have had enough

time to prepare for the court session following their receipt of a copy of the appeal;

6) perform the procedural acts listed in §§ 280-284 of this Code.

(2) The presiding judge or a member of the court panel shall present the content of the appealed part of the court judgment, the reasons for the appeal, and the requests, and give an overview of the documents received.

(3) After the presentation, the presiding judge shall explain the right to discontinue the appeal and the consequences of discontinuance to the appellant pursuant to § 333 of this Code and ask whether the appellant will proceed with the appeal or discontinue the appeal in whole or in part.

§ 333. Discontinuance of appeal

(1) An appellant has the right to discontinue the appeal in whole or in part before the end of the summations. Discontinuance of the appeal is binding on the circuit court, except in the cases provided for in subsection (6) of this section.

(2) A counsel may discontinue an appeal of the accused only with the written consent of the person being defended.

(3) An authorised representative may discontinue an appeal only at the written request of the principal.

(4) The accused may discontinue an appeal of the counsel, except in the cases where the participation of a counsel in the criminal proceeding is mandatory pursuant to subsection 45 (2) of this Code.

(5) If an appeal is discontinued before the beginning of the court session, the hearing of the appeal shall be refused by a court ruling. If an appeal is discontinued during the court hearing, the appeal proceeding shall be terminated by a court ruling.

(6) If a circuit court ascertains that a court of first instance has incorrectly applied substantive law in the adjudication of a criminal matter and thereby aggravated the situation of the accused or that a court of first instance has materially violated the criminal procedural law, the hearing of the criminal matter shall be continued regardless of discontinuance of the appeal.

(7) If the hearing of an appeal is refused or the appeal proceeding is terminated due to discontinuance of the appeal, the judgment of the court of first instance shall, in the absence of other appeals, enter into force as of the making of the court ruling.

(8) An appellant who has discontinued the appeal does not have the right to contest the judgment of the circuit court by way of cassation proceedings unless the circuit court has extended the limits of the hearing of the criminal matter pursuant to subsection 331 (3) of this Code.

§ 334. Participation of accused and other parties to court proceedings in circuit court sessions

(1) A circuit court may hear a criminal matter in the absence of the accused with regard to whom the court judgment has been contested if:

1) the accused has received the summons and a copy of the appeal and notified the court that he or she does not wish to participate in the court session;

2) the accused has received the summons and a copy of the appeal and requested adjournment of the court hearing for a reason which the court does not deem to be good reason;

3) the accused has received the summons and a copy of the appeal and has failed to appear at the court session;

4) the accused has been removed from the courtroom on the basis of subsection 267 (1) of this Code;

5) the accused absconds the court.

(2) Participation of the other parties to a court proceeding in a circuit court session shall be decided by the court pursuant to the procedure provided for in §§ 270-273 of this Code.

§ 335. Examination by court in circuit court

(1) In a circuit court, examination by the court shall be conducted pursuant to the provisions of §§ 286-298 of this Code.

(2) In examination by court, a circuit court may disclose the minutes of a session of the court of first instance.

§ 336. Summations

(1) The summations commence by the closing arguments of the appellant. Thereafter, the other parties to the court proceeding shall be given the floor in the order determined by the court. The parties to the court proceeding have the right to rebut. The counsel or the accused has the right to the final rebuttal.

(2) The duration of the closing arguments is not limited. The presiding judge may interrupt the closing arguments if the limits of the appeal are exceeded.

(3) After the summations, the court shall announce the date when the decision will be available to the parties to the court proceeding in the circuit court. The court may pronounce the judgment or the conclusion of the judgment immediately after deliberations.

§ 337. Jurisdiction of circuit court in making of decision

(1) A circuit court may, by a judgment:

1) refuse to amend a judgment of a court of first instance, and dismiss the appeal;

2) refuse to make substantive amendments to a judgment of a court of first instance and make corrections thereto;

3) amend the main part of a judgment of a court of first instance and exclude facts presented therein;

4) annul a judgment of a court of first instance in whole or in part and make a new judgment.

(2) A circuit court may, by a ruling:

1) annul a court judgment and terminate the criminal proceeding on the grounds precluding criminal procedure pursuant to clauses 199 (1) 2)-5) of this Code;

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2) annul a court judgment in full or in part and return the criminal matter to the court of first instance for a new hearing.

§ 338. Grounds for annulment of court judgment by way of appeal procedure

The grounds for the annulment of a court judgment by way of appeal proceedings are:

1) one-sidedness or insufficiency of examination by the court of first instance;

2) incorrect application of substantive law;

3) material violation of criminal procedural law;

4) non-conformity of the imposed punishment or any other sanction with the degree of the criminal offence or the person of the convicted offender.

§ 339. Material violation of criminal procedural law

(1) Violation of criminal procedural law is material if:

1) the decision is made in a criminal matter by an unlawful court panel;

2) a criminal matter is heard in the absence of the accused, except in the cases provided for in subsections 267 (1) and 334 (1) of this Code;

3) a court proceeding is conducted without the participation of a counsel;

4) a court proceeding is conducted without the participation of the prosecutor;

5) the confidentiality of deliberations is violated in the making of a court judgment;

6) a court judgment is not signed by all members of the court panel;

7) a court judgment does not contain the reasons for the judgment;

8) the conclusions presented in the conclusion of a court judgment do not correspond to the facts established with regard to the subject of proof;

9) a criminal matter is heard without the participation of a translator or interpreter in a language in which the accused is not proficient;

10) minutes are not taken of a court session, with the exception of the matters heard by way of summary proceedings.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A court may declare any other violation of criminal procedural law to be material if such violation results or may result in an unlawful or unfounded court judgment.

§ 340. Making of new judgment in circuit court

(1) A circuit court shall make a new judgment on the basis of a request submitted in an appeal or regardless of such request if the court ascertains incorrect application of substantive law or material violation of criminal procedural law which has aggravated the situation of the accused.

(2) If a circuit court makes a new judgment, the court may:

1) acquit the accused with regard to all the criminal offences;

2) acquit the accused with regard to some of the criminal offences and impose a lesser punishment or refuse to amend the punishment;

3) convict the accused of a lesser criminal offence and impose a lesser punishment or refuse to amend the punishment;

4) annul the judgment of the court of first instance in the part concerning imposition of the punishment and impose a lesser punishment on the accused;

5) annul the court judgment with regard to the civil action;

6) annul the court judgment with regard to issues provided for in §§ 313 and 314 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) If incorrect application of the provisions of substantive law is ascertained, the court shall apply the provisions of subsection (1) of this section also with regard to the other accused persons regardless of whether they have filed an appeal.

(4) On the basis of an appeal filed by a Prosecutor's Office or a victim, a circuit court may:

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

1) convict the accused of a more serious criminal offence and impose a more severe punishment or refuse to amend the punishment;

2) annul the judgment of acquittal and make a judgment of conviction;

3) convict the accused of a criminal offence with regard to which he or she has been acquitted, and impose a punishment on him or her;

4) annul the judgment of the court of first instance in the part of the punishment and impose a more severe punishment;

5) annul the court judgment with regard to issues provided for in §§ 313 and 314 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 341. Return of criminal matters to courts of first instance for new hearing

(1) If material violation of criminal procedural law is ascertained in the course of a court session pursuant to subsection 339 (1) of this Code, the circuit court shall annul the judgment of the court of first instance and return the criminal matter to the court of first instance for a new hearing by a different court panel.

(2) If material violation of criminal procedural law is ascertained in the course of a court session pursuant to the procedure provided for in subsection 339 (2) of this Code and the violation cannot be eliminated in the court session, the circuit court shall annul the judgment of the court of first instance and return the criminal matter to the court of first instance for a new hearing by a different court panel.

(3) A court of first instance re-hearing a criminal matter may aggravate the situation of the accused only if one of the bases for hearing the criminal matter by way of appeal proceedings was the appeal of the Prosecutor's Office or the victim requesting aggravation of the situation of the accused.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) If a circuit court has annulled a court judgment only on the basis an appeal of the accused, the court of first instance, when re-hearing the criminal matter, shall not impose a more severe punishment on the accused than the punishment imposed by the annulled judgment of the court of first instance.

§ 342. Judgment of circuit court

(1) A judgment of a circuit court shall be made pursuant to §§ 305-314 of this Code, taking into account the specifications provided for in this section.

(2) The introduction of a judgment of a circuit court shall set out:

1) the appealed court judgment;

2) the content of the appealed part of the judgment of the court of first instance and the content of the requests of the appellant.

(3) If a circuit court refuses to amend a judgment of a court of first instance pursuant to clauses 337 (1) 1) or 2) of this Code, the court:

1) need not repeat the facts set out in the main part of the judgment of the court of first instance in the judgment of the circuit court and may, if necessary, add the reasoning of the circuit court;

2) may limit the judgment thereof to the introduction, conclusion and the provisions of procedural law pursuant to which the judgment was made.

§ 343. Pronouncement of judgment of circuit court and service of copies of judgment

(1) After the summations, the circuit court shall announce the time or day when the court decision will be available for the parties to the proceedings at circuit court.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) If a circuit court pronounces a court judgment or the conclusion of the judgment immediately after deliberations, provisions of §§ 315 and 316 of this Code apply.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) Copies of a judgment of a circuit court shall be served in accordance with § 317 of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

Chapter 12

Cassation Proceedings

Division 1

Appeal to Supreme Court

§ 344. Right of appeal in cassation

(1) A party to a court proceeding has the right of appeal in cassation on the grounds provided in § 346 of this Code, if:

1) the right of appeal has been exercised in the interests or against the party;

2) a circuit court has amended or annulled the judgment of a county or city court.

(2) A victim and defendant have the right of appeal in cassation as concerns a civil action.

(3) The following have the right to file an appeal in cassation:

1) a Prosecutor's Office;

2) an advocate who is a criminal defence counsel;

3) other parties to a court proceeding through an advocate.

(4) An appellant in cassation is the prosecutor or advocate who filed the appeal in cassation or supports the appeal at a session of the Supreme Court.

(5) An appellant in cassation and a Prosecutor's Office are parties to a cassation proceeding. Any other person who has the right to file an appeal in cassation as specified in subsection (3) of this section is a party to a cassation proceeding if the Supreme Court considers it necessary that the person participate in the court session. If an appeal in cassation is filed by the other person, the counsel of the accused whose interests are concerned by the appeal in cassation is also a party to the cassation proceeding.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 345. Term for cassation

(1) A circuit court shall be notified in writing of a wish to exercise the right of appeal in cassation within seven days after a court judgment or the conclusion thereof is pronounced or communicated through the court office. A circuit court may be notified of a wish to exercise the right of appeal in cassation by fax.

(2) An appeal in cassation shall be filed with the circuit court which made the judgment in writing within thirty days as of the date when the party to the court proceeding had the opportunity to examine the judgment of the circuit court. An appeal in cassation may be filed by fax.

(3) Hearing of an appeal in cassation shall be refused and the appeal shall be returned by a conclusion of the Supreme Court if the term for filing an appeal in cassation has been allowed to expire.

(4) If, upon adjudication of a criminal matter, a circuit court declares legislation of general application subject to application in the conclusion of a court judgment to be in conflict with the Constitution and refuses to apply the legislation of general application, an appeal in cassation shall be filed within thirty days as of the day following

pronunciation of the judgment made concerning the legislation of general application which is not applied by way of constitutional review of the Supreme Court.

(5) At the request of an appellant in cassation, the Supreme Court may restore the term for cassation if the Court finds that the term was allowed to expire for good reason.

(6) Restoration of the term or refusal to restore the term shall be formalised by a ruling of the Supreme Court.

§ 346. Grounds for appeal in cassation

The grounds for an appeal in cassation are:

1) incorrect application of substantive law;

2) material violation of criminal procedural law in the case specified in § 339 of this Code.

§ 347. Appeal in cassation

(1) Appeals in cassation shall be in typewritten form. An electronic copy of an appeal in cassation shall be added to the appeal.

(2) An appeal in cassation shall set out:

1) the name, status in the proceedings, address of the seat, phone number and other telecommunications numbers of the appellant in cassation;

2) the name of the court which made the contested decision, and the date of the decision;

3) the name of the party to the proceeding in whose interests or against whom the appeal in cassation is filed, the address of the residence or seat, phone number and other telecommunications numbers of the party;

4) grounds for the appeal in cassation according to § 346 of this Code and a reference to the relevant provisions of substantive law or criminal procedural law;

5) the facts which were established by the court judgment or the evidence examined by the court on the basis of which the appellant in cassation proves that substantive law has been applied incorrectly or criminal procedural law has been materially violated;

6) a list of documents which the appellant in cassation considers necessary to submit additionally in appellate procedure in order to establish a material violation of criminal procedural law;

7) the content of and reason for the request of the appellant in cassation;

8) whether the accused who submitted the appeal in cassation has chosen a criminal defence counsel or whether he or she requests appointment of a criminal defence counsel;

9) whether the appellant in cassation requests an oral procedure;

10) a list of the documents annexed to the appeal in cassation.

(3) The following shall be annexed to an appeal in cassation:

1) a document certifying the authorisation of the appellant in cassation if the appellant is an advocate and such document is not in the criminal file;

2) copies of the appeal in cassation for the accused and any other person specified in subsection 344 (3) of this Code whose interests are concerned by the appeal and the Prosecutor's Office.

(4) An appeal in cassation shall be signed and dated by the appellant in cassation.

§ 348. Prohibition on disclosure of criminal file, and access to criminal file

(1) During a term for appeal in cassation, a criminal file shall be kept in the circuit court and shall not be disclosed.

(2) Persons who have the right to file an appeal in cassation have the right to examine the criminal file.

(3) Upon expiry of a term for appeal in cassation, the criminal file and the appeal in cassation shall be sent to the Supreme Court.

Division 2

Pre-trial Proceedings in Supreme Court

§ 349. Decision on acceptance of appeal in cassation

(1) A panel of three justices of the Supreme Court shall decide on the acceptance of an appeal in cassation on the basis of the materials of the criminal file, without summoning the parties to the cassation proceeding, within one month as of the receipt of the appeal in cassation.

(2) The Supreme Court shall send a copy of an appeal in cassation to the persons specified in subsection 344 (3) of this Code whose interests are concerned by the appeal and set a term for the submission of a response to the appeal in cassation, if necessary.

(3) A response to an appeal in cassation shall set out whether oral procedure is requested.

(4) An appeal in cassation shall be accepted if at least one justice of the Supreme Court finds that:

1) the allegations made in the appeal in cassation give reason to believe that the circuit court has applied substantive law incorrectly or has materially violated criminal procedural law;

2) the appeal in cassation contests the correctness of application of substantive law or requests annulment of the judgment of a circuit court due to material violation of criminal procedural law, and a judgment of the Supreme Court is essential for the uniform application of law.

(5) Acceptance of an appeal in cassation or refusal to accept an appeal in cassation shall be formalised by a ruling of the Supreme Court without setting out any reasons.

(6) If an appeal in cassation is not accepted, the appeal and the ruling of the Supreme Court shall be included in the criminal file which shall be returned to the court of first instance. Copies of the ruling shall be sent to the appellant in cassation and the person who submitted the response to the appeal in cassation.

§ 350. Refusal to accept or hear appeal in cassation

(1) If an appeal in cassation is not in compliance with the requirements provided for in § 347 of this Code, the Supreme Court shall, by a ruling, refuse to accept the appeal and set a term for the appellant in cassation for the elimination of deficiencies.

(2) The Supreme Court shall prepare a ruling on refusal to hear an appeal in cassation and return the appeal to the appellant in cassation if:

1) the appeal in cassation was filed after the expiry of the term for appeal in cassation provided for in § 345 of this Code and the appellant in cassation has not requested restoration of the term or the Supreme Court has refused to restore the term;

2) the appeal in cassation is submitted by a person who pursuant to subsection 344 (3) of this Code does not have the corresponding right;

3) the appellant in cassation fails to eliminate deficiencies in the appeal in cassation within the specified term;

4) the appeal in cassation is discontinued before the beginning of the court session.

§ 351. Giving notice of and summoning to sessions of Supreme Court and examination of criminal file in Supreme Court

(1) If the Supreme Court decides to accept an appeal in cassation, it shall send a summons to a party of the cassation proceedings together with a copy of the appeal, if a copy has not been sent to the party pursuant to the procedure provided for in subsection 349 (2) of this Code.

(2) The Supreme Court shall notify any parties to the court proceeding whose interests are concerned by the appeal in cassation of the time and place of a court session.

(3) The Supreme Court may summon a party to the court proceeding who is not a party to the cassation proceeding to a court session if the Supreme Court deems it necessary.

(4) Parties to a cassation proceeding have the right to examine the criminal file in the Supreme Court and make copies of the file at their own expense.

Division 3

Hearing of Criminal Matters in Supreme Court

§ 352. Manner, term and limits for hearing criminal matter by way of cassation procedure

(1) Generally, the Supreme Court shall hear a criminal matter by way of a written proceeding.

(2) A criminal matter shall be heard by way of an oral proceeding if oral procedure has been requested by a party to the cassation proceeding or deemed necessary by the Supreme Court.

(3) The Supreme Court shall hear a criminal matter within two months after acceptance of the appeal in cassation.

(4) A criminal matter shall be heard within the limits of the appeal in cassation.

(5) In the hearing of a criminal matter, the appellant in cassation does not have the right to exceed the limits of the appeal in cassation.

(6) The Supreme Court shall extend the limits of hearing a criminal matter to all the persons accused and all the criminal offences they are accused of regardless of whether an appeal in cassation has been filed with regard to them if incorrect application of substantive law which has aggravated the situation of the accused or a material violation of criminal procedural law becomes evident.

§ 353. Court panel upon hearing criminal matter by way of cassation procedure

In the Supreme Court, a criminal matter shall be heard by way of cassation proceedings:

1) by a three-member panel of the Criminal Chamber;

2) by the full panel of the Criminal Chamber;

3) by a Special Panel of the Supreme Court;

4) by the Supreme Court *en banc*.

§ 354. Hearing of criminal matter by full panel of Criminal Chamber

If fundamentally different opinions arise as to the application of the law in a three-member panel of the Criminal Chamber of the Supreme Court or if a need arises to amend a position regarding application of the law maintained by the Criminal Chamber in an earlier court judgment, a criminal matter shall be referred, on the basis of a ruling, for hearing by the full panel of the Criminal Chamber which shall comprise at least six justices of the Supreme Court.

§ 355. Hearing of criminal matter by Special Panel of Supreme Court

(1) If the full panel of the Criminal Chamber of the Supreme Court finds in the hearing of a criminal matter that it is necessary to interpret the law so as to amend a position of another chamber of the Supreme Court or a position maintained in the most recent court decision of the Special Panel, the criminal matter shall be referred for hearing by a Special Panel of the Supreme Court on the basis of a court ruling.

(2) A Special Panel of the Supreme Court shall be formed by the Chief Justice of the Supreme Court.

(3) The members of a Special Panel of the Supreme Court are:

1) the Chief Justice of the Supreme Court as the presiding judge;

2) two justices of the Criminal Chamber of the Supreme Court;

3) two justices from such chamber of the Supreme Court whose position concerning application of the law is contested by the Criminal Chamber.

(4) At the sessions of a Special Panel, materials shall be presented by a member of the Criminal Chamber.

§ 356. Hearing of criminal matter by Supreme Court *en banc*

A criminal matter shall be referred for hearing by the Supreme Court *en banc* on the basis of a court ruling if the full panel of the Criminal Chamber finds in the hearing of the criminal matter:

1) that in the application of the law it is necessary to amend the opinion maintained in the most recent decision of the Supreme Court *en banc* or a Special Panel of the Supreme Court;

2) the adjudication of the criminal matter by the Supreme Court *en banc* to be essential for the interpretation of the law;

3) that adjudication of the criminal matter requires adjudication of an issue subject to hearing on the basis of the Constitutional Review Court Procedure Act (RT I 2002, 29, 174; 2003, 4, 22; 24, 148).

§ 357. Opening of Supreme Court session

(1) Upon application of a court session in the Supreme Court, the presiding judge shall:

1) open the court session and announce the criminal matter to be heard and the name of the person who filed the appeal in cassation;

2) ascertain which of the parties to the cassation proceeding and other persons summoned have appeared at the court session and verify their authority;

3) involve an interpreter or translator, if necessary;

4) announce the composition of the court and ask the appellant in cassation and the other parties to the cassation proceeding whether they wish to submit petitions of challenge or other requests;

5) ask the appellant in cassation whether he or she will proceed with the appeal in cassation or discontinue the appeal. Discontinuance of an appeal in cassation shall be certified by the signature of the appellant on the appeal.

(2) Any requests shall be adjudicated pursuant to the procedure prescribed in subsection 284 (3) of this Code.

(3) If circumstances hindering the hearing of a criminal matter become evident during a court session, the court shall adjourn the hearing of the matter by a ruling.

§ 358. Discontinuance of appeal in cassation

(1) An appellant in cassation has the right to discontinue the appeal in full or in part before the Supreme Court withdraws from the courtroom to make the judgment.

(2) A criminal defence counsel or representative may discontinue an appeal in cassation if the person being defended or the principal has agreed to this in writing.

(3) On the basis of a written request, a party to a cassation proceeding has the right to discontinue an appeal in cassation filed in the interests of the party. The accused may discontinue an appeal in cassation filed by the counsel, unless the participation of a counsel in the criminal proceeding is mandatory pursuant to subsection 45 (2) of this Code.

(4) If an appellant in cassation discontinues the appeal in cassation, proceedings concerning the appellant shall be terminated by a court ruling.

(5) If the Supreme Court ascertains that a circuit court has incorrectly applied substantive law in the adjudication of a criminal matter and thereby aggravated the situation of the accused or that a circuit court has materially violated criminal procedural law, the hearing of the criminal matter shall be continued regardless of discontinuance of the appeal in cassation.

§ 359. Report on materials of criminal matter

(1) After opening a court session, the presiding judge or a justice of the Supreme Court shall present the materials of the criminal matter.

(2) A presentation shall give an overview of:

1) the facts relating to the criminal matter;

2) the content of and reasons for the appeal in cassation;

3) the requests of the appellant in cassation;

4) the explanations and objections set out in the response to the appeal in cassation.

§ 360. Hearing of opinions of parties to cassation proceeding and closing of court session

(1) After presentation of the materials of a criminal matter, the court shall hear the opinions of the parties to the cassation proceeding who have appeared at the court session in the order determined by the court, whereas the appellant in cassation shall be heard first. The criminal defence counsel of the accused shall be the last to be heard even if he or she had already spoken as the appellant in cassation.

(2) The presiding judge has the right to interrupt the statement of a party to the cassation proceeding if he or she exceeds the limits of the appeal in cassation.

(3) The court has the right to question the parties to the cassation proceeding and the parties to the court proceeding who are not parties to the cassation proceeding and who have been summoned to the court session.

(4) After hearing the parties to the cassation proceeding, the presiding judge shall close the court session and announce the date when the court judgment will be available in the Office of the Supreme Court.

(5) A judgment of the Supreme Court shall be available in the Office of the Supreme Court not later than within one month after the session of the Supreme Court. In exceptional cases, the term may be extended by one month.

§ 361. Competence of Supreme Court upon making of judgment

The Supreme Court may, by a judgment:

1) refuse to amend a judgment made by a circuit court and deny the appeal in cassation;

2) refuse to make substantive amendments to the judgment of a circuit court and make corrections thereto which do not aggravate the situation of the convicted offender;

3) amend the main part of a court judgment and exclude facts presented therein;

4) annul a court judgment and terminate the criminal proceeding on the grounds prescribed in clauses 199 (1) 2)-5) of this Code;

5) annul a judgment of a circuit court and execute the judgment of the county or city court without aggravating the situation of the convicted offender;

6) annul a court judgment in full or in part and refer the criminal matter for a new hearing by the court which applied substantive law incorrectly or materially violated criminal procedural law;

7) annul a court judgment made in a criminal matter in full or in part and, without collecting any additional evidence, make a new judgment which does not aggravate the situation of the convicted offender.

§ 362. Grounds for annulment of court judgment by way of cassation procedure

The grounds for annulment of a court judgment by way of cassation procedure are:

1) incorrect application of substantive law;

2) material violation of criminal procedural law.

§ 363. Judgment of Supreme Court

(1) The introduction of a judgment of the Supreme Court shall set out:

1) the number of the case;

2) the date of the judgment of the Supreme Court;

3) the name of the case heard;

4) the contested court decision;

5) the date of hearing the case;

6) whether the case is heard by way of written or oral proceedings;

7) the official title and name of the appellant in cassation;

8) the official titles and names of the parties to the cassation proceeding and the names of the parties to the court proceeding and the name of the interpreter or translator who participated in the session of the Supreme Court.

(2) The statement of reasons of a judgment of the Supreme Court shall set out the following:

1) a short summary of the court proceedings to date;

2) the part of the court judgment which the appellant in cassation contests, and the requests of the appellant;

3) the explanations and objections submitted in the response to the appeal in cassation;

4) the opinions of the parties to the cassation proceeding presented during the court session;

5) the reasons for the conclusions of the Supreme Court;

6) the legal basis for the conclusions of the Supreme Court.

(3) The conclusion of a judgment of the Supreme Court shall set out the conclusions of the court.

(4) If the Supreme Court refuses to amend a judgment of a circuit court pursuant to clauses 361 1) or 2) of this Code, the Supreme Court:

1) is not required to repeat in its judgment the reasons for the judgment of the circuit court, but may add the motives of the Supreme Court;

2) may limit the judgment thereof to the introduction, conclusion and the provisions of procedural law pursuant to which the judgment was made.

(5) The Supreme Court shall not establish facts.

(6) Judgments of the Supreme Court enter into force as of the date they are made and are not subject to appeal.

§ 364. Obligation to comply with judgment of Supreme Court

(1) Compliance with a position maintained in a judgment of the Supreme Court in the application of the law is obligatory for:

1) the county, city or circuit court hearing the same criminal matter;

2) the Supreme Court, taking into account the specifications provided for in §§ 354-356 of this Code;

3) authorities applying the Code of Criminal Procedure of Estonia in the case provided for in clause 2 4) of this Code.

(2) The chambers of the Supreme Court shall comply with a judgment of a Special Panel of the Supreme Court concerning application of the law.

(3) The chambers and Special Panels of the Supreme Court shall comply with a judgment of the Supreme Court *en banc* concerning application of the law.

Chapter 13

Review Procedure for Court Decisions

§ 365. Definition of review procedure

(1) "Review procedure" means hearing of a petition for review by the Supreme Court in order to decide on the resumption of proceedings in a criminal matter in which the court decision has entered into force.

(2) A criminal matter in which the court decision has entered into force and resumption of the proceedings in which is requested is a criminal matter subject to review.

§ 366. Grounds for review

The grounds for review are:

1) the unlawfulness or unfoundedness of a court judgment or ruling arising from the false testimony of a witness, knowingly wrong opinion of an expert, knowingly false interpretation or translation, or falsification of documents, or fabrication of evidence which is established by another court judgment which has entered into force;

2) a criminal offence which is committed by a judge in the hearing of the criminal matter subject to review and which is established by a court judgment;

3) a criminal offence which is committed by an official of the body that conducted pre-trial proceedings or a prosecutor in the pre-trial proceedings of a criminal matter and which is established by a court judgment, if the criminal offence could have had an effect on the court judgment made in the criminal matter subject to review;

4) annulment of a court judgment or ruling which was one of the bases for making a court judgment or ruling in the criminal matter subject to review, if this may result in the making of a judgment of acquittal in the criminal matter subject to review, or in mitigation of the situation of the convicted offender;

5) any other facts which are relevant to the just adjudication of the criminal matter but which the court was not aware of while making the court judgment or a court ruling in the criminal matter subject to review and which independently or together with the facts previously established may result in a judgment of acquittal or in mitigation of the situation of the convicted offender;

6) the Supreme Court declares, by way of constitutional review proceedings, the legislation of general application or a provision thereof on which the court judgment or ruling in the criminal matter subject to review was based to be in conflict with the Constitution.

§ 367. Right to submit petition for review

Persons specified in subsection 344 (3) of this Code have the right to submit a petition for review.

§ 368. Terms for submission of petitions for review

A petition for review may be submitted within six months after the grounds for provided in § 366 of this Code become evident.

§ 369. Petition for review

(1) A petition for review submitted to the Criminal Chamber of the Supreme Court shall be prepared in typewritten form. The petition for review shall be sent to the court also in electronic form.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) A petition for review shall set out:

1) the name, official title, address of the seat, phone number and other telecommunications numbers of the petitioner;

2) the name of the court whose decision is requested to be reviewed, and the date of the decision subject to review;

3) the name of the convicted offender with regard to whom review of the criminal matter is requested;

4) the grounds for review according to § 366 of this Code and the reasons therefor;

5) materials which should be examined and persons who should be questioned in the Supreme Court in order to ascertain the existence of the grounds for review;

6) whether the petitioner requests an oral procedure;

7) a list of the documents annexed to the petition for review.

(3) The following shall be annexed to a petition for review:

1) a document certifying the authority of the petitioner if the petition is submitted by a sworn advocate;

2) copies of the petition for review for the convicted offender who is serving a prison sentence and whose interests are concerned by the petition and for the Prosecutor's Office;

3) materials which should be examined in the Supreme Court in order to ascertain the existence of the grounds for review;

4) addresses of the residence or seat and phone numbers and other telecommunications numbers of persons who should be questioned in the Supreme Court in order to ascertain the existence of the grounds for review.

(4) If review of a criminal matter is requested on the basis of the grounds provided in clauses 366 1)–4) of this Code, a copy of the court judgment on which the request for review is based shall be annexed to the petition for review.

(5) A person submitting a petition for review shall sign the petition and indicate the date of preparation of the petition.

§ 370. Decision on acceptance of petition for review

(1) The Supreme Court shall decide on acceptance of a petition for review pursuant to the provisions of subsection 349 (1)-(3) of this Code.

(2) A petition for review shall be accepted if at least one justice of the Supreme Court finds that the allegations made in the petition give reason to presume the existence of grounds for review.

(3) If a petition for review is not accepted, the petition and the ruling of the Supreme Court shall be included in the criminal file which shall be returned to the court of first instance. Copies of the ruling of the Supreme Court shall be sent to the person who submitted the petition for review and the person who responded to the petition for review.

(4) Where necessary, the Supreme Court shall send copies of a petition for review and relevant materials to the Public Prosecutor's Office for verification. The Prosecutor's Office shall organise verification directly or through the body that conducted pre-trial proceedings and observe the requirements of pre-trial procedure.

§ 371. Refusal to accept or hear petition for review

Acceptance or hearing of a petition for review shall be refused pursuant to the provisions of § 350 of this Code.

§ 372. Review procedure

Review procedure shall be conducted in compliance with the provisions of §§ 352-360 and 363 of this Code, taking into account the specifications provided for in this Chapter.

§ 373. Jurisdiction of Supreme Court in review procedure

(1) If a petition for review is justified, the Supreme Court shall annul the contested court decision by a judgment and send the criminal matter for a new hearing by the court which made the annulled decision or to the Public Prosecutor's Office for a new pre-trial proceeding to be conducted.

(2) If there is no need to ascertain new facts in the criminal matter subject to review, the Supreme Court may make a new judgment after the review of the criminal matter without aggravating the situation of the convicted offender.

§ 374. Criminal proceedings after review of criminal matter

(1) After the review of a criminal matter, criminal proceedings shall be conducted pursuant to general procedure.

(2) A person may be acquitted without a court hearing if:

1) the person is dead;

2) the facts are explicit and the Prosecutor's Office does not request a court hearing.

Chapter 14

Special Procedure for Preparation of Statement of Charges and Performance of Certain procedural Acts

§ 375. Scope of application of Chapter

(1) The provisions of this Chapter apply to the preparation of a statement of charges and the performance of procedural acts specified in § 377 of this Code with regard to the President of the Republic, members of the Government of the Republic and the Riigikogu, the Auditor General, the Chancellor of Justice, the Chief Justice of the Supreme Court and judges.

(2) The provisions of this Chapter apply to the preparation of a statement of charges and the performance of procedural acts specified in § 377 of this Code with regard to persons who held an office specified in subsection (1) of this section at the time when a resolution concerning the grant of consent provided in § 381 of this Code was adopted, regardless of whether the act was committed prior to assuming office or during the term of office.

(3) The provisions of this Chapter concerning members of the Riigikogu also apply to alternate members of the Riigikogu who perform the duties of a member of the Riigikogu.

(4) The provisions of this Chapter concerning the President of the Republic also apply to the President of the Riigikogu who is temporarily performing the duties of the President of the Republic pursuant to subsection 83 (1) of the Constitution. The provisions of this Chapter concerning members of the Government of the Republic also apply to any

member of the Riigikogu whose authority is suspended due to his or her appointment as a member of the Government of the Republic.

§ 376. Special procedure for preparation of statement of charges

(1) A statement of charges with regard to the President of the Republic, members of the Government of the Republic and the Riigikogu, the Auditor General, or the Chief Justice and justices of the Supreme Court may be prepared only on the proposal of the Chancellor of Justice and with the consent of the majority of the membership of the Riigikogu.

(2) A statement of charges with regard to the Chancellor of Justice may be prepared only on the proposal of the President of the Republic and with the consent of the majority of the membership of the Riigikogu.

(3) A statement of charges with regard to a judge may be prepared only on the proposal of the Supreme Court and with the consent of the President of the Republic.

§ 377. Special procedure for performance of procedural acts

(1) The President of the Republic, a member of the Government of the Republic or the Riigikogu, the Auditor General, the Chancellor of Justice, and the Chief Justice or a justice of the Supreme Court may be detained as a suspect, preventive measures may be applied with regard to him or her and searches, seizure of property, inspections and physical examinations may be conducted with regard to him or her, only if the Riigikogu has granted consent to the preparation of a statement of charges with regard to such person.

(2) A judge may be detained as a suspect, preventive measures may be applied with regard to him or her and searches, seizure of property, inspections and physical examinations may be conducted with regard to him or her, if the President of the Republic has granted consent to the preparation of a statement of charges with regard to the judge.

(3) A person specified in subsection (1) or (2) of this section may be detained as a suspect without the consent of the Riigikogu or the President of the Republic if the person was apprehended in the act of commission of a criminal offence in the first degree. In such case, the person and any premises associated with him or her may be searched and the person subjected to inspections and physical examinations without the consent of the Riigikogu or the President of the Republic as appropriate.

(4) The Public Prosecutor's Office shall be notified of the performance of any procedural acts referred to in subsection (3) of this section.

§ 378. Public Prosecutor's Office's request for preparation of statement of charges and processing of statement of charges

(1) On the basis of a request from the Public Prosecutor's Office, the Chancellor of Justice shall make a proposal to the Riigikogu for the preparation of a statement of

charges with regard to the President of the Republic, a member of the Government of the Republic or the Riigikogu, the Auditor General, the Chancellor of Justice, and the Chief Justice or a justice of the Supreme Court.

(2) The President of the Republic shall make a proposal for the preparation of a statement of charges with regard to the Chancellor of Justice on the basis of a request from the Public Prosecutor's Office.

(3) The Supreme Court shall make a proposal for the preparation of a statement of charges with regard to a judge on the basis of a request from the Public Prosecutor's Office.

(4) The summary of the pre-trial proceeding shall be annexed to a request from the Public Prosecutor's Office.

(5) The Chancellor of Justice, the President of the Republic or the Supreme Court shall verify the legality of the summary of the pre-trial proceeding and the conducted criminal proceedings but shall not verify or assess the collected evidence. If necessary, the Chancellor of Justice, the President of the Republic or the Supreme Court shall examine the materials of the criminal file.

(6) If the summary of a pre-trial proceeding has been prepared and criminal proceedings have been conducted in compliance with the provisions of this Code, the Chancellor of Justice or the President of the Republic shall make a written proposal to the Riigikogu or the Supreme Court shall make a written proposal to the President of the Republic to grant consent for the preparation of a statement of charges with regard to the person specified in the request of the Public Prosecutor's Office.

(7) If the provisions of this Code were not observed in the preparation of the summary of the pre-trial proceeding or conduct of criminal proceedings, the Chancellor of Justice, the President of the Republic or the Supreme Court shall return the request to the Public Prosecutor's Office within ten days as of the receipt of the request. If the request is returned, the reasons shall be provided.

§ 379. Submission of proposal for preparation of statement of charges

(1) A proposal to grant consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic or the Riigikogu, the Auditor General, the Chancellor of Justice, the Chief Justice or a justice of the Supreme Court shall be submitted to the Riigikogu in writing by the Chancellor of Justice or the President of the Republic.

(2) A proposal to grant consent for the preparation of a statement of charges with regard to a judge shall be submitted to the President of the Republic in writing by the Supreme Court.

(3) A proposal shall be reasoned and it shall set out:

1) the name of the person with regard to whom consent for the preparation of a statement of charges is requested from the Riigikogu or the President of the Republic;

2) the facts relating to the criminal offence;

3) the content of the suspicion and legal assessment of the criminal offence;

4) the facts set out in the summary of the pre-trial proceeding and the request of the Public Prosecutor's Office;

5) other facts on which the proposal is based.

(4) The Chancellor of Justice, the President of the Republic or the Supreme Court shall limit the content of the proposal submitted to the Riigikogu or the President of the Republic, as appropriate, to the content of the suspicion.

(5) The request of the Public Prosecutor's Office and the summary of the pre-trial proceeding shall be annexed to a proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court.

§ 380. Proceeding in Riigikogu concerning proposal for preparation of statement of charges

(1) In the Riigikogu, a proceeding concerning a proposal of the Chancellor of Justice or the President of the Republic referred to in subsection 379 (1) of this Code shall be conducted pursuant to the Riigikogu Rules of Procedure Act.

(2) A report presented by the Chancellor of Justice or the President of the Republic to the Riigikogu in order to obtain consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic or the Riigikogu, the Auditor General, the Chancellor of Justice, the Chief Justice of the Supreme Court or a judge shall set out the information contained in the proposal specified in subsection 379 (1) of this Code and annexes thereto.

(3) The President or Vice-President of the Riigikogu with regard to whom consent for the preparation of a statement of charges is requested shall not chair the session of the Riigikogu during the proceeding concerning the corresponding draft resolution.

(4) Questions posed by the members of the Riigikogu and the responses of the Chancellor of Justice or the President of the Republic must remain within the limits of the material presented to the Riigikogu.

(5) If the Riigikogu conducts a proceeding concerning a draft resolution for the grant of consent for the preparation of a statement of charges with regard to a member of the Riigikogu, questions shall not be posed to the member of the Riigikogu and he or she shall not be given the floor nor participate in voting.

§ 381. Consent of Riigikogu or President of Republic and consequences thereof

(1) A resolution of the Riigikogu to grant consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic or the Riigikogu, the Auditor General, the Chancellor of Justice, the Chief Justice or a justice of the Supreme Court enters into force as of the adoption thereof. The resolution shall be immediately sent to the person who made the proposal, to the Public Prosecutor's Office and to the person whom it concerns.

(2) A resolution of the President of the Republic to grant consent for the preparation of a statement of charges with regard to a judge enters into force upon signature thereof.

(3) A resolution of the Riigikogu or the President of the Republic to grant consent for the preparation of a statement of charges with regard to a person specified in subsection (1) or (2) of this section, except members of the Riigikogu, shall suspend the performance of the official duties of the person concerned until entry into force of a court judgment.

(4) If, by a resolution, the Riigikogu or the President of the Republic grants consent for the preparation of a statement of charges with regard to a person specified in subsection (1) or (2) of this section, proceedings in the criminal matter shall be conducted pursuant to the general procedure prescribed by this Code.

§ 382. Preparation of statement of charges in other criminal offence

(1) If it is necessary to prepare a statement of charges with regard to a person specified in subsection 375 (1) of this Code concerning a criminal offence other than the criminal offence indicated in the proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court, new consent of the Riigikogu or the President of the Republic is required.

(2) The Riigikogu or the President of the Republic shall grant the consent specified in subsection (1) of this section by a resolution on the basis of a proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court, as appropriate, and pursuant to the procedure provided in this Chapter.

(3) New consent of the Riigikogu or the President of the Republic is not required for amendment of the legal assessment of the criminal offence or the statement of charges or preparation of a new statement of charges.

Chapter 15

Proceedings for Adjudication of Appeals Against Court Rulings

§ 383. Definition of appeal against court ruling

(1) An appeal against a court ruling may be filed in order to contest a court ruling prepared in a pre-trial proceeding, a court proceeding conducted by a court of first instance or a court of appeal or an execution proceeding unless contestation of the ruling is precluded pursuant to § 385 of this Code.

(2) A court ruling which cannot be contested by way of an appeal against the ruling may be contested by an appeal or appeal in cassation filed against the court judgment.

§ 384. Right to file appeals against rulings

(1) The parties to a court proceeding and persons not participating in the court proceeding have the right to file appeals against a ruling of a county or city court if the ruling restricts their rights or lawful interests.

(2) Persons listed in subsection 344 (3) of this Code have the right to file appeals against a ruling of a circuit court and persons not participating in the court proceeding have the right to file appeals against a ruling of a circuit court through an advocate if the ruling restricts their rights or lawful interests.

§ 385. Court rulings not subject to contestation by way of proceedings for adjudication of appeals against court rulings

Appeals shall not be filed against the following court rulings:

1) a ruling on the restriction of public access to a court session;

2) a ruling on the involvement of a reserve judge or reserve lay judge;

3) a ruling on the referral of a criminal matter to a court with appropriate jurisdiction;

4) a ruling on removal or a ruling on dismissal of a petition of challenge;

5) a ruling on restoration of or refusal to restore a term in a proceeding;

6) a ruling on the grant of permission for a procedural act;

6^1) a ruling on verification of the reasons for the arrest;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

7) a ruling on termination and resumption of criminal proceedings on the basis of §§ 201, 202 and 203 of this Code;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

8) a ruling on refusal to commence or continue criminal proceedings on the basis of § 208 of this Code;

9) a ruling on compelled attendance;

10) a ruling on declaring a person a fugitive;

11) a ruling made concerning contestation of the activities of an investigative body or Prosecutor's Office on the basis of § 231 of this Code;

12) a ruling on the return of a criminal file to a Prosecutor's Office;

13) a ruling on prosecution;

14) a ruling on the adjournment of a court hearing;

15) a ruling on the joinder or severance of criminal matters;

16) a ruling made in the course of a court proceeding on the adjudication of a request of a party to the court proceeding;

17) a ruling on the collection of additional evidence in a court proceeding;

18) a ruling on an expert assessment;

19) a ruling on refusal to accept an appeal;

20) a ruling ordering the hearing of a criminal matter by a circuit court;

21) a court ruling on the verification of the legal permissibility of extradition on the basis of § 451 of this Code;

22) an arrest warrant in surrender proceedings.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 386. Appeal against court ruling and procedure for filing thereof

(1) An appeal against a court ruling shall be filed with the court which made the contested ruling. An appeal against a court ruling on arrest or refusal of arrest specified in § 136 of this Code shall be filed with the circuit court through the court which made the ruling.

(2) An appeal against a court ruling shall be prepared in writing and shall set out:

1) the name of the court with which the appeal is filed;

2) the name, status in the proceedings, residence or seat and address of the appellant;

3) the name of the court whose ruling is contested, the date of making the ruling and the name of the party to the court proceeding with regard to whom the ruling is contested;

4) which part of the ruling is contested;

5) the content of and reasons for the requests submitted in the appeal;

6) a list of the documents annexed to the appeal.

(3) An appeal against a court ruling shall be signed and dated by the appellant.

(4) An appeal against a court ruling shall be included in the criminal file.

§ 387. Term for appeal against court ruling

(1) An appeal against a ruling shall be filed within ten days as of the date when the person became or should have become aware of the contested court ruling.

(2) If, by a ruling made in a criminal matter, a court declares legislation of general application subject to application to be in conflict with the Constitution and refuses to apply the legislation of general application, the term for filing an appeal against a ruling concerning the legislation of general application which is not applied shall be calculated as of pronunciation of the judgment made by way of constitutional review of the Supreme Court.

§ 388. Procedure for hearing of appeals against court rulings

(1) An appeal against a court ruling shall be heard within the limits of the appeal and with regard to the person in respect of whom the appeal was filed.

(2) An appeal against a court ruling shall be heard by way of a written proceeding without the participation of the parties to the court proceeding, with the exception of the cases provided for in subsection (3) of this section.

(3) The appellant, his or her counsel or legal representative and the prosecutor shall be summoned to the hearing of an appeal against a ruling on arrest or any other court ruling prepared in a court proceeding in order to apply a preventive measure or any other means for securing a criminal proceeding. The failure of such persons to appear shall not hinder the hearing of the appeal.

(4) An appeal against a court ruling shall be heard pursuant to the provisions of Chapters 10, 11 or 12 of this Code, taking into account the specifications provided for in this Chapter.

§ 389. Hearing of appeal against court ruling by court which made such ruling

(1) A court which has made a ruling shall hear an appeal against the ruling within five days as of the filing of the appeal.

(2) If the court panel which made a contested court ruling considers an appeal against the ruling to be justified, the panel shall annul the contested court ruling by a ruling and, if necessary, make a new ruling. Notice of the annulment of the contested court ruling and the making of a new ruling shall be given immediately to the appellant and any participants in the proceedings whose interests are concerned.

(3) If a court panel which made a contested court ruling considers an appeal against the ruling to be unfounded, the panel shall forward the contested court ruling and the appeal against the ruling immediately to a court with appropriate jurisdiction.

§ 390. Hearing of appeal against court ruling by higher court

(1) A higher court shall hear an appeal against a court ruling within ten days as of the receipt of the appeal.

(2) An appeal against a court ruling made by a county or city court judge shall be heard by the judge of the circuit court sitting alone.

(3) An appeal against a court ruling made by a collegial panel of a county or city court shall be heard by a three-member panel of the circuit court.

(4) An appeal against a ruling of a circuit court shall be heard by a three-member panel of the Supreme Court.

§ 391. Finality of court ruling made in hearing of appeal against court ruling

A ruling made by a court in the hearing of an appeal against a court ruling is final and not subject to appeal, except in the case provided for in subsection 389 (2) of this Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 392. Suspension of execution of contested ruling

A court which receives an appeal against a court ruling may suspend the execution of the contested ruling.

Chapter 16

Procedure for Administration of Coercive Psychiatric Treatment

§ 393. Commencement of proceedings for administration of coercive psychiatric treatment

If a person commits an unlawful act in a state of mental incompetence or if he or she becomes mentally ill or feeble-minded or suffers from any other severe mental disorder after the court judgment is made but before he or she has served the full sentence, or if it is established during pre-trial proceedings or court proceedings that the person suffers from one of the aforementioned conditions, criminal proceedings with regard to the person shall be conducted pursuant to the provisions of this Chapter.

§ 394. Facts relating to subject of proof

In the case of a person specified in § 393 of this Code, the facts relating to a subject of proof are as follows:

1) an unlawful act;

2) state of mental incompetence at the time of commission of the unlawful act, developing an illness or disorder after the court judgment is made but before the person has served the full sentence, or developing an illness or disorder during pre-trial proceedings or court proceedings;

3) mental state during criminal proceedings;

4) whether the person's subsequent behaviour may be harmful to the person himself or herself or to society;

5) the need for administration of coercive psychiatric treatment.

§ 395. Participation in procedural acts

A person subject to proceedings for the administration of coercive psychiatric treatment shall participate in procedural acts and exercise the rights of a suspect or the accused provided in §§ 34 and 35 of this Code if the mental state of the person allows for it.

§ 396. Summary of pre-trial proceedings for administration of coercive psychiatric treatment

(1) If an official of an investigative body is convinced that the evidentiary information necessary for a criminal matter has been collected, he or she shall immediately prepare a summary of the pre-trial proceedings pursuant to § 153 of this Code setting out the facts relating to a subject of proof in accordance with § 394 of this Code.

(2) The summary of the pre-trial proceedings shall be included in the criminal file which shall be sent to the Prosecutor's Office.

§ 397. Acts performed by Prosecutor's Office upon receipt of criminal file

(1) If a Prosecutor's Office receives a criminal file for the administration of coercive psychiatric treatment, the Prosecutor's Office shall act in accordance with the provisions of subsections 223 (1)-(3) of this Code.

(2) If a Prosecutor's Office declares pre-trial proceedings completed, the Prosecutor's Office shall make a ruling on the sending of the criminal matter to a court for the administration of coercive psychiatric treatment provided for in the Penal Code.

§ 398. Ruling on sending criminal matter to court

(1) The introduction of a ruling on sending a criminal matter to a court shall set out:

1) the date and place of preparation of the ruling;

2) the official title and name of the prosecutor;

3) the title of the criminal matter;

4) the name of the person who committed the unlawful act and his or her personal identification code or, in the absence thereof, date of birth, nationality, education, residence, place of work or educational institution, native tongue.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(2) The main part of a ruling shall set out:

1) facts relating to the unlawful act;

2) evidence that proves commission of the unlawful act;

3) reasons for the administration of coercive psychiatric treatment;

4) statements made by the counsel or other participants in the proceedings who have contested the need for administration of coercive psychiatric treatment.

(3) The final part of a ruling shall set out the proposal of the prosecutor concerning the administration of coercive psychiatric treatment. The ruling shall be included in the criminal file.

(4) A copy of the criminal file shall be sent to the counsel and the criminal file shall be sent to the court.

§ 399. Preparation for court hearing

Preparations for a court hearing shall be carried out in accordance with subsection 257 (1) of this Code.

§ 400. Court hearing

(1) A court hearing shall be conducted pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Chapter.

(2) A judge sitting alone shall decide on the administration of coercive psychiatric treatment.

(3) Examination by a court begins with the publication of the ruling on sending a criminal matter to the court.

(4) The person with regard to whom administration of coercive psychiatric treatment is requested may be summoned to a court session by the court if the mental state of the person allows for it.

§ 401. Issues to be adjudicated in chambers

(1) A court shall adjudicate a criminal matter by a ruling made in chambers.

(2) Upon the making of a ruling, a court shall adjudicate on the following issues:

1) whether an unlawful act has been committed;

2) whether the act was committed by the person with regard to whom administration of coercive psychiatric treatment is requested;

3) whether the person committed the unlawful act in a state of mental incompetence or whether he or she developed an illness or disorder after the court judgment was made but before he or she had served the full sentence, or whether he or she developed an illness or disorder during pre-trial proceedings or court proceedings;

4) whether to administer coercive psychiatric treatment.

§ 402. Ruling on administration of coercive psychiatric treatment

(1) If a court deems it to be proved that an unlawful act was committed by a person specified in § 393 of this Code, the court shall prepare a ruling on termination of the criminal proceedings on the basis of clause 199 (1) 1) of this Code and, if necessary, order coercive psychiatric treatment prescribed in the Penal Code to be administered to the person concerned.

(2) If a court finds that the mental incompetence of a person has not been established or that the nature of the illness or disorder of the person who committed an unlawful act is such that he or she is able to understand the unlawfulness of his or her act and to act according to such understanding, the court shall, by a ruling, return the criminal matter to the Prosecutor's Office for continuation of the proceedings pursuant to the general procedure.

§ 403. Termination and alteration of administration of coercive psychiatric treatment

(1) If a person recovers as a result of coercive psychiatric treatment administered to him or her and, according to the opinion of a forensic psychiatric expert or the medical committee of the medical institution, there is no need for further administration of coercive treatment, a court shall terminate the administration of coercive psychiatric treatment on the proposal of the medical institution.

(2) If the administration of coercive psychiatric treatment is terminated with regard to a person who developed an illness or disorder after the court judgment was made but before the person had served the full sentence, a court shall decide on the subsequent serving of the sentence at the request of a Prosecutor's Office.

(3) If the administration of coercive psychiatric treatment is terminated with regard to a person who developed an illness or disorder during pre-trial proceedings or court proceedings, a Prosecutor's Office shall decide on the continuation of criminal proceedings pursuant to the general procedure.

(4) Taking into consideration the opinion of a forensic psychiatric expert or the medical committee of a medical institution, a court may terminate the administration of coercive treatment if a corresponding request is submitted by a person close to the person being treated within the meaning of subsection 71 (1) of this Code, his or her legal representative or counsel.

(5) Termination of the administration of coercive psychiatric treatment shall be decided by a ruling of the court of the location of the medical institution in the presence of a prosecutor and a criminal defence counsel.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

Chapter 17

Grant of Permission for Imposition of Sanctions Provided for in Juvenile Sanctions Act

§ 404. Grant of permission for placement of minor in school for students who need special treatment due to behavioural problems or for extension of term for his or her stay in school for students who need special treatment due to behavioural problems

Permission for placement of a minor in a school for students who need special treatment due to behavioural problems or for extension of the term for his or her stay in such a school pursuant to the procedure provided for in subsection 6 (4) of the Juvenile Sanctions Act (RT I 1998, 17, 264; 2002, 82, 479; 90, 521; 2003, 26, 156; 2004, 30, 206) is granted by a judge on the basis of a written reasoned application of a juvenile committee.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 405. Grant of permission for premature release of minor from school for students who need special treatment due to behavioural problems

Permission for the premature release of a minor from a school for students who need special treatment due to behavioural problems is granted by a judge on the basis of a written application of the head of the school for students who need special treatment due to behavioural problems or the legal representative of the minor. The opinion of the juvenile committee shall be annexed to an application.

§ 406. Procedure for review of applications

(1) A judge shall immediately review an application specified in §§ 404 or 405 of this Code.

(2) For the adjudication of an application, a judge may summon a minor, his or her legal representative, a representative of the juvenile committee and a child protection official, social worker or psychologist to the court and question them in order to ascertain whether the application is justified.

(3) For the adjudication of an application, a court shall make:

1) a ruling on placement in a school for students who need special treatment due to behavioural problems;

2) a ruling on extension of the term for stay in a school for students who need special treatment due to behavioural problems;

3) a ruling on premature release from a school for students who need special treatment due to behavioural problems, or

4) a ruling by which the application is denied.

(4) A ruling specified in subsection (3) of this section shall be reasoned.

(5) Copies of a ruling shall be sent to the person who submitted an application, the minor and his or her legal representative, and the school for students who need special treatment due to behavioural problems.

§ 407. Contestation of grant of permission or refusal to grant permission

The juvenile committee or the legal representative of a minor may file an appeal against a ruling specified in subsection 406 (3) of this Code pursuant to the procedure provided for in Chapter 15 of this Code.

Chapter 18

Entry into Force and Enforcement of Court Decisions

Division 1

General Provisions

§ 408. Entry into force of court judgments and rulings

(1) A court judgment or ruling enters into force when it can no longer be contested in any other manner except by review procedure.

(2) A court judgment enters into force upon expiry of the term for appeal or appeal in cassation. If an appeal in cassation is filed, the court judgment enters into force as of the date on which acceptance of the appeal in cassation is refused or the conclusion of the judgment of the Supreme Court is pronounced.

(3) A court judgment made by way of summary proceedings enters into force upon expiry of the term for submission of requests for court hearing of the judgment by way of the general procedure.

(4) A court ruling enters into force upon expiry of the term for appeal against the ruling. If an appeal is filed against a ruling, the ruling enters into force after it has been heard by the court which made the ruling or by a higher court.

(5) An arrest warrant or a court ruling which is not subject to appeal enters into force as of the issue of the warrant or the making of the ruling.

§ 408[1]. Publication of court judgment and court ruling which have entered into force

(1) A court judgment and a court ruling which have entered into force and which terminate proceedings shall be published in the Internet on the website of the court.

(2) A published court decision shall not disclose the personal identification code, date of birth or residence of a person.

(3) A court shall replace in a court decision, on its own initiative or at the request of the data subject, the name of the person with initials or characters if the court decision contains private or sensitive personal data or if publication of the court decision with personal data may significantly breach the inviolability of private life of the person.

(4) If a court decision specified in subsection (3) of this section allows identification of a person also without personal data, the court shall publish, on its own initiative or at the request of the data subject, only the conclusion or final part of the decision or does not publish the court decision in its entirety.

(5) A court shall publish, on its own initiative or at the request of the interested person, only the conclusion or final part of a court decision if the court decision contains information regarding which another restriction on access prescribed by law applies.

(6) A request specified in subsections (3), (4) and (5) of this section shall be submitted to a court before a decision is made. The court shall adjudicate the request by a ruling. A person who submitted the request may file an appeal against a court ruling by which the request was dismissed.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 409. Mandatory nature of court judgments and rulings

Compliance with court judgments and court rulings which have entered into force is mandatory for all persons within the territory of the Republic of Estonia.

§ 410. Admissibility of execution of court judgment or ruling

(1) A court judgment or ruling shall be enforced when it has entered into force unless otherwise provided by law.

(2) If an appeal or appeal in cassation is filed against a court judgment with regard to only one of the accused persons, the court judgment shall not be enforced with regard to the other accused persons either before the entry into force of the judgment.

§ 411. Enforcement of court judgment or ruling

(1) A judgment or ruling of a court of first instance which has entered into force shall be enforced by the county or city court which made the decision.

(2) A court judgment or ruling of a court of appeal or court of cassation which has entered into force shall be enforced by the county or city court which made the first court decision in the same criminal matter.

(3) If a court decision is enforced, the county or city court shall send a copy of the decision to the body executing the court decision. A notation concerning the entry into force of the court judgment or ruling shall be made on the copy.

§ 412. Tern for enforcement of court judgment or ruling

(1) A judgment of acquittal or a judgment releasing the accused from punishment shall be enforced immediately after the conclusion of the judgment has been pronounced. If the accused is under arrest, the court shall release him or her from arrest in the courtroom.

(2) A judgment of conviction shall be enforced within three days after the entry into force of the judgment or rejection of the criminal matter by the court of appeal or court of cassation.

(3) In the case provided for in subsection 417 (2) of this Code, the court judgment shall be enforced within one month after the entry into force of the judgment.

(4) A court ruling shall be enforced immediately after the entry into force thereof.

§ 413. Enforcement of several court judgments

If, in the making of a court judgment, a punishment which was imposed on the person by a previous court judgment and which has not been served in full is not added to or deemed to be covered by the punishment imposed on the person by the new court judgment, the court making the most recent judgment or the judge of the court of the place of execution of the court judgment who is in charge of execution of court judgments shall make a ruling pursuant to § 65 of the Penal Code.

Division 2

Enforcement of Punishments

§ 414. Enforcement of sentence of imprisonment

(1) If a convicted offender was not kept under arrest during the court proceeding, the county or city court enforcing the court decision shall send a notice prepared according to

the treatment plan to the convicted offender, setting out by which time and to which prison the convicted offender must appear for the service of the sentence.

(2) In the case provided for in subsection (1) of this section, the time when the convicted offender arrives in the prison is deemed to be the time of commencement of the service of the sentence of imprisonment.

§ 415. Deferral of enforcement of sentence of imprisonment

(1) A judge in charge of execution of court judgments may defer the enforcement of a sentence of imprisonment for up to one year by a ruling if:

1) the convicted offender suffers from a serious illness due to which he or she cannot serve the sentence;

2) the convicted offender is pregnant at the time of execution of the court judgment.

(2) If a convicted offender has a small child, the judge in charge of execution of the court judgment may defer the enforcement of the sentence of imprisonment by a ruling until the child has attained three years of age.

(3) A judge in charge of execution of court judgments may defer the enforcement of a punishment by a ruling for up to six months if immediate commencement of the service of the sentence of imprisonment would result in serious consequences for the convicted offender or his or her family members due to extraordinary circumstances.

§ 416. Waiver of enforcement of sentence of imprisonment

(1) A judge in charge of execution of court judgments may, by a ruling, waive the enforcement of a sentence of imprisonment for a specified term or a sentence of imprisonment imposed in substitution for another punishment pursuant to § 70 or 71 of the Penal Code if the convicted offender is extradited to a foreign state or expelled.

(2) A judge in charge of execution of court judgments may enforce a sentence of imprisonment for a specified term or a sentence of imprisonment imposed in substitution for another punishment pursuant to § 70 or 71 of the Penal Code if the convicted offender who has been extradited or expelled returns to the state earlier than ten years after his or her extradition or expulsion.

§ 417. Enforcement of pecuniary punishments

(1) A court judgment ordering pecuniary punishment is deemed to be complied with and the judgment is not enforced if the convicted offender has paid the amount of the pecuniary punishment imposed on him or her to the bank account of the court in full within one month as of entry into force of the court judgment.

(2) If an amount of pecuniary punishment has not been paid by the due date prescribed in subsection (1), the court judgment or ruling on enforcement of the pecuniary punishment shall be sent to a bailiff.

(3) If a bailiff has sent to the county or city court an application which indicates that the convicted offender has failed to pay an amount of pecuniary punishment or a fine to the extent of assets by the designated due date or if the terms for the payment of instalments of an amount of pecuniary punishment are not complied with and the term for payment of an amount of pecuniary punishment or a fine to the extent of assets has not been extended or postponed pursuant to the procedure provided for in § 424 of this Code, the judge in charge of execution of court judgments shall decide on the substitution of the pecuniary punishment or fine to the extent of assets pursuant to the procedure provided for in §§ 70 and 71 of the Penal Code or file a claim against the assets of the debtor.

(4) If an amount of pecuniary punishment or a fine to the extent of assets has been paid in part, the paid part shall be taken into account upon determination of the duration of the substitutive punishment in proportion to the paid amount. A judge in charge of execution of court judgments shall settle the ordering of substitutive punishment or the making of a claim against the assets of a convicted offender pursuant to the procedure provided for in subsections 432 (1) and 3) of this Code. A copy of the ruling shall be sent to the participants in the proceedings concerned and to the bailiff.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 418. Waiver of enforcement of pecuniary punishment

(1) The judge in charge of execution of court judgments at the county or city court of the residence of a convicted offender may waive the enforcement of a pecuniary punishment by a ruling if:

1) a sentence of imprisonment is imposed on the convicted offender in another criminal matter and the sentence is enforced;

2) execution of the pecuniary punishment may endanger the resocialisation of the convicted offender;

3) circumstances provided for in § 416 of this Code exist.

(2) On the bases provided for in subsection (1) of this section, a judge in charge of execution of court judgments may also waive collection of the procedure expenses from the convicted offender.

§ 419. Enforcement and execution of sentence of community service

(1) A sentence of community service is enforced by sending the court judgment or ruling to the probation supervision department of the residence of the convicted offender.

(2) The head of a probation supervision department which receives a court judgment or ruling shall appoint a probation supervisor for the convicted offender and the duty of the

probation supervisor is to monitor the community service and exercise supervision over compliance with the supervisory requirements and obligations set out in the court decision.

(3) If possible, the head of a probation supervision department shall appoint the probation officer who prepared the pre-trial report as the probation supervisor for the convicted offender.

(4) Community service specified in clause 202 (2) 3) of this Code is applied on the basis of the provisions of this section. If a person evades community service, the probation supervisor shall immediately submit to a Prosecutor's Office a report on failure to perform his or her obligations.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) The procedure for the preparation, execution of sentence and supervision of community service shall be established by a regulation of the Minister of Justice.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 420. Deferral or waiver of enforcement of prohibition on activities

The judge in charge of execution of court judgments at the county or city court of the residence of a convicted offender may, at the request of the offender, defer enforcement of a prohibition on activities imposed as a supplementary punishment for up to six months by a ruling or waive enforcement of the prohibition if execution of the punishment may result in serious consequences for the convicted offender or his or her family members.

§ 421. Enforcement of other supplementary punishment imposed on natural person

(1) A supplementary punishment not specified in § 420 of this Code is enforced by sending the court judgment or ruling to the appropriate agency who shall deprive the convicted offender of the rights specified in the court decision or restrict such rights and revoke or deposit the documents issued to the convicted offender for exercising such rights.

(2) A fine to the extent of assets shall be enforced pursuant to the provisions of this Code concerning enforcement of pecuniary punishments.

(3) Expulsion shall be enforced pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act (RT I 1998, 98/99, 1575; 2001, 68, 407; 2002, 53, 336; 61, 375; 102, 599; 2003, 4, 21; 13, 65).

§ 421[1]. Procedure for transfer of confiscated property and physical evidence transferred into state ownership

(1) Unless otherwise provided by law, a copy of the court judgment or ruling and of the procedural document concerning the confiscated property and physical evidence

transferred into state ownership shall be sent to the country government of the location of the confiscated property and physical evidence transferred into state ownership.

(2) The cost of transfer and destruction of confiscated property shall be paid by the convicted offender.

(3) The procedure for the transfer of confiscated property and physical evidence transferred into state ownership shall be established by the Government of the Republic.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

Division 3

Return of Objects and Collection of Expenses Relating to Criminal Proceedings

§ 422. Return of objects and release of property from seizure

(1) If documents or objects were confiscated or property was seized from a person who is acquitted or with regard to whom criminal proceedings are terminated, the judge in charge of execution of court judgments at the country or city court enforcing the court judgment shall send the court judgment or ruling which has entered into force to the appropriate agency and order return of such documents or objects or release of the property from seizure.

(2) The agency executing a court judgment or ruling shall immediately notify the court of the execution of the court decision.

§ 423. Collection of expenses relating to criminal proceedings

The expenses relating to a criminal proceeding shall be collected pursuant to the provisions of this Code concerning enforcement of pecuniary punishments.

Division 4

Settlement of Issues Arising in Execution of Court Decisions

§ 424. Extension of term for payment of pecuniary punishment, and payment of pecuniary punishment in instalments

With good reason, the judge in charge of execution of court judgments at the county or city court of the residence of a convicted offender may, by a ruling made at the request of the convicted offender, extend or the term for the payment of a pecuniary punishment in full or in part or postpone the term for a year, or order payment of the pecuniary punishment in instalments within the specified terms.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 425. Premature release of convicted offender from service of punishment due to illness

(1) If a convicted offender becomes terminally ill during the service of his or her punishment, the judge in charge of execution of court judgments at the county or city court of the place of execution of the punishment shall, on the basis of a proposal of the head of the agency executing the punishment and the decision of the medical committee, make a ruling on the release of the convicted offender from the service of the rest of the punishment pursuant to § 79 of the Penal Code.

(2) If a convicted offender becomes mentally ill or feeble-minded or develops any other severe mental disorder after the making of the court judgment but before the punishment has been served in full, the judge in charge of execution of court judgments at the county or city court of the place of execution of the punishment shall make a ruling on the waiver of enforcement of the punishment or the release of the offender from the service of the punishment. In such case, the judge in charge of execution of court judgments shall apply coercive psychiatric treatment with regard to the convicted offender pursuant to § 86 of the Penal Code.

§ 426. Release on parole

The judge in charge of execution of court judgments at the county or city court of the place of execution of a punishment may make a ruling on the release of the convicted offender on parole pursuant to § 76 or 77 of the Penal Code on the basis of a proposal of the head of the agency executing the punishment.

§ 427. Settlement of issues arising in execution of probation supervision

(1) The judge in charge of execution of court judgments at the county or city court of the residence of a convicted offender shall, by a ruling, decide whether to assign additional duties to or mitigate or annul the existing duties of the convicted offender pursuant to subsection 74 (4) or 75 (3) of the Penal Code.

(2) The judge in charge of execution of court judgments at the county or city court of the residence of a convicted offender shall, by a ruling, decide whether to annul the probation applied with regard to the offender and send him or her to serve the punishment imposed by the court judgment pursuant to subsection 74 (5) or (6), 76 (5) or (6) or 77 (4) of the Penal Code.

(3) A judge in charge of execution of court judgments shall review a special report of a probation officer within ten days as of the receipt of the report by the court.

(4) If after the termination of the criminal proceedings and the assignment of obligations to a person on the basis of subsection 202 (2) of this Code, circumstances become evident which aggravate the performance of obligations, a Prosecutor's Office or court may, with the consent of the person, change the obligation imposed on a person or to free him or her from the obligation by an order.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 428. Settlement of issues arising in execution of sentence of community service

(1) If a convicted offender evades community service or fails to comply with the supervisory requirements or to perform the duties imposed on him or her, the probation officer shall submit a special report for the enforcement of the sentence of imprisonment imposed on the convicted offender to the court.

(2) The judge in charge of execution of court judgments at the county or city court of the residence of a convicted offender shall, by a ruling made within ten days as of the receipt of a report of the probation officer by the court, decide whether to annul the community service of the offender and enforce the sentence of imprisonment imposed on him or her by the court judgment pursuant to subsection 69 (6) or (7) of the Penal Code.

§ 429. Bases and procedure for arresting convicted offender

(1) At the request of a prison officer, probation officer or bailiff, a judge in charge of execution of court judgments may arrest a convicted offender who has not been taken into custody if the offender evades or may evade execution of the judgment of conviction and the court has sufficient reason to believe that:

1) the conditional sentence will be enforced;

2) the part of the punishment which was not served due to release on parole will be enforced;

3) the sentence of imprisonment substituted by community service will be enforced;

4) the pecuniary punishment will be substituted by detention, imprisonment or community service; or

5) the fine to extent of assets will be substituted by imprisonment.

(2) In the cases provided for in subsection (1) of this section, a convicted offender may be kept under arrest until the entry into force of a ruling on the enforcement or substitution of the punishment.

(3) Convicted offenders are arrested pursuant to the provisions of §§ 131–136 of this Code.

§ 430. Alteration of type or extension of term of sanction imposed on person under 18 years of age

Extension of the term for application of supervision of conduct with regard to a convicted offender under 18 years of age or the term for his or her stay at a youth home or a school for students who need special treatment due to behavioural problems pursuant to subsection 87 (2) or (3) of the Penal Code or alteration of the type of a sanction pursuant to subsection 87 (4) of the Penal Code shall, on the basis of a special report submitted by the probation officer or a proposal of the head of the agency applying the sanction, be decided by a ruling of the judge in charge of execution of court judgments at the county or city court of the residence of the convicted offender.

§ 431. Settlement of issues arising in execution of court decisions

Issues not regulated by §§ 424–428 and 430 of this Code and other doubts and ambiguities arising in the execution of a court decision shall be settled by a ruling of the court which made the decision or the judge in charge of execution of court judgments at the county or city court enforcing the decision.

§ 432. Procedure for review of issues arising in execution of court decisions

(1) A judge in charge of execution of court judgments shall settle issues relating to the execution of a court decision by a ruling made by way of a written proceeding without summoning the parties to the court proceeding unless otherwise provided for in subsection (3) of this section.

(2) If an issue pertains to the execution of a judgment in the part which concerns the civil action, the judge in charge of execution of court judgments shall inform the victim and defendant of the issue beforehand and they have the right to submit their opinions in writing within the term specified by the court.

(3) A judge in charge of execution of court judgments shall settle the issues provided for in §§ 425–426 of this Code and the issues relating to the deprivation of the liberty of a convicted offender in his or her presence. The prosecutor and, at the request of the convicted offender, his or her counsel shall be summoned before the judge and their opinions shall be heard. The health care professional who has rendered an opinion concerning the premature release of a convicted offender from punishment due to his or her illness is required to participate in the settling of the corresponding issue.

(4) A court shall send a copy of a ruling made pursuant to subsection (1) of this section to the participants in the proceeding who are concerned by the ruling.

Chapter 19

International Co-operation in Criminal Procedure

Division 1

General Provisions

§ 433. General principles

(1) International co-operation in criminal procedure comprises extradition of persons to foreign states, mutual assistance between states in criminal matters, execution of the judgments of foreign courts, taking over and transfer of criminal proceedings commenced, co-operation with the International Criminal Court and extradition to member states of the European Union.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

(2) International co-operation in criminal procedure shall be effected pursuant to the provisions of this Chapter unless otherwise prescribed by the international agreements of the Republic of Estonia or the generally recognised principles of international law.

(3) International co-operation in criminal procedure shall be effected pursuant to the provisions of the other chapters of this Code in so far as this is not in conflict with the provisions of this Chapter.

(4) If adherence to the requirement of confidentiality is requested in the course of international co-operation in criminal procedure, such requirement shall be complied with to the extent necessary for the purposes of co-operation. If compliance with the confidentiality requirement is refused, the requesting state shall be immediately notified of such refusal.

§ 434. Requesting state and requested state

(1) A state which submits a request for international co-operation in criminal procedure to another state is the requesting state.

(2) A state to whom a requesting state has submitted a request for international co-operation in criminal procedure is the requested state.

§ 435. Judicial authorities competent to engage in international co-operation in criminal procedure

(1) The central authority for international co-operation in criminal procedure is the Ministry of Justice.

(2) Courts, Prosecutors' Offices, the Police Board, Security Police Board, Central Criminal Police, police prefectures, the Tax and Customs Board, Border Guard Administration, Competition Board and the Headquarters of the Defence Forces are the judicial authorities competent to engage in international co-operation in criminal procedure to the extent provided by law.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 590)

(3) If the Estonian Penal Code is applied to criminal offences which are committed outside the territory of the Republic of Estonia, the Public Prosecutor's Office, which initiates criminal proceedings or verifies the legality and justification of commencement of the criminal proceedings, shall be immediately informed thereof.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 436. Prohibition on international co-operation in criminal procedure

(1) The Republic of Estonia refuses to engage in international co-operation if:

1) it may endanger the security, public order or other essential interests of the Republic of Estonia;

2) it is in conflict with the general principles of Estonian law;

3) there is reason to believe that the assistance is requested for the purpose of bringing charges against or punishing a person on account of his or her race, nationality or religious or political beliefs, or if the situation of the person may deteriorate for any of such reasons.

(2) If a witness or expert is requested to be summoned to a foreign court, the request shall not be complied with if the requesting state fails to ensure compliance with the requirement of immunity on the bases provided for in § 465 of this Code.

§ 437. Division of expenses relating to international co-operation in criminal procedure

(1) The Republic of Estonia as the requesting and requested state shall bear all expenses incurred in its territory unless otherwise provided by an international agreement or a decision of the requested state.

(2) The Republic of Estonia as the requested state shall claim the following expenses from the requesting state:

1) expenses relating to the involvement of experts in Estonia;

2) expenses relating to the organisation of a hearing by telephone or video-conference in Estonia and to the attendance of the persons to be heard and the translators and interpreters unless otherwise agreed upon with the requesting state;

3) other essential or unavoidable expenses incurred by Estonia, to the extent agreed upon with the requesting state.

(3) On the basis of the request of a requesting state, the Estonian state may grant an advance to the experts and witnesses involved in international co-operation in criminal procedure.

(4) The Republic of Estonia as the requesting state shall bear all expenses incurred in the requested state if the expenses:

1) have arisen on the bases and pursuant to the procedure provided for in subsection (2) of this section;

2) are related to the transfer of a person in custody.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Division 2

Extradition

Subdivision 1

Extradition of persons to foreign states

§ 438. Admissibility of extradition

Estonia as the requested state is entitled to extradite a person on the basis of a request for extradition if criminal proceedings have been initiated and an arrest warrant has been issued with regard to the person in the requesting state or if the person has been sentenced to imprisonment by a judgment of conviction which has entered into force.

§ 439. General conditions for extradition of persons to foreign states

(1) Extradition of a person for the purposes of continuation of the criminal proceedings concerning him or her in a foreign state is permitted if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment according to both the penal law of the requesting state and the Penal Code of Estonia.

(2) Extradition of a person for the purposes of execution of a judgment of conviction made with regard to him or her is permitted under the conditions provided for in subsection (1) of this section if at least four months of the sentence of imprisonment have not yet been served.

(3) If a person whose extradition is requested has committed several criminal offences and extradition is permitted for some of the criminal offences, extradition may be granted also for the other offences which do not meet the requirements specified in subsections (1) and (2) of this section.

§ 440. Circumstances precluding or restricting extradition of persons to foreign states

(1) In addition to the cases provided for in § 436 of this Code, extradition of a person to a foreign state is prohibited if:

1) the request for extradition is based on a political offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols thereto;

2) the person has been finally convicted or acquitted on the same charges in Estonia;

3) according to the laws of the requesting state or Estonia, the limitation period for the criminal offence has expired or an amnesty precludes application of a punishment.

(2) Extradition of an Estonian citizen is not permitted if the request for extradition is based on a military offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols thereto.

(3) If death penalty may be imposed in a requesting state as punishment for a criminal offence which is the basis for the request for extradition, the person may be extradited

only on the condition that the competent authority of the requesting state has assured that death penalty will not be imposed on the person to be extradited or, if death penalty was imposed before the submission of the request for extradition, the penalty will not be carried out.

(4) A request for the extradition of a person to a foreign state may be denied if initiation of criminal proceedings on the same charges has been refused with regard to the person or if the proceedings have been terminated.

§ 441. Conflicting requests for extradition

If extradition of a person is requested by several states, the state to which the person is to be extradited shall be determined having regard, primarily, to the seriousness and place of commission of the criminal offences committed by the person, the order in which the requests were submitted, the nationality of the person claimed and the possibility of his or her subsequent extradition to a third state.

§ 442. Requirements for request for extradition of person from Republic of Estonia

(1) A request for extradition shall be prepared by the competent judicial authority of the requesting state and it shall be addressed to the Ministry of Justice of the Republic of Estonia.

(2) The following shall be annexed to a request for extradition:

1) information concerning the time and place of commission of and other facts relating to the criminal offence on which the request for extradition is based, and the legal assessment of the criminal offence pursuant to the penal law of the requesting state;

2) an extract from the penal law or any other relevant legal act of the requesting state;

3) the original or an authenticated copy of the arrest warrant or judgment of conviction made pursuant to the procedure prescribed in the procedural law of the requesting state;

4) if possible, a description of the person claimed, together with any other information which may enable to establish the identity of the person.

Subdivision 2

Procedure for extradition of persons to foreign states

§ 443. Stages in procedure for extradition of persons to foreign states

The procedure for the extradition of a person to a foreign state is divided into the preliminary proceeding in the Ministry of Justice and the Public Prosecutor's Office,

verification of the legal admissibility of the extradition in court, and deciding on extradition falling within the competence of the executive power.

§ 444. Acts of Ministry of Justice in preliminary proceedings

(1) The Ministry of Justice shall verify the compliance of a request for extradition with the requirements, and the existence of the necessary supporting documents.

(2) If necessary, the Ministry of Justice may grant a term to a requesting state for submission of additional information.

(3) A request for extradition which meets the requirements, and the supporting documents shall be sent to the Public Prosecutor's Office promptly.

§ 445. Acts of Public Prosecutor's Office in preliminary proceedings

(1) If a request for extradition submitted by a foreign state is received directly by the Public Prosecutor's Office, the Ministry of Justice shall be immediately notified of such request.

(2) If a request for extradition is received directly by the Public Prosecutor's Office, additional information may be requested without the mediation of the Ministry of Justice.

(3) The Public Prosecutor's Office shall annex an excerpt from the punishment register and other necessary information to a request for extradition and ascertain whether criminal proceedings have been initiated with regard to the person in Estonia.

(4) The Public Prosecutor's Office shall send a request for extradition which meets the requirements, and the additional materials specified in subsection (3) of this section to the court immediately.

§ 446. Jurisdiction over verification of legal admissibility of extradition

Verification of the legal admissibility of the extradition of a person to a foreign state falls within the jurisdiction of the Tallinn City Court.

§ 447. Provisional arrest

(1) If the legal admissibility of the extradition of a person to a foreign state is recognised, provisional arrest may be applied with regard to the person at the request of the Public Prosecutor's Office.

(2) In cases of urgency, a preliminary investigation judge may apply provisional arrest at the request of the Public Prosecutor's Office before the arrival of the request for extradition if the requesting state has:

> 1) assured that an arrest warrant has been issued or a judgment of conviction has entered into force with regard to the person in the requesting state;

2) assumed the obligation to dispatch the request for extradition immediately.

(3) A person may be detained pursuant to the procedure provided for in subsection 217 (1) of this Code before the arrival of the request for extradition on the basis of an application for an arrest warrant submitted through the International Criminal Police Organisation (Interpol).

(4) Provisional arrest shall not be applied with regard to a person if legal impediments to the extradition have become evident.

(5) A person with regard to whom provisional arrest has been applied may be released if the requesting state fails to send the request for extradition within eighteen days as of the application of provisional arrest with regard to the person. A person with regard to whom provisional arrest has been applied shall be released if the request for extradition does not arrive within forty days as of the application of provisional arrest.

(6) Release of a person from provisional arrest in the cases provided for in subsection (5) of this section does not preclude application of provisional arrest with regard to him or her and his or her extradition upon subsequent arrival of the request for extradition.

(7) A person shall not be kept under provisional arrest for more than one year.

(8) A ruling on provisional arrest may be contested pursuant to the procedure provided for in Chapter 15 of this Code.

§ 448. Participation of counsel in extradition proceedings

(1) The counsel in an extradition proceeding must be an advocate.

(2) Participation of a counsel in an extradition proceeding is mandatory as of the arrest of the person on the basis of subsection 447 (3) of this Code.

§ 449. Simplified extradition procedure

(1) An alien may be extradited to the requesting state pursuant to the simplified procedure without verification of the legal admissibility of the extradition, on the basis of a written consent granted by the alien in the presence of his or her counsel.

(2) A proposal to consent to extradition pursuant to the simplified procedure shall be made to the person claimed upon his or her detention. The consent shall be immediately communicated to the Minister of Justice who shall decide on the extradition of the person pursuant to the procedure provided for in § 452 of this Code.

(3) A decision of the Minister of Justice on the extradition of an alien pursuant to the simplified procedure shall be promptly forwarded to the Central Criminal Police for execution and to the Public Prosecutor's Office for their information. A decision by which extradition pursuant to the simplified procedure is refused shall be sent to the Public Prosecutor's Office who shall decide on the submission of a request to take over the criminal proceeding from the foreign state.

§ 450. Verification of legal admissibility of extradition in court

(1) In order to verify the legal admissibility of an extradition in court, a court hearing shall be held within ten days as of the receipt of the request for extradition by the court.

(2) A proceeding for the verification of the legal admissibility of an extradition shall be conducted by a judge sitting alone.

(3) The following persons are required to participate in a court session:

1) the public prosecutor;

2) the Estonian citizen or the alien whose extradition is requested, if he or she has not consented to the simplified extradition procedure or if a proposal to consent to extradition pursuant to the simplified procedure has not been made to him or her upon his or her detention;

3) the counsel of the person claimed.

(4) In a court session, the court shall:

1) present and explain the request for extradition and the possible course of the extradition proceeding;

2) hear the opinions of the person claimed, his or her counsel and the public prosecutor concerning the legal admissibility of the extradition.

(5) A court may grant a term to a requesting state through the Ministry of Justice for submission of additional information.

§ 451. Decisions made upon verification of legal admissibility of extradition in court

(1) In the adjudication of a request for the extradition of a person to a foreign state, a court shall make one of the following rulings:

1) to declare the extradition legally admissible;

2) to declare the extradition legally inadmissible.

(2) A ruling shall set out:

1) the name, personal identification code or, in the absence thereof, date of birth and place of birth of the person subject to extradition proceedings;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

2) the content of the request reviewed;

3) the opinions of the persons who participated in the court session;

4) the decision of the court concerning the legal admissibility of the extradition, and the reasons therefor;

5) the decision of the court concerning provisional arrest, and the reasons therefor;

(3) A copy of a ruling shall be immediately sent to the person subject to extradition proceedings, his or her counsel, the Public Prosecutor's Office and the Minister of Justice.

(4) If a court declares the extradition of a person legally admissible, the request for extradition together with the other materials of the extradition proceeding shall be sent to the Minister of Justice in addition to a copy of the ruling.

(5) If a court declares the extradition of a person legally inadmissible, a copy of the ruling together with the request for extradition and the supporting materials shall be sent to the Ministry of Justice who shall inform the requesting state thereof.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 452. Extradition decision

(1) The extradition of an Estonian citizen shall be decided by the Government of the Republic. Draft extradition decisions shall be prepared and submitted to the Government of the Republic by the Ministry of Justice.

(2) The extradition of an alien shall be decided by the Minister of Justice.

(3) A reasoned decision to grant or refuse to grant extradition shall be made promptly.

(4) A copy of a decision shall be sent to the custodial institution where the person claimed is kept under provisional arrest and the decision is made known to him or her against signature.

(5) A decision on the extradition of a person enters into force unless the decision is appealed pursuant to administrative procedure or is amended as a result of a court proceeding. A decision to refuse to extradite a person enters into force as of the making of the decision.

(6) A decision on the extradition of a person which has entered into force shall be immediately sent to the Central Criminal Police who shall organise the execution of the decision.

(7) If extradition is refused, the person shall be released from provisional arrest.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(8) The Ministry of Justice shall immediately notify a requesting state of a decision to grant or refuse to grant extradition.

§ 453. Postponement of extradition and temporary extradition

(1) The Ministry of Justice may, on the proposal of the Public Prosecutor's Office, postpone the execution of an extradition decision which has entered into force if postponement is necessary for the purposes of the criminal proceeding conducted in Estonia with regard to the person claimed or for the purposes of execution of a court judgment made with regard to him or her.

(2) By agreement with a requesting state, a person whose extradition has been postponed may be temporarily extradited to the requesting state.

§ 454. Surrender of person claimed

(1) An extradition decision which has entered into force shall be sent to the Central Criminal Police who shall notify the requesting state of the time and place of surrender of the person claimed and organise the surrender of the person.

(2) A person claimed may be released from provisional arrest if the requesting state fails to take the person over within fifteen days after the due date for the surrender. A person claimed shall be released from provisional arrest if the requesting state fails to take the person over within thirty days after the due date for the surrender.

§ 455. Extension of extradition

(1) If a state to whom a person has been extradited requests performance of procedural acts or execution of a court judgment regarding the person for an offence other than that for which he or she was extradited, such request shall be adjudicated pursuant to the provisions of §§ 438–442 of this Code.

(2) A court shall decide on the extension of extradition by way of a written proceeding on the basis of the request and the supporting documents.

(3) The provisions of subsections (1) and (2) of this section apply also if a request to extradite a person to a third state is submitted.

§ 456. Permission for transit of extradited person

(1) Permission for the transit of persons extradited by third states through the territory of the Republic of Estonia shall be granted by the Minister of Justice.

(2) A request for transit shall meet the requirements of § 442 of this Code.

(3) Permission for transit shall not be granted if:

1) the act for which the person is extradited is not punishable pursuant to the Estonian Penal Code;

2) Estonia considers the act which is the basis for extradition to be a political offence or a military offence;

3) death penalty may be imposed on the extradited person in the requesting state and the state has not given assurance that death penalty will not be imposed or carried out.

Subdivision 3

Request for extradition by foreign state

§ 457. Initiation of proceedings for request for extradition of person by foreign state

(1) Extradition of a person is requested from a foreign state if the person is a suspect or accused who stays in the foreign state and absconds the criminal proceeding, and continuation of the criminal proceeding without the participation of the suspect or accused is especially complicated or precluded or if extradition of a convicted person is necessary for the execution of a court judgment made with regard to him or her.

(2) The principles provided for in §§ 438–442 of this Code shall be taken into account in requesting the extradition of a person by a foreign state.

(3) A request for the extradition of a person to be submitted to a foreign state shall be prepared in compliance with the requirements provided for in § 458 of this Code by:

1) the competent judicial authority in a pre-trial proceeding;

2) the court in a court proceeding;

3) the Public Prosecutor's Office in the stage of execution of a court judgment.

(4) In a pre-trial proceeding, the preliminary investigation judge may apply provisional arrest by a ruling at the request of the Public Prosecutor's Office before the request for extradition is submitted.

(5) If the extradition of a person by a foreign state is requested in a court proceeding, the arrest warrant for the person shall be prepared by the court which hears the criminal matter.

(6) A person whose extradition by a foreign state has been requested shall be arrested for at least ten days after his or her arrival in the Republic of Estonia.

(7) A request for extradition shall be communicated to the Ministry of Justice.

§ 458. Requirements for request for extradition of person by foreign state

(1) A request for the extradition of a person by a foreign state shall be addressed to the competent judicial authority of such state.

(2) A request shall set out:

1) the name, personal identification code and citizenship of the person claimed;

2) the facts relating to and the legal assessment of the criminal offence of which the person is suspected, accused or convicted and for which his or her extradition is requested;

3) the date of application of preventive custody with regard to the person;

4) the date of detention of the person in the foreign state;

5) a reference to the European Convention on Extradition or an agreement on legal assistance.

(3) A request for the extradition of a person by a foreign state shall be submitted together with the documents specified in subsection 442 (2) of this Code and a translation of the request and the annexes thereto into the language specified by the requested state.

§ 459. Submission of request for extradition

(1) A request for extradition shall be submitted to the requested state by the Minister of Justice.

(2) In cases of urgency, a request to apply provisional arrest with regard to a person claimed may be submitted to a foreign state through the International Criminal Police Organisation (Interpol) with the consent of the Public Prosecutor's Office before the request for extradition is submitted.

Division 3

Mutual Assistance in Criminal Matters

§ 460. Requirements for requests for assistance

(1) A request for assistance shall set out:

1) the name of the authority making the request;

2) the content of the request;

3) the name, address and, if possible, other contact details of the person with regard to whom the request is submitted;

4) the facts relating to and the legal assessment of the criminal offence concerning which the request is submitted.

(2) The following shall be annexed to a request for assistance:

1) extracts from the relevant legal acts;

2) a translation of the request and the supporting materials into the language of the requested state.

§ 461. Prohibition on compliance with request for assistance

Compliance with a request for assistance is not permitted and shall be refused on the grounds provided for in § 436 of this Code.

§ 462. Proceedings conducted by Ministry of Justice and Public Prosecutor's Office concerning requests for assistance received from foreign states

(1) The Ministry of Justice shall verify whether a request for assistance received from a foreign state meets the requirements. A request in compliance with the requirements shall be sent to the Public Prosecutor's Office immediately.

(2) The Public Prosecutor's Office shall verify whether compliance with the request is admissible and possible and forward the request to the competent judicial authority for execution.

(3) The Ministry of Justice shall forward a request for the service of a summons to the court of first instance of the residence or seat of the person for execution.

§ 463. Compliance with requests for assistance received from foreign states

(1) Requests for assistance are complied with pursuant to this Code. At the request of a foreign state, a request may be complied with pursuant to procedural provisions different from the provisions of this Code unless this is contrary to the principles of Estonian law.

(2) The materials received as a result of compliance with a request shall be sent to the Ministry of Justice through the Public Prosecutor's Office and the Ministry of Justice shall forward the materials to the requesting state.

§ 464. Submission of requests for assistance to foreign states

(1) Unless otherwise prescribed by an international agreement entered into by the Republic of Estonia, a request for assistance shall be submitted to the Public Prosecutor's Office which shall verify whether the request meets the requirements. The Public Prosecutor's Office shall forward requests in compliance with the requirements to the Ministry of Justice.

(2) The Ministry of Justice shall immediately make a decision on the submission of or refusal to submit a request to a foreign state and notify the judicial authority which submitted the request of such decision. Refusal to submit a request shall be reasoned.

(3) In cases of urgency, a request may be submitted also through the International Criminal Police Organisation (Interpol) and communicated concurrently through the judicial authorities specified in subsection (1) of this section.

(4) If the protection of a witness is requested, the measures of protection shall be agreed upon separately.

§ 465. Immunity of person arriving in Estonia on basis of request for assistance submitted to foreign state

(1) A witness or expert appearing before a judicial authority on a summons set out in a request for assistance shall not be prosecuted, accused, arrested or detained as a suspect in connection with any criminal offence which was committed before his or her departure from the territory of the requesting party and which was not expressly specified in the summons.

(2) The accused appearing before a judicial authority on a summons set out in a request shall not be prosecuted, accused, arrested or detained as a suspect in connection with any criminal offences or charges which were committed or brought before his or her departure from the territory of the requesting party and were not expressly specified in the summons.

(3) The immunity provided for in subsections (1) and (2) of this section ceases when the witness, expert or accused has been in Estonia for fifteen consecutive days after the date when his or her presence was no longer required by the judicial authority although he or she has had the opportunity of leaving or, having left, has returned.

§ 466. Temporary transfer to foreign states of persons whose personal liberty has been restricted

(1) If a person has been arrested or imprisoned or his or her persona liberty has been restricted in any other lawful manner in Estonia, the person may, by a decision of the Minister of Justice on the basis of a request from a foreign state, be temporarily transferred to such state for the purposes of hearing the person as a witness or performing any other procedural act with his or her participation.

(2) A person may be temporarily transferred if the requesting state has assured that:

1) the person transferred will not be prosecuted and his or her fundamental rights will not be restricted in connection with any criminal offence which was committed before his or her departure from the territory of the requesting state and was not expressly specified in the summons;

2) the person transferred shall be sent back to Estonia immediately after the performance of the procedural acts.

(3) A person will not be temporarily transferred to a foreign state if:

1) he or she does not consent to the transfer;

2) his or her presence is necessary at criminal proceedings being carried out in Estonia;

3) the transfer may prolong the lawful term for the restriction of his or her personal liberty;

4) there is any other good reason to refuse to transfer the person.

(4) The conditions for arrest applicable in the requesting state apply to a person transferred, and the period of his or her stay in the foreign state shall be included in the term of the punishment imposed on him or her in Estonia.

§ 467. Request for temporary transfer of person staying in foreign state whose personal liberty has been restricted

(1) If a person has been arrested or imprisoned or his or her personal liberty has been restricted in any other lawful manner in a foreign state and it is necessary to hear the person as a witness or perform any other procedural acts with his or her participation at a criminal proceeding being carried out in Estonia, the competent judicial authorities may request temporary transfer of the person, taking into account the requirements provided for in § 465 of this Code.

(2) A request shall set out:

1) the time and place of preparation of the request;

2) the name, personal identification code or, in the absence thereof, date of birth and place of birth of the person to be temporarily transferred;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

3) the name of the procedural act in connection with which the presence of the person in Estonia is required;

4) the basis for the request under procedural law.

§ 468. Hearing of person staying in foreign state by telephone or video-conference

(1) A person staying in a foreign state may be requested to be heard by telephone or video-conference on the bases provided for in subsection 69 (1) of this Code. The request shall set out the reasons for hearing the person by telephone or video-conference, the name of the person to be heard and his or her status in the proceeding, and the official title and name of the person conducting the hearing.

(2) If hearing by video-conference is requested, the request shall contain the assurance that the suspect or accused to be heard consents to the hearing by video-conference.

(3) If hearing by telephone is requested, the request shall contain the assurance that the witness or expert to be heard consents to the hearing by telephone.

(4) Hearing of a suspect or accused by telephone is not permitted.

(5) Hearings by telephone or video-conference shall be conducted directly by, and under the direction of, a representative of the competent judicial authority of the requesting state pursuant to the procedural law of such state. Summonses to hearings by telephone or

video-conference shall be served pursuant to the procedural law of the requested state. The person to be heard may refuse to give statements also on the basis of the procedural law of the requested state.

(6) The competent judicial authority of a requested state which holds a hearing by telephone or video-conference shall:

1) determine and give notification of the time of the hearing;

2) ensure that the person to be heard be summoned to and appear at the hearing;

3) be responsible for the identification of the person to be heard;

4) be responsible for compliance with laws of the state of the authority;

5) ensure participation of an interpreter if necessary.

(7) A hearing by telephone or video-conference shall be recorded by the competent judicial authority of the requesting state but may additionally be recorded by the competent judicial authority of the requested state.

(8) The minutes of a hearing by video-conference shall be taken by the competent judicial authority of the requested state. The minutes of a hearing by telephone shall be taken by the competent judicial authority of the requesting state.

(9) The minutes of a hearing by telephone or video-conference shall set out:

1) the time and place of the hearing;

2) the form in which the hearing was conducted and the names of the technical devices used;

3) a reference to the request for legal assistance which is the basis for the hearing;

4) the names of the representatives of the competent judicial authorities of the requesting state and requested state participating in the hearing;

5) the status in the proceeding of the person heard and his or her name, personal identification code or, in the absence thereof, date of birth, residence or seat, address and telecommunications numbers or e-mail address;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

6) a notation concerning explanation of the rights of the person heard to him or her;

7) assurance from the person heard that he or she has been warned about the liability for refusal to give statements and for giving knowingly false statements,

or that he or she has taken an oath concerning the statements if the procedural law prescribes such obligation.

§ 469. Reclamation of property from foreign states

(1) A foreign state may be requested to hand over property located in such state if:

1) the property claimed has been acquired by a criminal offence subject to proceedings in the requesting state or if the property is required as physical evidence in a criminal proceeding conducted in the requesting state;

2) the act on which the request is based is punishable as a criminal offence pursuant to both the Estonian Penal Code and the penal law of the requested state.

(2) In Estonia, third party rights to property to be handed over shall be preserved and the property shall be delivered to the entitled person outside the proceedings at the request of the person after the entry into force of the court judgment.

(3) The procedural decision which is the basis for reclamation of property or an authenticated copy thereof or assurance from the competent judicial authority of the requesting state that such procedural decision would have been made if the property had been located in Estonia shall be annexed to a request to hand over property submitted to a foreign state.

(4) In cases of urgency, seizure of property or the conduct of a search may be requested before submission of a request to hand over property.

§ 470. Handing over of property to foreign states

(1) Handing over of property to a foreign state by Estonia on the bases provided for in § 469 of this Code shall be decided by a ruling made by a judge of the county or city court of the location of the property sitting alone.

(2) A ruling shall set out:

1) the name and location of the property to be handed over, and the name of the owner or possessor of the property;

2) the content of the request reviewed;

3) the content of and reasons for the ruling;

4) the basis under procedural law;

5) the decision of the court and the procedure for appeal.

(3) A court shall send a copy of a ruling which has entered into force to the Ministry of Justice who shall notify the requesting state of compliance with the request or refusal thereof.

(4) Handing of property over to the requesting foreign state shall be organised by the competent judicial authority.

(5) In cases of urgency, property may be seized or a search may be conducted at the request of a foreign state before receipt of the request to hand over property.

§ 471. International investigation teams

(1) An international investigation team may be requested to be set up for a specific purpose and a limited period in the interests of efficiency of pre-trial investigation of criminal offences. The request shall set out a proposal concerning the composition of the investigation team.

(2) A joint investigation team operates pursuant to the legislation of the state in which it operates. The competent judicial authority of such state shall appoint the leader of the investigation team and ensure the organisational and technical conditions for the operation of the team.

(3) With the knowledge of the leader of a joint investigation team and the consent of the competent judicial authorities of the states participating in the team, members of the team from foreign states may also perform procedural acts.

(4) Where an investigation team needs procedural acts to be performed outside the state where the team operates, a member of the investigation team may request the competent investigative body of a state participating in the team to perform the procedural act in the territory of and pursuant to the procedural law of such state.

(5) Information which is obtained by a member of a joint investigation team and which is not otherwise available to the competent authorities of the participating states may be used:

1) unconditionally for the purposes for which the joint investigation team was set up;

2) with the consent of the state which made the information available, for ascertaining facts relating to other criminal proceedings for the purposes of which the investigation team was set up. Such consent may be withheld if the information would be prejudicial to the joint investigation or if circumstances precluding provision of mutual legal assistance appear;

3) in order to prevent an immediate and serious threat to public security, and where criminal proceedings have already been initiated and use of the information is not contrary to the conditions specified in clause 2) of this subsection;

4) for other purposes by agreement between the states setting up the joint investigation team.

§ 472. Cross-border observations

(1) If a suspect is in a foreign state and his or her extradition is not precluded by law or if there is any other reason to believe that he or she may change his or her identity or abscond criminal proceedings in any other manner, a request may be submitted to the foreign state that a representative of the competent judicial authority of the state conducting the criminal proceeding be permitted to conduct cross-border observation of the suspect in the foreign state. The foreign state where cross-border observation is conducted is the state of location.

(2) Cross-border observation is permitted in pre-trial proceedings concerning the criminal offences specified in subsection 110 (1) of this Code.

(3) If cross-border observation has been conducted in cases of urgency in pre-trial investigation of a criminal offence specified in subsection (2) of this section without prior permission from the state of location:

1) the state of location shall be immediately notified that an employee of the competent judicial authority of the requesting state has crossed the border and has commenced observation;

2) a request provided for in subsection (1) of this section shall be immediately submitted to the state of location.

(4) In cross-border observation:

1) the law of the state of location and the instructions of the representatives of state authority shall be complied with;

2) a document authorising cross-border observation shall be carried;

3) service weapons may be carried with the consent of the state of location and used only for self-defence;

4) private property or any other places not intended for public use shall not be entered, and the person under observation shall not be stopped, questioned or arrested;

5) the competent judicial authority of the state of location shall be notified of each observation operation.

(5) Cross-border observation shall cease:

1) when the purpose of the observation has been achieved;

2) at the request of the state of location;

3) if within twelve hours as of crossing the border in order to commence cross-border observation pursuant to the procedure prescribed in subsection (3) of this section, the state of location has not granted permission for cross-border observation.

§ 473. Spontaneous information

Within the framework of mutual assistance in criminal procedure, a competent judicial authority may forward to a foreign state information obtained by a procedural act performed without prior request when such information may be the reason for initiating a criminal proceeding in such foreign state or may assist in ascertaining the facts relating to a criminal offence subject to a criminal proceeding already initiated.

Division 4

Transfer and Taking Over of Criminal Proceedings

§ 474. Transfer of criminal proceedings

(1) Transfer of a criminal proceeding initiated with regard to a person suspected or accused of a criminal offence to a foreign state may be requested if:

1) the person is a citizen of or permanently lives in the foreign state;

2) the person is serving a sentence of imprisonment in the foreign state;

3) criminal proceedings concerning the same or any other criminal offence have been initiated with regard to the person in the requested state;

4) the evidence or the most relevant pieces of evidence are located in the foreign state;

5) it is considered that the presence of the accused at the time of the hearing of the criminal matter cannot be ensured and his or her presence for the purposes of the hearing of the criminal matter is ensured in the requested state.

(2) A request for transfer shall be sent to the Public Prosecutor's Office together with the criminal file or an authenticated copy thereof, and other relevant materials.

(3) The Public Prosecutor's Office shall verify whether the transfer of a criminal proceeding is justified and send the materials to the Ministry of Justice who shall forward them to the foreign state.

(4) After submission of a request for the transfer of a criminal proceeding, charges shall not be brought against the person for the criminal offence regarding which transfer of the proceedings was requested, and a court judgment previously made with regard to the person for the same criminal offence shall not be executed.

(5) The right to bring charges and execute a court judgment is regained if:

1) the request for transfer is not satisfied;

2) the request for transfer is not accepted;

3) the requested state decides not to commence or to terminate the proceedings;

4) the request is withdrawn before the requested state has given notice of its decision to satisfy the request.

§ 475. Taking over of criminal proceedings

(1) The Ministry of Justice shall forward a request to take over a criminal proceeding from a foreign state to the Public Prosecutor's Office who shall decide whether to take over the criminal proceeding.

(2) In addition to the cases provided for in § 436 of this Code, acceptance of a request to take over a criminal proceeding may be refused in whole or in part if:

1) the suspect or accused is not an Estonian citizen or does not live permanently in Estonia;

2) the criminal offence concerning which the request to take over the criminal proceeding is submitted is a political offence or a military offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols thereto;

3) the criminal offence was committed outside the territory of the requesting state;

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

4) the request is in conflict with the principles of Estonian criminal procedure.

(3) A criminal matter which has been taken over shall be subject to proceeding by the county or city court of the residence of the accused or, in the absence of a residence, by the court in whose jurisdiction the pre-trial proceeding was completed.

Division 5

Recognition and Execution of Judgments of Foreign Courts

§ 476. Assistance in recognition and execution of judgments of foreign courts

Assistance may be provided to a requesting state in the execution of a punishment or any other sanction imposed for a criminal offence if a corresponding request together with the court judgment which has entered into force or an authenticated copy thereof has been submitted to the Ministry of Justice.

§ 477. Scope of assistance

(1) In addition to the conditions provided for in § 436 of this Code, assistance shall not be provided to a requesting state in the execution of a punishment or any other sanction imposed in the requesting state if:

1) the court judgment which is the basis for the request has not entered into force;

2) the judgment was not made by an independent and impartial court;

3) the judgment was made on default;

4) the right of defence was not ensured to the accused or the criminal proceedings were not conducted in a language understandable to him or her;

5) the act for the commission of which a punishment or any other sanction was imposed is not punishable as a criminal offence pursuant to the Estonian Penal Code or the Penal Code does not prescribe such punishment or sanction;

6) an Estonian court has convicted the person on the same charges, or commencement of criminal proceedings with regard to him or her has been refused or the criminal proceedings have been terminated;

7) pursuant to Estonian law, the limitation period for the execution of the court judgment has expired.

(2) If a person has been sentenced to imprisonment in a foreign state, a request for assistance in the execution of the punishment may be satisfied if the person is a citizen of Estonia and the written consent of the person to his or her surrender in order to continue service of the punishment in Estonia has been annexed to the request. The consent shall not be withdrawn.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) If a court judgment made with regard to a citizen of the Republic of Estonia, or an administrative act relating to such judgment contains an order to expel the person from the state immediately after his or her release from imprisonment, the person may be surrendered without his or her consent.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) If a judgment on confiscation made in a requesting state concerns a person outside the proceeding, the judgment shall not be executed if:

1) such third person has not been given the opportunity to protect his or her interests, or

2) the judgment is in conflict with a court decision made in the same matter by way of civil procedure pursuant to Estonian law.

§ 478. Proceedings conducted by Ministry of Justice concerning requests for execution of court judgments submitted by foreign states

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(1) The Ministry of Justice shall verify whether a request is in compliance with the requirements and has the required supporting documents and, in the case of compliance, shall forward the request to the court immediately.

(2) The surrender of or refusal to surrender a person sentenced to imprisonment shall be decided by the Minister of Justice.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(3) Execution of a court judgment by which a person has been sentenced to imprisonment in a requesting state shall be continued without amending the judgment if the term of the imprisonment imposed on the person in the requesting state corresponds to the punishment prescribed for the same criminal offence by the Estonian Penal Code.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(4) If necessary, additional information is requested from the foreign state through the Ministry of Justice and a term for reply is determined.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

§ 479. Arrest and keeping under arrest for purposes of execution of foreign court judgment

(1) If a request for the execution of a court judgment is received from a foreign state, the person staying in Estonia with regard to whom execution of the court judgment by which the person has been sentenced to imprisonment is requested may be arrested at the request of the public prosecutor and on the basis of a ruling of a preliminary investigation judge if there is reason to believe that the person evades execution of the court judgment.

(2) A person shall not be arrested if it is evident that execution of the court judgment is impossible.

(3) A person shall be released from custody if within three months as of his or her arrest, the court has not made a judgment on the recognition and enforcement of the court judgment of the requesting state.

(4) An arrest warrant may be appealed by the person arrested, his or her counsel, or the Prosecutor's Office.

§ 480. Participation of counsel in taking over of execution of confiscation

If a requesting state requests execution of confiscation to be taken over, the convicted offender must have counsel. The counsel in the taking over of execution must be an advocate.

§ 481. Jurisdiction over recognition of foreign court judgment

The Tallinn City Court shall decide on the recognition of foreign court judgments.

§ 482. Court procedure for recognition of foreign court judgments

(1) Recognition of a foreign court judgment shall be decided by a judge sitting alone. A court session where recognition of a foreign court judgment is heard shall be held within thirty days as of the receipt of the request by the court.

(2) If necessary, additional information is requested from a foreign state through the Ministry of Justice and a term for reply is determined.

(3) Persons outside the proceedings whose interests are concerned by a court judgment may be summoned to a court session if they are in Estonia. In deciding on confiscation, the participation of a third person is mandatory.

(4) The participation of a punished person and a public prosecutor in a court session is mandatory.

(19.05.2004 entered into force 01.07.2004 - RT I 2004, 46, 329)

(5) Minutes shall be taken of court sessions.

§ 483. Court rulings made in recognition and enforcement of foreign court judgments

(1) In deciding on the recognition of a foreign court judgment, a court shall make one of the following rulings:

1) to declare execution of the foreign court judgment admissible, or

2) to declare execution of the foreign court judgment inadmissible.

(2) If execution of a court judgment is not permitted, the court shall send a copy of the court ruling to the Ministry of Justice. The Ministry of Justice shall notify the foreign state of the refusal to execute a foreign court judgment.

§ 484. Specification of punishment imposed in foreign state

(1) If a court declares execution of a foreign court judgment admissible, the court shall determine the punishment to be executed in Estonia. The punishment imposed in the foreign state shall be compared to the punishment prescribed for the same act by the Estonian Penal Code.

(2) A specified punishment shall by nature as much as possible correspond to the punishment imposed in the foreign state. The court shall take into account the degree of the punishment imposed in the foreign state but the punishment shall not exceed the maximum rate prescribed by the sanction specified in the corresponding section of the Estonian Penal Code.

(3) If the term of a punishment has not been determined in a foreign state, the court shall determine the punishment in accordance with the principles of the Penal Code.

(4) It is not permitted to aggravate a punishment imposed in a foreign state.

(5) If probation is applied with regard to a person or he or she is released on parole in a foreign state, the court shall apply the provisions of the Estonian Penal Code.

(6) Pecuniary punishments, fines to the extent of assets and amounts subject to confiscation shall be converted into Estonian kroons on the basis of the exchange rate applicable on the date of specification of the punishment.

(7) In the specification of a punishment, the time spent in imprisonment or under arrest on the basis of § 479 of this Code in a foreign state shall be included in the term of the punishment.

§ 485. Ruling on specification of judgment of foreign court

(1) A court shall decide the specification of a foreign court judgment by a ruling.

(2) A ruling shall set out the extent to which a foreign court judgment is recognised and specify the punishment to be executed in Estonia.

(3) A court shall send a copy of a ruling which has entered into force to the punishment register and the Minister of Justice. The Ministry of Justice shall notify the foreign state of compliance with the request and of the specified punishment.

(4) Appeals may be filed against a ruling provided for in subsection (1) of this section by the accused, counsel, third persons and the Prosecutor's Office.

§ 486. Execution of specified punishments

(1) Punishments shall be executed pursuant to the procedure provided by Estonian legislation.

(2) A punishment shall not be enforced if the competent authority of the foreign state gives notification that the circumstances which were the basis for imposition of the punishment have ceased to exist.

§ 487. Specifications concerning execution of pecuniary punishments, fines to the extent of assets and confiscation imposed by foreign court judgments

(1) Pecuniary punishments and fines to the extent of assets shall be enforced as payments into the revenues of the Estonian state unless the parties have agreed otherwise.

(2) The provisions of this Division apply to confiscated property unless the parties have agreed otherwise.

Division 6

Requests for Recognition and Execution of Estonian Court Judgments

§ 488. Requests for recognition and execution of Estonian court judgments by foreign states

(1) Estonia may request a foreign state to execute a punishment or any other sanction imposed on a person on the basis of the Estonian Penal Code if:

1) the convicted offender is a citizen or permanent resident of the requested state or if he or she is staying in the requested state and is not extradited;

2) execution of the punishment in the foreign state is in the interests of the convicted offender or the public.

(2) If a convicted offender is staying in Estonia, execution of his or her imprisonment may also be requested from the foreign state if the convicted offender consents to his or her surrender. Consent shall be given in writing and shall not be withdrawn.

(3) If a court judgment or an administrative act relating thereto made with regard to a convicted offender contains an order to expel the person from the state immediately after his or her release from imprisonment, surrender of the person to a foreign state may be requested without his or her consent.

(4) A person sentenced to imprisonment may be surrendered for the purposes of continuation of the service of the sentence if at the time of receipt of the request at least six months of the sentence of imprisonment have not yet been served by the person.

(5) The surrender of or refusal to surrender a person sentenced to imprisonment shall be decided by the Minister of Justice.

Division 7

International Criminal Court

§ 489. Co-operation with International Criminal Court

(1) Co-operation with the International Criminal Court shall be carried out pursuant to this Code unless otherwise provided by an international agreement.

(2) If the Public Prosecutor's Office receives an application for arrest from the International Criminal Court, the Public Prosecutor's Office shall arrange the detention of the person pursuant to the procedure provided for in § 217 of this Code and the arrest of the person pursuant to the procedure provided for in § 131 of this Code.

(3) The prosecutors of the International Criminal Court performing procedural acts in Estonia have all the rights and obligations of prosecutors prescribed in this Code.

(4) If a request for legal assistance submitted by the International Criminal Court is in conflict with a request for legal assistance submitted by a foreign state, the request shall be adjudicated pursuant to the procedure provided for in an international agreement.

Division 8

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Surrender

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Subdivision 1

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

General Provisions

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 490. European arrest warrant

An European arrest warrant is a request submitted by a competent judicial authority of a Member State of the European Union to another Member State of the European Union for the detention, arrest and surrender of a person in order to continue criminal proceedings or execute imprisonment imposed by a court judgment which has entered into force.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 491. General conditions for surrender

(1) A person may be surrendered in a requesting state for the continuation of criminal proceedings with regard to him or her if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment in the requesting state.

(2) A person may be surrendered pursuant to the Estonian Penal Code regardless of the punishment for the act if imprisonment of at least three years is prescribed as punishment in the requesting state for commission of the following criminal offences:

1) participation in criminal organisations;

2) terrorism;

3) trafficking in human beings;

4) sexual exploitation of children and child pornography;

5) illicit trafficking in narcotic drugs and psychotropic substances;

6) illicit trafficking in weapons, ammunition and explosives;

7) corruption;

8) fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests;

9) money laundering;

10) counterfeiting currency;

11) computer-related crime;

12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;

13) facilitation of unauthorised entry and residence;

14) manslaughter, causing serious damage to health;

15) illicit trade in human organs and tissue;

16) kidnapping, unlawful deprivation of liberty and hostage taking;

17) racism and xenophobia;

18) organised or armed robbery;

19) illicit trafficking in cultural goods, including antiques and works of art;

20) swindling;

21) extortion;

22) counterfeiting and piracy of products;

23) forgery of administrative documents and trafficking therein;

24) forgery of means of payment;

25) illicit trafficking in hormonal substances and other growth promoters;

26) illicit trafficking in nuclear or radioactive materials;

27) trafficking in stolen vehicles;

28) rape;

29) arson;

30) criminal offences which fall within the jurisdiction of the International Criminal Court;

31) unlawful seizure of aircraft or ships;

32) sabotage.

(3) Surrender of a person for the purposes of execution of a judgment of conviction made with regard to him or her is permitted under the conditions provided for in subsections (1) and (2) of this section if at least four months of the sentence of imprisonment have not yet been served.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 492. Circumstances precluding or restricting surrender of persons

(1) In addition to the provisions of clause 436 (1) 3) of this Code, surrender of a person is not permitted if:

1) the Estonian Penal Code may be applied to the criminal offence and an amnesty precludes imposition of a punishment in Estonia for the criminal offence which is the basis for an arrest warrant;

2) the person has been finally convicted or acquitted on the same charges in another Member State or, in the case of a judgment of conviction, the imposed punishment has been served or is served or the execution of the punishment cannot be ordered pursuant to the legislation of the state which made the judgment;

3) the person with regard to whom an arrest warrant has been issued is less than fourteen years of age;

4) an arrest warrant has been issued with regard to an Estonian citizen for the execution of imprisonment and the person applies for enforcement of the punishment in Estonia.

(2) Surrender of a person may be refused if:

1) criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have been initiated with regard to the person in Estonia;

2) criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have not been initiated or have been terminated with regard to the person in Estonia;

3) the Estonian Penal Code may be applied to the criminal offence and the criminal offence which is the basis for the arrest warrant has expired pursuant to the Estonian Penal Code;

4) the person has been finally convicted or acquitted on the same charges in a non-EU state or, in the case of a judgment of conviction, the imposed punishment has been served or execution of the punishment cannot be ordered pursuant to the legislation of the state which made the judgment;

5) the criminal offence which is the basis for the arrest warrant was committed outside the territory of the requesting state and the Estonian Penal Code cannot be applied to criminal offences committed outside the territory of the Republic of Estonia under the same circumstances;

6) in the case provided for in subsection 502 (5) of this Code, additional information has not been submitted by the due date determined by the court.

(3) Estonia surrenders its citizens on the basis of an European arrest warrant for the period of criminal proceedings provided that the punishment imposed on a person in a Member State is enforced in the Republic of Estonia.

(4) If an European arrest warrant is issued for the execution of imprisonment with regard to a person who has been convicted without his or her participation in court proceedings and who was not informed of the time and place of the court session, the person may be surrendered on the condition that the requesting state has assured that the possibility of a new hearing of the criminal matter of the person is ensured.

(5) If life imprisonment may be imposed in a requesting state as punishment for a criminal offence which is the basis for an arrest warrant, the person may be surrendered on the condition that the competent authority of the requesting state has assured that release of the person before the prescribed time is possible.

(6) If a person whose surrender is requested enjoys immunity or privileges in the Republic of Estonia, execution of the European arrest warrant shall be suspended until receipt of a notice from a competent authority concerning deprivation of the person of the immunity or privileges.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 493. Extension of surrender

(1) Criminal proceedings shall not be initiated, measures which restrict freedom shall not be applied and a court judgment for a criminal offence committed before surrender, except the criminal offence in connection with which the person was surrendered, shall not be enforced with regard to a person surrendered to Estonia.

(2) The provisions of subsection (1) of this section do not apply if:

1) the surrendered person had the opportunity to leave Estonia within forty-five days as of his or her final release, or if he or she has returned to Estonia after leaving;

2) the criminal offence is not punishable by imprisonment;

3) the criminal proceedings do not bring about measures which restrict freedom;

4) punishment does not bring about deprivation of liberty, except substitutive punishment which restricts freedom;

5) a person voluntarily consents to surrender and non-application of subsection (1) of this section in respect of him or her or, after entry into force of a surrender decision, has consented to the non-application of subsection (1) of this section in respect of him or her;

6) a Member State which surrenders a person has granted its consent for the bringing of additional charges.

(3) A request for the extension of surrender shall be submitted to the competent judicial authority of the requesting state.

(4) A request for the extension of surrender submitted to Estonia may be satisfied if the request is based on a criminal offence to which an European arrest warrant may be applied.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 494. Surrender and extradition to third country

(1) A person surrendered to Estonia cannot be re-surrendered to another Member State of the European Union or extradited to a non-EU state, unless:

1) the surrendered person had the opportunity to leave Estonia within forty-five days as of his or her final release, or he or she has returned to Estonia after leaving;

2) the person consents to the surrender or extradition;

3) the Member State which surrenders the person grants its consent for the re-surrender or extradition.

(2) A citizen of the Republic of Estonia who is surrendered to a Member State of the European Union cannot be re-surrendered to another Member State of the European Union or extradited to a non-EU state without the consent of the Minister of Justice.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 495. Plurality of requests

(1) If several countries request the surrender of a person, a court shall decide which European arrest warrant is executed. The decision shall be based, primarily, on the seriousness and time and place of commission of the criminal offences committed by the person, the order in which the European arrest warrants were submitted and whether the

warrants have been issued for pre-trial proceedings or for the enforcement of a court judgment which has entered into force.

(2) If necessary, a court may ask the advice of the unit of judicial cooperation in Europe Eurojust.

(3) If an European arrest warrant and a request for extradition have been submitted in respect of the same person, the Minister of Justice shall decide which request is executed, taking account of the circumstances specified in subsection (1) of this section.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 496. Permission for transit of surrendered person

(1) Permission for the transit of persons surrendered by other Member States through the territory of the Republic of Estonia shall be granted by the Minister of Justice.

(2) A request for transit shall set out the following:

1) the personal data and the citizenship of the person concerned;

2) a notation that an European arrest warrant has been issued with regard to the person;

3) information on the facts relating to and the legal assessment of the criminal offence.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 497. Relinquishment of property

(1) Relinquishment of property located in a requested state may be requested by an European arrest warrant if the property claimed has been acquired by a criminal offence which is the basis for the European arrest warrant or the property is required as physical evidence in the criminal proceeding.

(2) In Estonia, third party rights to property to be relinquished shall be preserved and the property to be relinquished shall be returned to the entitled person outside the proceedings after the entry into force of the court judgment.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Subdivision 2

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Surrender Procedure

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 498. Authorities competent to execute European arrest warrant

(1) The following authorities are competent to conduct proceedings regarding an European arrest warrant and adopt a surrender decision:

1) Tallinn City Court if a person is detained in Tallinn or in Harju, Rapla, Lääne-Viru, Ida-Viru, Järva, Lääne, Hiiu, Saare or Pärnu county;

2) Tartu City Court if a person is detained in Jõgeva, Viljandi, Tartu, Põlva, Võru or Valga county.

(2) The central authority for co-operation in surrender procedure is the Ministry of Justice.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 499. Arrest for surrender

(1) In order to ensure execution of an European arrest warrant, a person may be arrested pursuant to the procedure provided for in subsection 217 (8) of this Code. A preliminary investigation judge shall decide on an arrest for surrender at the request of a Prosecutor's Office.

(2) A person may be detained pursuant to the procedure provided for in subsection 217 (1) of this Code before the arrival of the European arrest warrant on the basis of a request for an arrest warrant submitted through the International Criminal Police Organisation (Interpol) if the request contains a confirmation on submission of the warrant.

(3) Upon arrest of a person, the grounds for arrest shall be explained to him or her and the person shall be informed of the opportunity to consent to surrender.

(4) A person has, as of his or her arrest, the right to receive state legal aid and the assistance of a translator or interpreter.

(5) If an European arrest warrant has not been sent within a term provided for in subsection 500 (1) of this Code, the person shall be immediately released.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 500. Channels for communication of European arrest warrant

(1) An European arrest warrant shall be addressed to the Ministry of Justice not later than within three working days after the arrest of a person in Estonia. The Ministry of Justice shall immediately communicate the European arrest warrant to a competent court.

(2) An European arrest warrant received through the International Criminal Police Organisation (Interpol) shall be sent to the competent court immediately after the arrest of a person and a copy of the arrest warrant shall be sent to the Ministry of Justice.

(3) A copy of an European arrest warrant shall be immediately communicated to the Prosecutor's Office.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 501. Participation of counsel in surrender proceedings

(1) The counsel in a surrender proceeding must be an advocate.

(2) Participation of a counsel in a surrender proceeding is mandatory after review of a request for the arrest of a person.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 502. Surrender proceedings in court

(1) In order to hear an European arrest warrant and decide on the surrender of a person, a court session shall be held within ten days after the receipt of the European arrest warrant by the court. If a person has given notification of his or her consent to the surrender, a court session shall be held within five days after the receipt of the European arrest warrant by a court.

(2) Surrender proceedings shall be conducted by a judge sitting alone.

(3) The following persons are required to participate in a court session:

1) prosecutors;

2) the person claimed;

3) the counsel of the person claimed.

(4) In a court session, the court shall:

1) verify whether the person consents to surrender;

2) inform the person of the provisions of §§ 493 and 494 of this Code;

3) hear the opinions of the person claimed, his or her counsel and the prosecutor.

(5) A court may grant a term to a competent judicial authority of a requesting state for the submission of additional information.

(6) A court shall make a ruling provided for in § 503 of this Code within twenty days after the receipt of an European arrest warrant by the court and, if the person subject to surrender proceedings consents to his or her surrender, within ten days after the arrival of the European arrest warrant in Estonia.

(7) If a surrender decision cannot be made within a prescribed term, the term for the making of the surrender decision shall be extended by thirty days. The person who submitted the request shall be immediately informed of such extension of surrender proceedings.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 503. Court decisions in surrender proceedings

(1) Upon deciding on surrender of a person to a foreign state, a court shall make one of the following rulings:

1) to satisfy an European arrest warrant and consent to the surrender of the person;

2) to refuse to satisfy an European arrest warrant and refuse to consent to the surrender of the person.

(2) A ruling shall set out:

1) the name, personal identification code or date of birth, and place of birth of the person subject to surrender proceedings;

2) the content of the European arrest warrant reviewed;

3) the opinions of the persons who participated in the court session and, if the person consents to his or her surrender, the consent of the person;

4) the court judgment and reasons for the consent or refusal to consent to surrender;

5) the conditions of surrender provided for in subsections 492 (3)-(5) of this Code;

6) the period during which a person subject to surrender proceedings was kept under arrest;

7) the procedure for appeal.

(3) If an European arrest warrant contains a request for the confiscation of assets, the court shall decide on confiscation of the assets in surrender proceedings.

(4) If a court decides to satisfy an European arrest warrant and surrender a person, a court applies arrest for surrender to the person until the person is surrendered.

(5) If a court decides to refuse surrender, arrest for surrender is applied to the person until a ruling on surrender or ruling on refusal to surrender enters into force.

(6) A copy of a ruling shall be sent to the custodial institution where the person to be surrendered is kept under arrest for surrender and the ruling is made known to the person to be surrendered against signature.

(7) A copy of a ruling which has entered into force and is issued in surrender proceedings shall be immediately sent to the Ministry of Justice who shall communicate it to the requesting state.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 504. Contestation of ruling made in surrender proceedings

(1) An appeal against a ruling on surrender made in surrender proceedings or an appeal against a ruling on refusal to surrender may be filed pursuant to the procedure provided for in subsection 386 (2) of this Code within three days as of receipt of the ruling.

(2) An appeal against a ruling of Tallinn City Court shall be filed with Tallinn Circuit Court and an appeal against a ruling of Tartu County Court shall be filed with Tartu Circuit Court.

(3) An appeal against a ruling shall be heard in a written proceeding in a circuit court within ten days as of receipt of the matter in the circuit court.

(4) A judgment of a circuit court is final.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 505. Surrender of person

(1) A copy of a ruling on surrender which has entered into force shall be sent to the Central Criminal Police who shall notify the requesting state of the time and place of surrender of the person to be surrendered and organise the surrender of the person.

(2) A surrendered person shall be surrendered within ten days as of entry into force of the ruling on surrender.

(3) If the hindering circumstances are independent from the requested and requesting state, a person shall be surrendered not later than within twenty days as of entry into force of the ruling on surrender.

(4) If a person is not surrendered with a term specified in subsections (2) and (3) of this section, he or she shall be released.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 506. Postponement of surrender and temporary surrender

(1) The Ministry of Justice may postpone the execution of a ruling on surrender which has entered into force if postponement is necessary for the purposes of the criminal

proceeding conducted in Estonia with regard to the person to be surrendered or for the purposes of execution of a court judgment made with regard to him or her.

(2) By a written agreement with a requesting state, a person whose surrender has been postponed may be temporarily surrendered to the requesting state.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Subdivision 3

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Submission of Arrest Warrant to Member State of European Union

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 507. Submission of European arrest warrant

(1) In pre-trial proceedings, a Prosecutor's Office which conducts proceedings regarding a criminal offence which is the basis for an European arrest warrant is competent to submit the European arrest warrant.

(2) The Ministry of Justice is competent to submit an European arrest warrant for the execution of a court judgment which has entered into force.

(3) An European arrest warrant shall be prepared in Estonian and it shall be translated into the language determined by the requesting state by the Ministry of Justice.

(4) An European arrest warrant shall be communicated to a requesting state through the Ministry of Justice.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

§ 508. Format and manner of communication of European arrest warrant

(1) The format of an European arrest warrant shall be established by the Minister of Justice.

(2) An arrest warrant shall be communicated to a requesting state by post, by electronic mail or in a form enabling written reproduction.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

Chapter 20

Implementing Provisions

§ 509. Entry into force of this Code

(1) This Code enters into force on 1 July 2004.

(2) The procedure for the implementation of this Code shall be provided for in the implementation Act thereof.

(28.06.2004 entered into force 01.07.2004 - RT I 2004, 54, 387)

[1] RT = *Riigi Teataja* = *the State Gazette*

[2] Riigikogu = the Parliament of Estonia