Translation of Liechtenstein Law

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Code of Criminal Procedure
Strafprozessordnung (StPO)

of 18 October 1988

I hereby grant My consent to the following resolution adopted by Parliament:

Title I
General provisions

§ 1

1) Offences assigned to the court for adjudication may be punished only after criminal proceedings in accordance with the Code of Criminal Procedure and as a result of a judgement rendered by the competent judge.

2) The death of the accused shall terminate the criminal proceedings. In that case, even a judgement that has not become final shall cease to have effect. The legal provisions governing *in rem* proceedings shall not be affected thereby.

§ 2

1) The judicial prosecution of punishable acts shall be initiated only upon application of a prosecutor.

2) If a punishable act is to be prosecuted only at the request of an injured party or other involved party, that party shall be responsible for bringing private criminal action. In the cases referred to in § 117(2), first and second sentence StGB, the injured party shall also be entitled to bring a private criminal action where the public prosecutor is unable to

prosecute the punishable act, either because the injured party irrevocably declares before the deadline set out in § 31(1) and without prior inquiry by the public prosecutor that he does not grant the required authorization, or because any of the declarations necessary for authorization is refused by the injured party and by his superior authority upon inquiry by the public prosecutor; in the case of such a refusal or of the subsequent withdrawal of a declaration necessary for the public prosecutor's authorization, the time-limit available to the injured party for bringing private criminal action shall start running pursuant to § 117(2), last sentence StGB.

3) All punishable acts not subject to private prosecution, including those whose prosecution requires an application or authorization, shall be subject to public prosecution. Public prosecution shall be the responsibility of the public prosecutor, but may also be assumed by a civil claimant in his stead pursuant to §§ 32 and 173.

4) If prosecution takes place only on application, it may not be initiated before the application has been substantiated to the court. The application may be withdrawn until the end of the trial

5) If prosecution takes place only with the authorization of the injured party or another involved party, the public prosecutor or the National Police shall, if authorization has not yet been granted, inquire without delay whether it will be granted. A declaration that a civil claimant joins the criminal prosecution shall be considered to constitute authorization. Authorization shall be deemed refused if it is not granted within fourteen days from service of the inquiry; in the case of the public vilification of Parliament, the time-limit of fourteen days shall be replaced by a time-limit of six weeks, not including the time without sessions. The authorization must refer to a specific person and must be substantiated to the court before the commencement of the trial. The authorization may be withdrawn until the end of the trial.[1]

6) The public charges shall expire as soon as the Prince orders that no criminal proceedings for a punishable act are to be initiated or that the initiated proceedings are to be discontinued.

1 § 2(5) amended by LGBl. 2012 No. 266.

§ 2a[1]

It shall not be permissible to induce persons to undertake, continue, or complete an offence or to have secretly appointed persons entice a confession.

§ 3

All authorities involved in the criminal proceedings shall consider the circumstances that incriminate and that defend the accused with the same care, and they shall be required to inform the accused of his rights, even where not expressly stipulated to do so.

§ 4

On application of the injured party, civil law claims of the injured party shall be taken care of in the course of the criminal proceedings, unless the need for further elaboration makes a referral of such claims to civil litigation appear indispensable.

§ 5

1) The criminal investigation and judgement shall extend also to preliminary questions under civil law.

2) The criminal judge shall not be bound by findings of the civil judge regarding such preliminary questions to the extent the criminal liability of the accused is at issue.

§ 6

1) The time-limits set out in this Act may not be extended, unless the contrary is expressly provided. Where they are to start running on a particular day, they shall be calculated so that this day is not counted. Time-limits measured in hours shall be calculated from moment to moment.[2]

2) The commencement and progression of a time-limit shall not be hindered by Saturdays, Sundays, public holidays, and Good Friday. But

1 § 2a inserted by LGBl. 2012 No. 26.
2 § 6(1) amended by LGBl. 2012 No. 26.

if the end of such a time-limit falls on such a day, the next business day shall be considered to be the last day of the time-limit.

3) Days in the mail shall not be included in the time-limit.

4) Unless specifically provided otherwise, resorts to a higher court, other legal remedies, and all other submissions may be submitted to the court, the Prosecution Service, or the National Police in writing or placed on record orally. Where they are subject to a time-limit, they shall be deemed on time even if they are submitted within the time-limit to the authority that is responsible for deciding on them.[1]

§ 7

1) If a fine imposed under the Code of Criminal Procedure turns out not to be collectable entirely or in part, the court shall reassess it in cases worthy of consideration, but otherwise shall convert it into an alternative term of imprisonment of up to eight days.

2) The provisions of the *Strafvollzugsgesetz* (StVG, Enforcement of Sentences Act) regarding the enforcement of terms of imprisonment not exceeding three months shall apply *mutatis mutandis* to the enforcement of such alternative terms of imprisonment as well as to the terms of imprisonment provided under the Code of Criminal Procedure and to coercive detention.

3) All monetary penalties shall go to the State.

§ 8[2]

1) The courts, the Prosecution Service, and the National Police shall be required to provide mutual administrative assistance for the performance of duties under this Act, and they shall be entitled to request support from all authorities of the State and of the municipalities. These authorities shall execute such requests without unnecessary delay or shall immediately indicate any obstacles to their execution.

2) Requests as referred to in Para. (1) that refer to offences committed by a specific person may be denied with reference to existing legal obligations of maintaining secrecy or to the fact that the data in question constitutes electronically processed personal data only if these

1 § 6(4) inserted by LGBl. 2012 No. 26.
2 § 8 amended by LGBl. 2012 No. 26.

obligations expressly apply also to the court or if compliance with the request would violate overriding public interests, which must be indicated and justified in detail.

3) The courts, the Prosecution Service, and the National Police shall be entitled to provide information regarding personal data obtained in accordance with this Act for the purpose of security administration, the administration of criminal justice, and the supervision of the lawfulness of the abovementioned bodies' actions. Apart from that, the transmission of data to authorities other than the National Police, the Prosecution Service, and the court shall be permissible only if covered by an explicit authorization by law.

4) If a request is refused or if the request is complied with only incompletely or with a delay, the court, the Prosecution Service, or the National Police shall report this fact to the competent authority so that a remedy can be found in the appropriate way. If this duty is neglected, the prosecution authorities may not assert the delays caused by another authority as a justification for delaying the proceedings. If, however, a request by the Prosecution Service for administrative or legal assistance is not or not fully complied with by a requested court, then the Court of Appeal shall, on application of the Prosecution Service and without prior oral hearing, decide on the lawfulness of the omitted administrative or legal assistance or on any other subject of the difference of opinion.

Title Ia
The National Police[1]

§ 9[2]

1) The National Police shall participate in the investigation and prosecution of offences under the provisions of this Act. They shall conduct their investigations either *ex officio* or on the basis of a criminal complaint; they shall comply with instructions from the Prosecution Service and from the courts.

2) Subject to Art. 21 et sqq. of the *Polizeigesetz* (PolG, Police Act), the National Police shall have authority to apply proportional and reasonable coercion in order to enforce the orders of the Prosecution Service or of the court (Art. 20 of the Police Act) or the powers granted to them under this Act. Subject to the conditions and formalities laid down respectively, the National Police shall have authority in this to also use physical force against persons and items as far as this is indispensable for the investigation and less severe means are unsuitable. An arrest warrant (§ 128(1)) shall also provide authority to search the apartment or other places protected by the immunity of the home for the person to be arrested, as far as the arrest is to be carried out at these locations according to the content of the warrant.

3) As far and as long this is necessary for carrying out a coercive measure or for recording evidence, the National Police shall have authority to close - on their own initiative or on the basis of an order - containers or facilities by applying a seal or to close off crime scenes in order to prevent access by unauthorized persons.

4) If a person refuses to carry out an act which such person is obliged to carry out by law, that act may be replaced directly by coercion in terms of Para. (2) or by a court decision. If this is not possible, the person - unless he is himself a suspect of the offence or legally privileged from testifying - may be forced by coercive measures to fulfil his obligation. Coercive measures may be used only as far as they are in reasonable proportion to the seriousness of the offence, to the amount of suspicion, and to the result being striven for.

1 Heading before § 9 inserted by LGBl. 2012 No. 26.
2 § 9 amended by LGBl. 2012 No. 26.

5) Eligible coercive measures shall be a fine of up to 10,000 Swiss francs and in important cases up to six weeks of imprisonment. The court shall decide on the application and extent of coercive measures.

6) The use of direct coercion shall be threatened and announced where the person concerned is present. This may only be dispensed with if doing so would endanger the success of the investigation.

§ 10[1]

1) The National Police shall be obliged to investigate every criminal offence which is subject to indictment and suspicion of which has been brought to their attention. For this purpose, the National Police shall without delay carry out inquiries to ascertain the facts and issue such orders as are necessary to prevent the removal of the traces of the criminal act or the escape of the suspect. Only in the cases provided for in this Act shall the National Police be permitted to take persons into custody and to take other coercive measures on their own initiative. They shall inform the Prosecution Service or the investigating judge of their orders and inquiries in accordance with § 11.

2) To perform their duty in accordance with Para. (1), the National Police shall have authority,

1. to receive communications and demand information from persons;
2. to ascertain the identity of suspects and persons who can contribute towards the clarification of the suspicion (§ 91a);
3. to carry out the police identification of persons who are strongly suspected of a crime or an offence (Art. 24a of the Police Act);
4. to interrogate unsworn witnesses and suspects, the National Police having to apply the provisions of Titles X to XII *mutatis mutandis*;
5. to search real estate and premises which are not accessible to the general public and do not form part of a household (§ 92(1)), vehicles or containers, as well as a person, in accordance with § 92(2);
6. to carry out a search of premises in the cases listed under § 94;
7. to arrange the investigation of biological traces at the scene of a crime or the non-invasive sampling of persons (§ 95a(3), last sentence);

1 § 10 amended by LGBl. 2012 No. 26.

8. to seize items pursuant to § 96a;

9. to carry out surveillance of the behaviour of a person pursuant to § 104a;

10. to carry out an undercover inquiry (§ 104b).

3) Insofar as the National Police are not carrying out an undercover inquiry, they shall point out their official status, unless this is obvious from the circumstances. They are permitted to receive communications or demand information provided this is given voluntarily and is not obtained by compulsion. The provisions concerning the interrogation of accused persons and witnesses must not be permitted to be circumvented thereby. The content of the information provided and other circumstances which have been obtained through such inquiries and which may be of significance for the proceedings shall be recorded in an official memorandum (§ 47(2)).

4) A deferment of the inquiries incumbent upon the National Police in accordance with this provision shall be permissible if

1. this furthers the solving of a substantially more serious offence or the gathering of information on a leading accessory to the commission of the punishable act and this deferment does not involve any serious risk to the life, health, physical integrity, or freedom of third parties, or

2. otherwise a serious risk to the life, health, physical integrity, or freedom of a person would arise which cannot be averted in any other way.

5) The National Police shall without delay inform the Prosecution Service about a deferment in terms of Para. (4).

§ 11

1) The National Police shall record their investigations in files, so that it is possible to verify the occasion, conduct, and result of such investigations. Grounds must be provided for the use of force and of powers that are connected with an infringement of rights, unless such grounds are already contained in the order from the Prosecution Service or the court.[1]

1 § 11(1) amended by LGBl. 2012 No. 26.

2) The National Police shall report to the Prosecution Service in writing (Para. (1)) if and as soon as

1. they learn of the suspicion of a serious crime or any other offence of particular public interest (incidence report),
2. an order from the Prosecution Service or from the court is required, or if and as soon as these request a report (occasioned report),
3. they have completed their investigations in terms of §§ 9 and 10, but at any rate as soon as a period of three months has passed in proceedings against a specific person without a report since the first investigative measure directed against such person, or if three months have passed since the last report (interim report),
4. they have completed all investigations assigned to them, or when the facts and suspicions appear clarified to such extent that the Prosecution Service is able to decide whether there will be an indictment, a withdrawal from prosecution, or a discontinuation of proceedings (final report).[1]

3) A report in terms of Para. (2) shall contain the following in particular, as far as these circumstances have not already been reported on:[2]

1. the names of the accused persons or, if these names are unknown, the characteristics necessary to identify them or seek them out, their financial situation, as well as offences of which they are suspect and their legal designation,[3]
2. the names of the persons who filed a criminal complaint, of the victims, and of any other persons who may contribute to solving the case,[4]
3. a summary statement of facts and suggestions for further procedure,[5]
4. any applications from the accused persons or from other participants of the proceedings, and any declarations of injured parties to join the proceedings for civil law claims.[6]

1 § 11(2) amended by LGBl. 2012 No. 26.
2 § 11(3) introductory sentence amended by LGBl. 2012 No. 26.
3 § 11(3)(1) amended by LGBl. 2012 No. 26.
4 § 11(3)(2) amended by LGBl. 2012 No. 266.
5 § 11(3)(3) amended by LGBl. 2012 No. 26.
6 § 11(3)(4) amended by LGBl. 2012 No. 266.

4) With each report, the Prosecution Service or the court shall be provided with all files necessary for assessing the factual and legal situation, as far as this has not yet been done.[1]

5) The National Police shall permit the inspection of files only if so ordered by the court; any applications to such effect shall otherwise be handled pursuant to Para. (2)(2).[2]

Title II
The courts

§ 12

1) The following courts shall have jurisdiction in criminal matters:

1. the Court of Justice (*Landgericht*);
2. the Court of Appeal (*Obergericht*);
3. the Supreme Court (*Oberster Gerichtshof*).

2) Everybody shall be obliged to appear before the criminal court if summoned before it, to answer the questions of the court, and to follow its instructions.

3) As far as under the provisions below, the threatened duration of imprisonment is relevant for the jurisdiction of the criminal courts and for the procedure to be followed, the modification of penalties by §§ 39 and 313 StGB shall be taken into account. If an offence is committed in a state of full intoxication, the limitation of penalties by § 287(1) last sentence StGB shall be taken into account in this respect.

§ 13

The Court of Justice shall:

1. conduct the investigation;
2. carry out the trial and render judgement on all punishable acts.

1 § 11(4) amended by LGBl. 2012 No. 26.
2 § 11(5) amended by LGBl. 2012 No. 26.

§ 14

One or more single judges shall be appointed as investigating judges in the allocation of duties of the Court of Justice (§ 13(1)).

§ 15[1]

1) The Court of Justice shall carry out its activities described in § 13(2) either in the form of a collegiate court (the "criminal tribunal") or through single judges.

2) The trial and the rendering of judgment shall be up to the criminal tribunal:

1. for all crimes in terms of § 17(1) StGB; but in the cases of breaking and entering in terms of § 129(1) to (3) StGB (in connection with § 12(3)) only where the penalty exceeds five years;
2. for the following misdemeanours:
   a) subversive groups (§ 246(3) StGB);
   b) vilification of the State and its symbols (§ 248 StGB);
   c) disclosure of state secrets (§ 253 StGB);
   d) secret intelligence service to the detriment of Liechtenstein (§ 256 StGB);
   e) offences at elections and votes (§§ 261 to 268 StGB);
   f) rioting (§ 274 StGB);
   g) creation of public fear (§ 275 StGB);
   h) armed groups (§ 279 StGB);
   i) amassing of weapons (§ 280 StGB);
   k) incitement to commit punishable acts and endorsement of punishable acts (§ 282 StGB) and omission to prevent a punishable act (§ 286 StGB), if the offence was committed with regard to any of the offences listed under items (a) to (i).

3) The trial and the rendering of judgment shall be up to the single judge unless the criminal tribunal has jurisdiction in terms of Para. (2).

1 § 15 amended by LGBl. 2011 No. 593.

4) If the accused is accused of several punishable acts and if the criminal tribunal has jurisdiction for only one of these, the criminal tribunal shall have jurisdiction for the trial of and decision on all punishable acts. However, the court that has jurisdiction for the trial and decision of all punishable acts may nevertheless issue directions in terms of § 67(3).

5) If the single judge considers himself not to have jurisdiction because the facts on which the request for prosecution is based as such or in connection with circumstances that become apparent during the trial lead to the criminal tribunal having jurisdiction, it shall declare its own lack of jurisdiction by way of a judgment. In that case, the public prosecutor shall submit his applications within fourteen days upon finality of the judgment declaring the lack of jurisdiction.

6) The rules of the *Jugendgerichtsgesetz* (Juvenile Court Act) shall remain reserved.

§ 16

The Court of Appeal shall decide on appeals and objections against judgments and rulings of the Court of Justice. It shall be only as an exception and subject to special provisions of the law that the Court of Appeal shall decide as a court of the first instance.

§ 17

The Supreme Court shall decide on appeals on points of law and objections against judgments and rulings of the Court of Appeal.

§ 18

Where there are disputes of jurisdiction between courts, the next jointly superior court shall decide, and ultimately the Supreme Court.

Title III
The Prosecution Service

§ 19[1]

1) The duties and organization of the Prosecution Service shall be guided by the requirements set out in the *Staatsanwaltschaftsgesetz* (Act on the Prosecution Service), unless this Act provides otherwise.

2) The public prosecutor shall be independent of the courts in the performance of his duties.

§ 20

1) The sphere of activity of the public prosecutor shall include involvement in all proceedings governed by this Act, in particular in all investigations and trials of criminal proceedings initiated for crimes, misdemeanours, and infractions.

2) The public prosecutor shall make sure that all means serving the discovery of the truth are properly used. The public prosecutor shall have authority to take note of the status of pending investigations at any time by inspecting the case files or to request reporting on such status and to make the appropriate applications; however, the criminal proceedings must not be held up by this.

3) The public prosecutor shall make applications orally or in writing, and each such application must be decided by a judicial direction or ruling. In the same way, the public prosecutor shall make declarations regarding applications of the accused or inquiries by the court.

4) The public prosecutor shall not participate in deliberations of the court.

5) The public prosecutor shall have authority to make direct contact with the law enforcement authorities and other authorities and to avail himself of their assistance.

1 § 19 amended by LGBl. 2011 No. 53.

§ 21

1) The Prosecution Service shall, *ex officio* and with the assistance of the National Police, be responsible for investigating all punishable acts of which it gains knowledge and which are not subject to investigation and punishment merely at the request of an involved party, and it shall prosecute those suspected of committing the punishable acts in order to enable the court to do what is necessary for investigation and punishment.[1]

2) If the accused person is charged with several punishable acts, the public prosecutor may, however, refrain from prosecuting individual such acts and discontinue their prosecution, reserving prosecution at a later date (§ 281(1)(3)), provided that:

a) doing so is unlikely to have a significant influence on the penalties, protective measures, or legal consequences associated with the sentence;

b) the accused is extradited to a foreign authority for the other punishable acts and the penalties or protective measures expected in Liechtenstein are insubstantial compared with those likely to be imposed abroad. If the public prosecutor resumes the reserved prosecution at a later time, it shall no longer be permissible to reserve the prosecution of individual punishable acts yet again.

3) The public prosecutor may furthermore refrain or withdraw from the prosecution of a punishable act committed abroad if the perpetrator has already been punished abroad for that act and it is not to be expected that the Liechtenstein court would impose a stricter penalty.

4) The rights accorded to civil claimants in accordance with §§ 173 and 320 shall not be affected by the provisions set out in Para. (2) and (3). For this reason, the civil claimants shall be notified if the public prosecutor makes use of one of the possibilities for desisting from prosecution provided in Para. (2) and (3). The public prosecutor shall be responsible for making such notification unless the investigating judge has considered the issue, in which case the latter shall be responsible for notification.

5) Repealed[2]

6) Repealed[3]

1 § 21(1) amended by LGBl. 2012 No. 26.
2 § 21(5) repealed by LGBl. 2007 No. 292.
3 § 21(6) repealed by LGBl. 2007 No. 292.

§ 21a

1) For this purpose, the Prosecution Service may also have the National Police or the investigating judge carry out provisional inquiries in order to obtain the necessary reference points for initiating criminal proceedings against a specific person (§ 22(1)).[1]

2) The investigating judge shall have the same rights and duties in such provisional inquiries as he has in the investigation; the National Police shall proceed in accordance with the provisions of Title Ia.[2]

3) The Prosecution Service may have the National Police interrogate persons who are likely to be able to provide clarification concerning punishable acts that have been committed. The Prosecution Service may also examine such persons itself, but not under oath, and have the National Police gather evidence by inspection and search of premises, and it may accompany such official acts if they cannot be carried out or ordered by the competent investigating judge because of imminent danger.[3]

4) However, the records of such acts, concerning which all formalities required for judicial official acts of this kind must be complied with, may on penalty of voidness be used as evidence only if they are immediately communicated to the investigating judge, who shall verify their form and completeness and if necessary shall ensure that the acts are repeated or completed.[4]

§ 22

1) If, upon reviewing the criminal complaint or the final report (§ 11(2)(4)) and the findings of any provisional inquiries conducted additionally at its request, the Prosecution Service finds sufficient grounds for initiating criminal proceedings against a specific person, the Prosecution Service shall submit either an application for the initiation of an investigation or a bill of indictment. Otherwise, the Prosecution Service shall discontinue the provisional inquiries with a brief record of its considerations in this regard, and if the investigating judge was involved with the provisional inquiries, it shall notify the investigating

1 § 21a(1) amended by LGBl. 2012 No. 26.
2 § 21a(2) amended by LGBl. 2012 No. 26.
3 § 21a(3) amended by LGBl. 2012 No. 26.
4 § 21a(4) inserted by LGBl. 2007 No. 292.

judge of such discontinuation. In this case, the investigating judge shall immediately release any accused persons who may have been arrested.[1]

2) The Prosecution Service shall notify persons who have already been interrogated as suspects of a punishable act (§ 23(3)) or who, according to the content of the case files, have otherwise gained knowledge of the suspicion against them, as well as any victims and civil claimants, that the provisional inquiries have been discontinued.[2]

Title IIIa

Withdrawal from prosecution after the payment of money, performance of community service, probation, and out-of-court resolution (diversionary measures)[3]

I. General provisions[4]

§ 22a

1) The public prosecutor shall proceed in accordance with this Title and withdraw from the prosecution of a punishable act if it is clear due to sufficient clarification of the facts that setting aside the complaint pursuant to § 22 is out of the question, but that in view of

1. the payment of an amount of money (§ 22c) or
2. the performance of community service (§ 22d) or
3. the setting of a probation period, possibly in connection with supervised probation and compliance with duties (§ 22f) or
4. out-of-court resolution (§ 22g),

punishment does not seem advisable as a means to prevent the suspect from committing punishable acts or for counteracting the commission of punishable acts by other.[1]

1 § 22(1) amended by LGBl. 2012 No. 26.
2 § 22(2) amended by LGBl. 2012 No. 266.
3 Heading before § 22a inserted by LGBl. 2006 No. 99.
4 Heading before § 22a inserted by LGBl. 2006 No. 99.

2) However, one may proceed under this Title only if[2]

1. the punishable act constitutes an infraction pursuant to Art. 21 of the *Betäubungsmittelgesetz* (Narcotics Act), Art. 35(2) of the *Tierschutzgesetz* (Welfare of Animals Act), Art. 101 or 102(1) to (3) of the *Kinder- und Jugendgesetz* (Children and Juvenile Act), or Art. 54 of the *Heilmittelgesetz* (Therapeutic Products Act), a misdemeanour, or burglary pursuant to § 129(1) to (3) StGB, if the maximum penalty does not exceed five years.[3]
2. the suspect's level of culpability would not have to be considered grave, and[4]
3. the offence has not caused the death of a human being.[5]

3) Also, one must not proceed under this Title under any circumstances in connection with the offences of sexual assault (§ 201 StGB) and sexual abuse of a defenceless or mentally impaired person (§ 204 StGB).[6]

§ 22b[7]

The provisions of this Title applicable to the public prosecutor shall be applied by the court *mutatis mutandis*, and after initiating the investigation or issuing the indictment, the Court shall until the end of the trial and subject to the requirements applicable to the public prosecutor discontinue by way of a ruling the proceedings for a punishable act that is subject to *ex officio* prosecution.

1 § 22a(1) inserted by LGBl. 2006 No. 99.
2 § 22a(2) introductory sentence inserted by LGBl. 2006 No. 99.
3 § 22a(2)(1) amended by LGBl. 2015 No. 29.
4 § 22a(2)(2) inserted by LGBl. 2006 No. 99.
5 § 22a(2)(3) inserted by LGBl. 2006 No. 99.
6 § 22a(3) inserted by LGBl. 2006 No. 99.
7 § 22b inserted by LGBl. 2006 No. 99.

II. Withdrawal from prosecution after the payment of money[1]

§ 22c[2]

1) Under the preconditions of § 22a, the public prosecutor may withdraw from the prosecution of a punishable act if the suspect deposits an amount of money for the benefit of the State.

2) The amount must not exceed the amount that is equivalent to a fine of 180 daily rates or a fine of 20,000 Swiss francs plus the costs of the proceedings to be reimbursed in the event of conviction. It must be paid within four weeks from service of the notice in terms of Para. (4). However, if the suspect would be hit unreasonably hard by this, the suspect may be granted deferment of payment for no more than six months or payment in instalments over that period.

3) As far as this is possible and expedient, the withdrawal from prosecution shall also be made contingent on the suspect making good within a term to be assessed (but not exceeding six months) the damage suffered from the offence and proving this forthwith.

4) The public prosecutor shall inform the suspect that it is intended to carry out criminal proceedings against him for a certain punishable act, but that this will not happen if the suspect will pay a specific amount of money and (if applicable) compensation for the damage in a specific amount. Furthermore, the public prosecutor shall inform the suspect in terms of § 22k and on the possibility of a deferment of payment (Para. 2) as far as the public prosecutor does not inform the suspect of this option *ex officio* anyway.

5) Following the payment of the amount of money and (if applicable) the compensation for the damage, the public prosecutor shall withdraw from prosecution unless it is required that the proceedings be initiated subsequently or be continued pursuant to § 22h.

1 Heading before § 22c inserted by LGBl. 2006 No. 99.
2 § 22c inserted by LGBl. 2006 No. 99.

III. Withdrawal from prosecution after the performance of community service[1]

§ 22d[2]

1) Under the preconditions of § 22a, the public prosecutor may withdraw from the prosecution of a punishable act for the time being if the suspect has expressly declared his willingness to render gratuitous community service within a term to be assessed (but not exceeding six months).

2) Community service is to demonstrate the readiness of the suspect to take responsibility for the offence. It shall be rendered during the suspect's free time at a suitable institution, an understanding with which shall be found.

3) As far as is possible and expedient, the withdrawal from prosecution following the rendering of community service shall also be made contingent on the suspect making good within a term to be assessed (but not exceeding six months) the damage suffered from the offence or otherwise contributing to restitution for the consequences of the offence and proving this forthwith.

4) The public prosecutor shall inform the suspect that it is intended to carry out criminal proceedings against him for a certain punishable act, but that this will not happen for the time being if the suspect will until a certain time-limit render community service in a specified amount and manner and will (if applicable) provide restitution for the offence. In this, the public prosecutor shall instruct the suspect in terms of § 22k; he may also ask a person experienced in social work to provide that information and to negotiate the community service (Art. 24c *Bewährungshilfegesetz*, Supervised Probation Act). The institution (Para. 2) shall issue a confirmation to the suspect or to the social worker on the services rendered, which confirmation shall be presented forthwith.

5) Following the rendering of the community service and restitution for the consequences of the offence (if applicable), the public prosecutor shall withdraw from prosecution unless it is required that the proceedings be initiated subsequently or be continued pursuant to § 22h.

1 Heading before § 22d inserted by LGBl. 2006 No. 99.
2 § 22d inserted by LGBl. 2006 No. 99.

§ 22e

1) Community service must not be in the amount of more than eight hours per day, 40 hours per week, and 240 hours in total; any simultaneous education or further education or professional activity of the suspect shall be taken into account. Community service that would constitute an unacceptable infringement of the suspect's personal rights or way of life shall be inadmissible.[1]

2) The branch manager of the private association responsible for providing probation services shall keep and if necessary update a list of institutions that are suitable for community service. That list shall be accessible for everybody on request.[2]

3) If the suspect causes damage to the institution or to the entity supporting it when rendering community service, the suspect's obligation of reimbursement shall be *mutatis mutandis* subject to § 1173a(8) ABGB (*Allgemeines Bürgerliches Gesetzbuch*, General Civil Code). If the suspect causes damage to a third party, not only the suspect but also the State shall be liable for this under the provisions of civil law. The institution or the entity supporting it shall not be liable to the injured party in this case.[3]

4) The State shall only reimburse the damage through the payment of money. It may demand reimbursement from the institution at which the community service was performed or from the entity supporting that institution, as far as these or their governing bodies are culpable of intent or gross negligence, in particular by failure to supervise or instruct. The relationship between the State and the suspect shall be subject to § 1173a(8) ABGB *mutatis mutandis*.[4]

5) If the suspect suffers an accident or an illness while rendering community service, the provisions of Art. 62 et sqq. of the Enforcement of Sentences Act shall apply *mutatis mutandis*.[5]

1 § 22e(1) inserted by LGBl. 2006 No. 99.
2 § 22e(2) inserted by LGBl. 2006 No. 99.
3 § 22e(3) inserted by LGBl. 2006 No. 99.
4 § 22e(4) inserted by LGBl. 2006 No 99
5 § 22e(5) amended by LGBl. 2011 No. 593.

IV. Withdrawal from prosecution after probation[1]

§ 22f[2]

1) Under the preconditions of § 22a, the public prosecutor may withdraw from the prosecution of a punishable act for the time being, setting a probation period of between one and two years. The probation period shall start running with the service of the notice of provisional withdrawal from prosecution.

2) As far as this is possible and expedient, the provisional withdrawal from prosecution shall also be made contingent on the suspect expressly declaring his willingness to comply with certain duties, which may be stated as instructions (§ 51 StGB), and to be supervised by a probation officer (§ 52 StGB). In this, the duty to make good the damage suffered at the suspect's best efforts or to otherwise contribute to restitution for the consequences of the offence shall be considered in particular.

3) The public prosecutor shall inform the suspect that it is intended to carry out criminal proceedings against him for a certain punishable act, but that this will provisionally not happen for a certain probation period, and he shall inform the suspect in terms of § 22k. If applicable, the public prosecutor shall inform the suspect that this provisional withdrawal from prosecution requires that the suspect expressly declare to accept certain duties and accept supervision from a probation officer (Para. 2). In this case, the public prosecutor may also ask a person experienced in social work to provide that information and instruction, and also ask that person to support the suspect in fulfilling his duties (Art. 24c Supervised Probation Act).

4) When the probation period has expired and the suspect has complied with his duties (if any), the public prosecutor shall make his withdrawal from prosecution final unless it is required that the proceedings be initiated subsequently or be continued pursuant to § 22h.

1 Heading before § 22f inserted by LGBl. 2006 No. 99.
2 § 22f inserted by LGBl. 2006 No. 99.

V. Withdrawal from prosecution after out-of-court resolution[1]

§ 22g[2]

1) Under the preconditions of § 22a, the public prosecutor may withdraw from the prosecution of a punishable act if the suspect is willing to take responsibility for the offence and to cope with its reasons, if he provides restitution for any consequences of the offence in a manner suitable under the circumstances (in particular, by making good the damage suffered or by otherwise contributing to restitution for the consequences of the offence), and if the suspect if necessary enters into obligations that demonstrate his willingness to refrain from conduct that has led to the act.

2) The injured party shall be integrated into any efforts for out-of-court resolution if he is willing to do so. The realization of out-of-court resolution shall be subject to his consent, unless such consent is denied for reasons that are not worthy of consideration in criminal proceedings. The injured party's justified interests must always be taken into account (§ 22i).

3) The public prosecutor may ask a conflict mediator to instruct the injured party and the suspect of the possibility of out-of-court resolution and about the content of the provisions of §§ 22i und 22k, and to initiate and support efforts for such resolution (Art. 24b Supervised Probation Act).

4) The conflict mediator shall report to the public prosecutor on agreements for out-of-court resolution and shall monitor the fulfilment of such agreements. The conflict mediator shall submit a final report either when the suspect has met his obligations at least so far that it can be expected - taking into consideration the rest of his conduct - that he is going to keep complying with the agreements, or when it can no longer be expected that out-of-court resolution is going to happen.

1 Heading before § 22g inserted by LGBl. 2006 No. 99.
2 § 22g inserted by LGBl. 2006 No. 99.

VI. Subsequent initiation or continuation of criminal proceedings[1]

§ 22h[2]

1) Following a withdrawal from the suspect's prosecution under this Title that is not just provisional (§§ 22c(5), 22d(5), 22f(4), and 22g (1)), the initiation or continuation of proceedings shall only be admissible under the requirements of the ordinary reopening of proceedings. Before any such withdrawal, the criminal proceedings shall be initiated or continued at any rate if so requested by the suspect.

2) If the public prosecutor has proposed to the suspect to pay an amount of money (§ 22c(4)), to render community service (§ 22d(4)), to accept probation or obligations (§ 22f(3)), or if the public prosecutor has withdrawn from the prosecution of the punishable act for the time being (§§ 22d(1), 22f(1)), the public prosecutor shall initiate or continue the criminal proceedings if:

1. the suspect fails to pay or render the amount of money or the community service fully and in time, including the restitution for the consequences of the offence,
2. the suspect does not sufficiently fulfil obligations assumed by him or persistently evades the influence of the probation officer, or
3. criminal proceedings are initiated against the suspect for another punishable act before the payment of the amount of money plus restitution for the damage (if any) or before the rendering of the community service or before the expiry of the probation period. In this case, the subsequent initiation or continuation of proceedings shall be admissible as soon as an indictment has been issued against the suspect for the new or newly discovered punishable act plus a period of one month after the issuing of such indictment even if the amount of money has meanwhile been paid, the community service has meanwhile been rendered, the restitution for the consequences of the offence has meanwhile been carried out, or the probation period has meanwhile expired. However, the subsequently initiated or continued criminal proceedings shall be discontinued if the new criminal proceedings are terminated in any other way than by the suspect being pronounced guilty.

1 Heading before § 22h inserted by LGBl. 2006 No. 99.
2 § 22h inserted by LGBl. 2006 No. 99.

3) However, the initiation or continuation of the proceedings may be dispensed with if in the cases of Para. 2(1), this seems justifiable for special reasons, and in the cases of Para. (2) Items (2) and (3), this is not necessary under the circumstances to prevent the suspect from committing punishable acts. Also, the initiation or continuation of the proceedings shall be admissible in the cases of Para. (2) only if the suspect does not accept the proposal of the public prosecutor mentioned there.

4) If the suspect fails to pay the amount of money in full and in time or if he cannot comply with the obligations accepted in full and in time because doing so would be unreasonably hard on the suspect due to a substantial change in the circumstances that are relevant for the amount of money or for the type or extent of obligations, the public prosecutor may modify the amount of money or the duty as appears reasonable.

5) Obligations which the suspect has accepted and payments which the suspect has agreed to make shall become invalid by the subsequent initiation or continuation of the proceedings. Supervised probations shall end; however, § 144b shall remain unaffected. Any services rendered by the suspect in this connection shall be taken into account when awarding the sentence (if any). If the suspect is acquitted or if prosecution is discontinued in any other way, only the amounts paid pursuant to § 22c shall be repaid, but there shall not be any reimbursement for any other services.

VII. Rights and interests of the injured party [1]

§ 22i[2]

1) In all cases where one proceeds pursuant to this Title, the interests of the injured party shall be taken into account and furthered in the highest amount possible as far as they are justified. In order to be able to assess whether making good the damage or providing restitution in any other way for the consequences of the offence is possible or expedient, the public prosecutor shall if necessary effect suitable inquiries. The injured party shall have the right to bring in a confidant. In any event, he shall as soon as possible be informed comprehensively of his rights and of suitable institutions providing advice. The injured party shall be heard

1 Heading before § 22i inserted by LGBl. 2006 No. 99.
2 § 22i inserted by LGBl. 2006 No. 99.

before prosecution is discontinued, as far as this appears appropriate in view of his interests.

2) The injured party shall always be informed if the suspect has declared his willingness to make good the damage from the offence or provide restitution for the consequences of the offence in any other way. The same shall apply where the suspect accepts an obligation that directly touches the interests of the injured party.

VIII. Information provided to the suspect [1]

§ 22k

1) Where one proceeds pursuant to this Title, the suspect shall be informed in detail about his legal situation, in particular about the requirements for withdrawal from prosecution pursuant to this Title, about the requirement of his consent, about his option to demand the initiation or continuation of the proceedings, and about the other circumstances that may cause the initiation or continuation of the proceedings (§ 22h(2)), as well as on the necessity of a lump-sum contribution to the costs (§ 305a).[2]

2) Repealed[3]

IX. Joint provisions[4]

§ 22l[5]

1) In order to clarify whether the requirements for a course of action pursuant to this Title are met, the public prosecutor or the court may ask the branch manager of the private association responsible for providing probation services to contact the injured party, the suspect, and if applicable also the institution where community service is to be rendered

1 Heading before § 22k inserted by LGBl. 2006 No. 99.
2 § 22k(1) inserted by LGBl. 2006 No. 99.
3 § 22k(2) repealed by LGBl. 2008 No. 333.
4 Heading before § 22l inserted by LGBl. 2006 No. 99.
5 § 22l inserted by LGBl. 2006 No. 99.

or where a training or course is to be visited, and to comment on whether the payment of an amount of money, the rendering of community services, the setting of a probation period, the acceptance of certain obligations, cooperation with a probation officer, or out-of court resolution would be expedient. For this purpose, the public prosecutor may also carry out his own inquiries and hear the injured party, the suspect, and other persons.

2) The probation period pursuant to § 22f(1) as well as the time-limits for the payment of money plus making good the damage (if applicable) and for the rendering of community service plus restitution for the consequences of the offence (if applicable) (§§ 22c(2) and (3), 22d(1) and (3)) shall not be included in the period of limitation (§ 58(3) StGB).

§ 22m[1]

1) The public prosecutor may withdraw from prosecution pursuant to this Title as long as he has not issued an indictment. Afterwards, he must apply to the court for a discontinuation or the proceedings (§ 22b).

2) Judicial rulings under this Title shall be issued by the investigating judge during the investigation, by the court of decision during the trial, and otherwise by the presiding judge. The court shall hear the public prosecutor before it serves a notice in terms of §§ 22c(4), 22d(4), 22f(3) or a ruling by which the proceedings are discontinued or their initiation is dismissed. Any such ruling shall be served upon the suspect only after it has become final with effect towards the public prosecutor.

3) Rulings by which criminal proceedings are discontinued or by which their initiation is denied under this Title (§§ 22c(5), 22d(1) and (5), 22f(1) and (4), 22g(1) in connection with § 22b) may be challenged by the public prosecutor, and rulings by which the application to discontinue the proceedings is dismissed may be challenged by the suspect and by the public prosecutor, by way of an objection to the Court of Appeal to be submitted within 14 days from service. No trial may be carried out as long as a decision on such an objection has not yet been rendered.

4) A ruling by which a decision is rendered on the subsequent initiation or continuation of criminal proceedings (§ 22h) may be challenged by the suspect and by the public prosecutor by way of an objection to the Court of Appeal to be submitted within 14 days from

1 § 22m inserted by LGBl. 2006 No. 99.

service. The objection against the subsequent initiation or continuation of criminal proceeding shall have suspensive effect.

Title IV
The accused, the defence, and jointly liable persons[1]

I. The accused and the defence counsel[2]

§ 23

1) Anyone who is suspect of a punishable act may be regarded as an accused (*Beschuldigter*) only after an indictment or a request for prosecution has been issued against him or after an application to initiate the investigation has been submitted. Until such date, he shall be regarded as a suspect (*Verdächtiger*).

2) A defendant (*Angeklagter*) shall be a person against whom a trial has been ordered for crime or misdemeanour.

3) As far as the provisions of this Act do not appear to be limited to the investigation by their nature, they shall also apply to the defendant and to anyone who is examined as a suspect of a punishable act or is summoned as such for examination or against whom coercion is applied (§ 9(4)).[3]

4) The accused shall be notified as soon as a judicial provisional inquiry (*Vorerhebung*) is conducted against him or an investigation (*Untersuchung*) has been initiated against him. The notification shall contain the subject of the charge and instructions on the essential rights in the proceedings. Notification may be postponed as long as it would endanger the purpose of the provisional inquiry or of the investigation.[4]

1 Heading before § 23 amended by LGBl. 2012 No. 26.
2 Heading before § 23 inserted by LGBl. 2012 No. 26.
3 § 23(3) amended by LGBl. 2012 No. 26.
4 § 23(4) inserted by LGBl. 2007 No. 292.

§ 23a[1]

1) An accused who is unable to sufficiently communicate in the language of the proceedings shall be entitled to translation assistance. This shall be provided by providing an interpreter as far as this is necessary in the interests of the administration of justice, in particular to preserve the rights of defence of the accused. This shall apply in particular to the instruction on rights (§ 23(4)), to acts of taking evidence in which the accused takes part, and to hearings. At the accused's request, he shall be provided with translation assistance also for his contact with a defence counsel provided to him or during the announcement of an application, an order, or a judicial ruling. The accused shall be given translation assistance for the inspection of the files only if he has no defence counsel and if it is unacceptable for the accused for special reasons to ensure himself the translation of the relevant parts of the files of which he has received copies.

2) If the accused is deaf or mute, an interpreter for sign language shall be brought in if the accused is able to communicate in this language. Otherwise, it shall be attempted to communicate with the accused in writing or in any other suitable manner in which the accused is able to make himself understood.

§ 23b[2]

1) The accused shall have the right to make suggestions to the Prosecution Service for the judicial taking of evidence even during the provisional inquiry. Such suggestions shall contain the facts in issue, the evidence, and the information required for the taking of evidence. Unless this is obvious, reasons shall be given why the evidence might be useful for clarifying the facts in issue.

2) Evidence which is inadmissible, impossible, or which cannot be used shall not be taken. Otherwise, any taking of evidence suggested by the accused may only be refrained from if

1. the facts in issue are obvious or irrelevant for assessing the suspicion,
2. the evidence is not suitable for proving a material fact, or
3. the facts in issue can be considered proven.

1 § 23a inserted by LGBl. 2012 No. 26.
2 § 23b inserted by LGBl. 2012 No. 26.

3) The submitting of applications in the investment proceedings shall be subject to § 43; the investigating judge may reserve the taking of evidence for the trial. This shall be inadmissible where the result of the taking of evidence may be suitable to directly remove the suspicion or where there is the danger that evidence for a material fact might be lost. If the evidence is not taken, the court shall inform the accused of the reasons for this.

§ 24

1) The accused may use a defence counsel even during the provisional inquiry and in all criminal proceedings. The defence counsel shall advise and support the accused. The defence counsel may and shall use every means of defence and shall openly state everything that serves the accused's defence as far as this is in accordance with the law, his commission, and his conscience.[1]

1a) Unless stated otherwise in this Act, the defence counsel shall exercise the procedural rights that are due to the accused. However, the accused may himself make statements at any time; where there is a conflict between statements, the accused's statement shall count. However, any waiver of appeal against the judgment which the accused does not declare in the presence of and following consultation with his defence counsel shall be ineffective.[2]

1b) Where a lawyer intercedes as a defence counsel, the reference to the power of attorney granted to him shall replace the proof by document of such power of attorney.[3]

2) Any person of full legal capacity may be a defence counsel; however, in the cases regulated in § 26(2) and in appeal proceedings, the defence counsel must be a lawyer who is a member of the Liechtenstein bar or is otherwise legally or by permit from the Government licensed to practice in the Principality of Liechtenstein.[4]

3) The legal representative of a minor or of a person for whom a guardian has been appointed may authorize a defence counsel for such minor or person against their will.[5]

1 § 24(1) amended by LGBl. 2012 No. 26.
2 § 24(1a) inserted by LGBl. 2012 No. 26.
3 § 24(1b) amended by LGBl. 2016 No. 406.
4 § 24(2) amended by LGBl. 2007 No. 292.
5 § 24(3) amended by LGBl. 2012 No. 26.

§ 25

1) Persons against whom proceedings are pending for participation in the same offence or for aiding with regard to such offence, or who misuse the contact with a detained accused for committing punishable acts or for causing material damage to the safety and order of a prison, in particular by unlawfully delivering or accepting items or messages, shall be excluded from being defence counsels.[1]

1a) Exclusion from defence shall be declared by the court by way of a ruling on application of the Prosecution Service; prior to such ruling, the court shall give the defence counsel the opportunity to comment. Otherwise, § 185 shall apply; in the cases of compulsory defence, the procedure stated in § 26(3) shall be followed. Exclusion shall be revoked as soon as the prerequisites for it have ceased.[2]

2) The accused may also consult several defence counsels; however, this must not lead to an increase in the number of presentations permitted to the accused during the trial, nor must the right to ask questions be extended thereby. In this case, any service of documents upon the accused shall be deemed to have been carried out as soon as these have been served upon any of his defence counsels.[3]

3) If there are several persons who are charged with the same punishable act, all of whom choose their defence counsels themselves, it shall be left to them to decide whether several of them want to be represented by a joint defence counsel.

§ 26[4]

1) The accused shall be informed of his right to have a defence counsel in the notification pursuant to § 23(4), but no later than at the first examination.

2) If the accused (defendant) is unable to bear all costs of defence without impairment to the maintenance necessary for a simple lifestyle for himself and for his family which he is obliged to support, the court shall rule on application of the accused (defendant) that he be provided with a defence counsel the costs of whom shall not or only partly be borne by the accused (defendant) if and as far as this is necessary in the

1 § 25(1) amended by LGBl. 2012 No. 26.
2 § 25(1a) inserted by LGBl. 2012 No. 26.
3 § 25(2) amended by LGBl. 2012 No. 26.
4 § 26 amended by LGBl. 2016 No. 406.

interest of the administration of justice, in particular in the interest of adequate defence (legal aid defence counsel). Providing a defence counsel shall at any rate be considered necessary in terms of this provision:

1. to elaborate any appeals that have been lodged, and for the public hearing on the appeal,
2. to submit an objection against the bill of indictment,
3. if the accused (defendant) is blind, deaf, mute, disabled in any other way, or not sufficiently able to speak the court language, and therefore unable to defend himself,
4. if the factual or legal situation is a difficult one.

If a legal aid defence counsel is provided for the trial or for the appeal, the appointment of such counsel shall also apply to the appeal proceedings unless ordered otherwise by the court in the individual case.

3) The accused (defendant) shall require a defence counsel for the duration of pre-trial detention and for the trial before the criminal tribunal. If neither the accused (defendant) himself nor his legal representative choose a defence counsel for him in these cases and if he is not provided with a defence counsel in terms of Para. (2), either, he shall be provided with a defence counsel *ex officio* and in the case of detention no later than before the first detention hearing is carried out; the defendant shall bear the costs of such defence counsel unless the requirements for providing a legal aid defence counsel in terms of para (2) apply. Para. (2) last sentence shall apply *mutatis mutandis*.

4) Para. (1) to (3) and §§ 26a to 26g of this Act and 63(2) ZPO [*Zivilprozessordnung*, Code of Civil Procedure] shall apply to legal entities *mutatis mutandis*.

§ 26a[1]

1) Together with providing a legal aid defence counsel, the court shall assess the instalments to be paid for the legal aid defence counsel's costs during the proceedings in such amount as does not impair necessary maintenance (§ 26(2)).

2) The court shall *ex officio* revoke legal aid as a whole if the accused (defendant) is in default with an instalment for more than three months.

3) The court shall adjust the instalments to be paid if the accused's (defendant's) asset, income, or family situation has changed significantly.

1 § 26a inserted by LGBl. 2016 No. 406.

The payment of instalments may be refrained from if these are no longer necessary to cover the costs of the legal aid defence counsel pursuant to § 26f or for other reasons.

§ 26b[1]

If the asset or income situation of the accused (defendant) improves substantially, also as a result of a change in the family situation, he shall inform the court of this forthwith by way of a declaration of assets in terms of § 66(1) ZPO.

§ 26c[2]

1) The court shall at any time revoke the providing of the legal aid defence counsel as a whole or in part *ex officio* or on application - also by the appointed defence counsel - insofar as the requirements pursuant to § 26(2) are no longer met. However, the procedural situation of the accused (defendant) must not be put at risk in this case.

2) The court shall at any time revoke the providing of the legal aid defence counsel *ex officio* or on application - also by the appointed defence counsel - insofar as it turns out that the requirements assumed at the time were in fact not met. In this case, the accused (defendant) shall reimburse the costs of the legal aid defence counsel that he did not have to pay, and shall on application pay according to the tariff the remaining remuneration of the lawyer provided to him in by way of legal aid.

§ 26d[3]

If no judicial inquiries have been made and no criminal proceedings have been effected, the suspect shall within four weeks from the discontinuation of the proceedings notify the court of such outcome and of the costs awarded pursuant to § 306(1).

1 § 26b inserted by LGBl. 2016 No. 406.
2 § 26c inserted by LGBl. 2016 No. 406.
3 § 26d inserted by LGBl. 2016 No. 406.

§ 26e[1]

After the proceedings have ended, the accused (defendant) shall be informed in what amount the costs of the legal aid defence counsel that he did not have to bear have remained unpaid. Upon service of such notification, the accused (defendant) shall be obliged to submit to the court an annual declaration of assets in terms of § 66(1) ZPO on his own initiative and over a period of ten years, lacking which declaration it shall be irrefutably presumed that the accused (defendant) is able to make subsequent payment (§ 26f) without necessary maintenance being impaired. This consequence of default shall be pointed out to the accused (defendant).

§ 26f[2]

1) The accused (defendant) shall be obliged by way of a ruling to subsequently pay all or part of the costs of the legal aid defence counsel that he did not have to bear, and on application also to pay according to the tariff the remaining remuneration of the lawyer provided to him by way of legal aid as far as and as soon as the accused (defendant) is able to do so without necessary maintenance being impaired. The obligation of subsequent payment may no longer be imposed after ten years have passed from the end of the proceedings.

2) In the ruling on subsequent payment, it shall first be imposed on the accused (defendant) to pay the costs of the legal aid defence counsel that he did not have to bear, and then the payment according to the tariff of the remaining remuneration of the lawyer provided to him by way of legal aid, the amount of these costs being assessed at the same time. Such ruling shall be enforceable only after it has become final.

3) The President of the Court of Justice may declare the amounts to be paid subsequently pursuant to Para. (1) to be uncollectible if the efforts to be made for subsequent payment are economically disproportionate to the amounts or if there are any other disproportionate obstacles.

§ 26g[3]

The court shall impose a fine of up to 25,000 Swiss francs for contempt of court on anyone who by incorrect or incomplete

1 § 26e inserted by LGBl. 2016 No. 406.
2 § 26f inserted by LGBl. 2016 No. 406.
3 § 26g inserted by LGBl. 2016 No. 406.

information fraudulently obtains the providing of a legal aid defence counsel or the exemption from the payment of instalments or from subsequent payment. Anyone on whom such fine for contempt of court has been imposed shall in addition have to pay double the amount of court fees, notwithstanding the obligation of the accused (defendant) to make subsequent payments.

§ 27[1]

1) The court shall provide a lawyer as a defence counsel. As far as a lawyer need not compulsorily be provided as a defence counsel, the court may also appoint a court intern to be the defence counsel. If the court has decided that it will appoint a lawyer to be the defence counsel, it shall notify the board of the Liechtenstein Chamber of Lawyers for the latter to appoint a lawyer to be the defence counsel.

2) Several concurrently accused persons (defendants) may be provided with a joint defence counsel, unless there is a conflict of interest or any of the accused persons (defendants) or the defence counsel demands separate representation.

§ 28[2]

1) If the accused (defendant) applies to be provided with a defence counsel within the time-limit set for the elaboration of a resort to a higher court or for any other procedural act or if he is provided with a defence counsel before such time-limit has expired (§ 26(2) and (3)), the running of such time-limit shall begin anew upon the service of the ruling for the appointment of the defence counsel and upon the service of such part of the file to the defence counsel as otherwise sets in motion the time-limit, or upon the service to the accused of the ruling dismissing the application in a final way.

2) If a time-limit has been triggered by service to the defence counsel, the running of such time-limit shall not be interrupted or prevented by the defence counsel terminating or withdrawing from the power of attorney. In this case, the defence counsel shall continue to safeguard the interests of the accused (defendant) and carry out the procedural acts necessary within such time-limit unless the accused (defendant) has expressly prohibited him from doing so.[3]

1 § 27 amended by LGBl. 2016 No. 406.
2 § 28 amended by LGBl. 2012 No. 26.
3 § 28(2) amended by LGBl. 2016 No. 406.

§ 29

1) Once appointed, the defence counsel shall not require any special power of attorney for carrying out any individual procedural act, not even for submitting an application to reopen the criminal proceedings.

2) The accused may at any time transfer his defence from the defence counsel selected by him to any other defence counsel. The mandate of the *ex officio* defence counsel shall also expire as soon as the accused has appointed a different defence counsel. However, the proceedings must not be delayed by any such change of defence counsel.

§ 30

1) Even during the investigation, the accused may hire a defence counsel to safeguard his rights considering judicial acts that directly concern the ascertainment of the facts and do not permit repetition later, and to elaborate certain appeals lodged by the accused.

2) The investigating judge shall at the accused's request permit him to inspect and make copies of the files of the criminal proceedings (with the exception of the records of deliberations) in the court's offices, and if the accused is detained, also in the offices of the Liechtenstein Prison; the investigating judge may also hand over photocopies to the accused instead; however, this right shall not include audio and video recordings, and the accused shall not be entitled to it as far as it is exercised by a defence counsel (§ 24(1a)). The right to inspect the files shall also include the right to inspect items of evidence as far as this is possible without any disadvantage to the investigation. As far as there is the risk described in § 119a, it shall be admissible to exempt from the right of inspection such personal data or circumstances as permit the drawing of conclusions about the personal circumstances of the endangered person; in that case, copies from which such circumstances have been deleted shall be handed over. Until the notification of the bill of indictment, the investigating judge may exempt individual items of the files from the right of inspection and making copies if the fear is justified that the immediate knowledge of such items might make the investigation more difficult. On request, the accused shall be provided with gratuitous copies (photocopies or other reproductions of the content of the files) of the records of inspections, the findings and opinions of expert witnesses, authorities, offices, and institutions, and of the original documents that are a subject of the punishable act. If the accused is in detention, he shall on request be also provided with such items from the record as may be of significance for assessing the suspicion or the reasons for detention. The defence counsel shall also be provided with counterparts of the arrest warrant and of all judicial decisions against which the accused is

entitled to seek resort to a higher court.[1]

2a) Simple information may also be provided orally. This shall be *mutatis mutandis* subject to the above provisions on the inspection of files.[2]

3) A detained accused may consult with his defence counsel without being monitored. If, however, the accused is in detention for the danger of collusion (§ 131(2)(2)) or the danger of re-offending (§ 131(2)(3)(d)), and if there is reason for concern because of special and serious circumstances that contact with the defence counsel might lead to danger to the purposes of detention, to danger to important evidence, or to danger to life and limb or other vital interests, the investigating judge may order by way of a ruling with grounds that the meeting with the defence counsel take place in the presence of and be monitored by the investigating judge or by a person appointed by him. Any such surveillance shall be admissible for a maximum term of one month from the imposition of pre-trial detention, but no longer than until the issuing of the indictment.[3]

4) The investigating judge may monitor the correspondence and the telephone calls of a detained accused with his defence counsel only under the requirements and conditions mentioned in Para. (3).[4]

§ 30a[5]

The accused and his defence counsel shall have the right to use in the interests of the defence and in other overriding interests any information that they have obtained in the proceedings in chambers or in the course of a non-public taking of evidence or by inspection of the files. However, as far as such information contains personal data of other participants of the proceedings or of third parties and has not appeared in any public hearing or otherwise become known to the public, they shall not have permission to publish such information in any media work or in any other way making the information accessible to the general public if this would violate the legitimate interest in secrecy of other participants of the proceedings or of third parties where such interest prevails over the public interest in information.

1 § 30(2) amended by LGBl. 2012 No. 26.
2 § 30(2a) inserted by LGBl. 2012 No. 26.
3 § 30(3) amended by LGBl. 2007 No. 292.
4 § 30(4) amended by LGBl. 2007 No. 292.
5 § 30a inserted by LGBl. 2004 No. 236.

§ 30b[1]

If pre-trial detention is imposed on the accused, the public prosecutor and the defence counsel shall until the first hearing on detention - and if the trial takes place earlier, until trial - be provided *ex officio* and without any undue delay with copies (photocopies) of all documents from the files that may be of importance for assessing the suspicion or the reasons for detention. The public prosecutor and the defence counsel may apply that they be provided with such documents also in the future. Starting with the imposition of pre-trial detention, it shall be inadmissible to restrict the inspection of the files concerning such items from the files as may be of importance for the assessment of the suspicion or the reasons for detention. Otherwise, §§ 30(2) and 30a shall remain unaffected.

II. Jointly liable persons[2]

§ 30c[3]

Jointly liable persons shall be persons who are liable for fines or monetary penalties or who are threatened by the forfeiture, extended forfeiture, or confiscation of an item, or who assert a title of ownership in an item threatened by confiscation. They shall have the rights of a defendant in the trial and in appeal proceedings as far the decision on such pecuniary orders are concerned.

Title V

The private prosecutor, the victim, and the civil claimant[4]

§ 31

1) On penalty of the loss of the right of prosecution, any person entitled to private criminal action must within six weeks from the day on which such person has learned of the punishable act and of who is reasonably suspect of such act submit an application for the prosecution of such suspect. Such application may also be directed at the initiation of an investigation or at the punishment of the perpetrator and must be

1 § 30b inserted by LGBl. 2007 No. 292.
2 Heading before § 30c inserted by LGBl. 2012 No. 26.
3 § 30c amended by LGBl. 2016 No. 162.
4 Heading before § 31 amended by LGBl. 2012 No. 26.

submitted to the criminal court either orally or in writing. The injured party or other participant shall no longer be entitled to intervene as a private prosecutor if he has expressly forgiven the punishable act. §§ 66 and 67 shall remain unaffected.

2) The private prosecutor shall have the right during the investigation to put anything at the court's disposal that might support his criminal action, to inspect the files, and to initiate all steps to assert his criminal action which the public prosecutor would otherwise be entitled to initiate. However, once his criminal action has been withdrawn, a reopening of the proceedings cannot be permitted to him.

3) If the private prosecutor has failed to submit within the legal time-limits the indictment or any other application required for maintaining criminal prosecution, if he has failed to appear at the trial, or if he has failed to submit his opinion in trial, it shall be assumed that he has withdrawn from prosecution. This shall be pointed out to the private prosecutor in all cases.

§ 31a[1]

1) Regardless of their position as a civil claimant, victims (in terms of Art. 1 OHG, *Opferhilfegesetz*, Act on Aid to Victims) shall have the right

1. to have themselves represented (§ 34),
2. to inspect the files (§ 32(2)(2)),
3. to be informed of the subject of the proceedings and of their essential rights before their examination,
4. to be informed of the progress of the proceedings (§§ 22i, 65(1), 141(7)),
5. to receive translation assistance, which shall be subject to § 23a *mutatis mutandis*,
6. to take part in the examination of witnesses (§ 115a) and accused persons (§ 147(3)) subject to considerate examination rules, and to take part in a reconstruction of the offence (§ 69(2)),
7. to be present during the trial and to examine defendants, witnesses, and expert witnesses, and to be heard concerning their claims.

1 § 31a amended by LGBl. 2012 No. 26.

2) Subject to Art. 12 to 14 of the Act on Aid to Victims, victims shall have the right to have themselves be advised, taken care of, accompanied to examinations in the investigation proceedings and in the trial, and represented in the exercise of rights under this Act by the *Opferhilfestelle* (Victim Advisory Centre).

§ 31b

1) All authorities operating in criminal proceedings shall be under the obligation of instructing victims and civil claimants on their rights in criminal proceedings. This may be refrained from only as long as this would endanger the purpose of the investigation.[1]

2) Victims shall be informed of the requirements for aid by the Victim Advisory Centre no later than before their first examination.[2]

3) In addition to this, victims whose sexual integrity may have been violated shall before their first examination be informed of the following rights to which they are entitled:

1. the right to refuse the answering of questions on circumstances from their personal sphere or on such details of the offence as they consider to be unacceptable for them to tell about (§ 108(2)(2)),
2. the right to demand examination subject to considerate examination rules in the investigation proceedings and in the trial (§§ 115a, 197(3)),
3. the right to demand that the public be excluded from the trial (§ 181a(2)).[3]

§ 31c[4]

1) In their official acts and in the providing of information to third parties, all authorities operating in criminal proceedings shall take into account the legitimate interests of the injured party in preserving his personal sphere. This shall apply in particular to the forwarding of photographs and of personal information that may lead to the injured party's identity becoming known to a larger group of persons without this being required for the purposes of the criminal proceedings.

1 § 31b(1) amended by LGBl. 2012 No. 266.
2 § 31b(2) amended by LGBl. 2012 No. 26.
3 § 31b(3) amended by LGBl. 2012 No. 26.
4 § 31c amended by LGBl. 2012 No. 266.

2) The prohibition of publication pursuant to § 30a shall apply *mutatis mutandis* to private prosecutors, civil claimants, and injured parties.

§ 32

1) Any person whose rights have been violated by a crime or by a misdemeanour to be prosecuted *ex officio* may declare until the end of the trial to join the criminal proceedings as a civil claimant. The declaration may be withdrawn at any time. As far as they are not obvious, grounds must be stated for the justification to take part in the proceedings and for the claims for damages or compensation. The declaration shall be rejected by the court if it is obviously unjustified or was made too late.[1]

2) The civil claimant shall have the following rights:

1. He may provide the public prosecutor and the investigating judge with anything that may serve the purpose of having the accused convicted or of justifying the claim for compensation, and may apply that certain evidence be taken (§ 23b).[2]

2. As far as his interests are concerned, he may inspect the files already during the investigation unless there are any special reasons against this. Access to the files may be denied or limited at any rate as far as it would endanger the purpose of the investigation or an unbiased testimony as a witness.[3]

3. The civil claimant shall be summoned to the trial with the note that if he fails to appear, the trial will take place anyway, and that his applications will then be read from the files. He may ask questions of the accused, of witnesses, and of expert witnesses, or may receive the floor already during the investigation in order to make other comments. At the end of the trial hearing, he shall receive the floor immediately after the public prosecutor has given his opinion and stated his grounds; there, the civil claimant may elaborate and justify his claims and submit the applications which he wants to be decided with the main judgment.

3) Civil claimants shall be provided with a legal aid counsel if and as far as this is necessary in the interest of the administration of justice, in

1 § 32(1) amended by LGBl. 2012 No. 266.
2 § 32(2)(1) amended by LGBl. 2012 No. 26.
3 § 32(2)(2) amended by LGBl. 2012 No. 26.

particular in the interest of the appropriate assertion of their claims to avoid subsequent civil proceedings. The provisions on legal aid under this Act shall apply *mutatis mutandis*.[1]

3a) If the public prosecutor withdraws from prosecution pursuant to Title IIIa, the civil claimant shall in contrast not have the right to submit or take over the public indictment.[2]

4) In addition, the civil claimant shall have the right to submit the public indictment instead of the public prosecutor as a subsidiary prosecutor subject to § 173; however, the Prosecution Service may in this case take over prosecution at any time, in which case the subsidiary prosecutor shall have once again the rights of a civil claimant.[3]

§ 32a

1) The civil claimant may assert a claim for performance, for declaration, or for the modification of rights against the accused. However, the validity of a marriage or registered partnership may only be assessed as a preliminary question (§ 5) in criminal proceedings (§ 262).[4]

2) During the trial, the court shall at any time put on the record a settlement agreement on claims under civil law. It may summon the civil claimant and the accused for an attempt at settlement *ex officio* or on application or make a proposal for a settlement agreement. If a settlement agreement is reached, the civil claimant, the public prosecutor, and the accused shall receive copies of the settlement agreement.[5]

3) In the event of seizure or attachment, the court shall effect the return of the item to the person entitled to it if seizure is not required for the purposes of evidence and if this does not interference with any rights of third parties.[6]

1 § 32(3) amended by LGBl. 2016 No. 406.
2 § 32(3a) inserted by LGBl. 2006 No. 99.
3 § 32(4) amended by LGBl. 2012 No. 26.
4 § 32a(1) inserted by LGBl. 2012 No. 26.
5 § 32a(2) inserted by LGBl. 2012 No. 26.
6 § 32a(3) amended by LGBl. 2012 No. 266.

§ 33

Where the requirements of § 42 StGB have been confirmed by a judicial decision, the civil claimant shall not have a right of subsidiary prosecution.

§ 34[1]

1) The private prosecutor, the civil claimant, the victim, and the jointly liable party as well as their legal representatives may conduct the case themselves or through an authorized representative. Unless laid down otherwise in this Act, such representatives shall exercise the procedural rights that are due to the represented party. The authorized person or entity may be a person licensed to act as a lawyer, a recognized institution for the protection of victims, or any other suitable person.

2) If the court considers this adequate, it may direct an absent private prosecutor, civil claimant, or jointly liable party to designate an authorized party resident at the court's seat.

Title VI

Notice, service, inspection of case files, and use of information technology[2]

§ 35[3]

1) Statements of termination from the court and from the Prosecution Service shall be published either by oral announcement or by service of a copy.

2) Oral announcements shall be put on the record. Any person who is the recipient of an oral announcement shall on request be provided with a copy in writing or in electronic form.

3) The files may be sent to the Prosecution Service and to the court for inspection of the statement of termination. In this case, the

1 § 34 amended by LGBl. 2012 No. 26.
2 Heading before § 35 amended by LGBl. 2012 No. 26.
3 § 35 amended by LGBl. 2008 No. 333.

Prosecution Service or the court shall document in the files in a verifiable manner the date of receipt of the files and the date of inspection.

§ 36[1]

1) Unless provided otherwise in this Act, service shall *mutatis mutandis* be subject to the *Zustellgesetz* (ZustG, Act on the Service of Official Documents) and §§ 87 and 91 ZPO.

2) Except in the cases of § 143(1) and § 295(2), the provisions of Art. 8, Art. 9(2), Art. 10(1), and Art. 12 ZustG shall be only applicable to subsidiary prosecutors, private prosecutors, civil claimants, other concerned parties (§ 354), and to authorized representatives by these persons.

3) Service shall be performed by direct delivery or by organs of a delivery service. The National Police shall be asked to serve documents only where this is indispensable in the interest of the administration of criminal justice.

§ 37[2]

1) As far as not provided otherwise in the individual case, service may be without acknowledgement of receipt.

2) Dispatch to an electronic address for service (Art. 2(1)(e) ZustG) shall be equivalent to service with acknowledgement of receipt.

3) Summonses and directions compliance with which may enforced by means of coercion or by other means, statements of termination whose service will trigger the time-limit to submit a resort to a higher court or a legal remedy to the court, and summonses of civil claimants, private prosecutors, and subsidiary prosecutors for the trial shall be served to the addressee personally (Art. 23 ZustG). Service to professional attorneys may always be with acknowledgement of receipt rather than personally.

4) As far as the accused or any other participant of the proceedings is represented by a defence counsel or by any other person, service shall be performed to such defence counsel or other representative. However, the summons for the trial in the first instance, the judgment *in absentia*,

1 § 36 amended by LGBl. 2008 No. 333.
2 § 37 amended by LGBl. 2008 No. 333.

and any notifications and notices in terms of §§ 22c(4), 22d(1) and (4), and 22f(1) and (3) shall always be served upon the accused or defendant directly and personally.

§ 38[1]

Repealed

§ 39[2]

1) If there is a legitimate legal interest, the court may grant access to the files and consent to copies (photocopies) being handed over even beyond the cases specifically listed in this Act as long as this does not conflict with overriding public or private interests.

2) For the purpose of anonymised evaluation for scientific research or for comparable studies that are in the public interest, the court may permit access to the files of proceedings, the making of copies (photocopies), and the transfer of data from these.

3) The prohibition of publication laid down in § 30a shall apply *mutatis mutandis*.

§ 39a[3]

1) Unless specifically provided otherwise concerning the processing of data, the provisions of the *Datenschutzgesetz* (DSG, Data Protection Act) shall apply.

2) When handling personal data (Art. 3(1)(a) DSG) including sensitive data, the public prosecutor and the National Police shall comply with the principles of legality and proportionality. At any rate, they shall preserve the legitimate interests in secrecy of the persons concerned and shall give priority to the confidential handling of the data. When handling sensitive data and personal profiles (Art. 3(1)(e) and (f) DSG), they shall take adequate measures to preserve the interests in secrecy of the persons concerned.

1 § 38 repealed by LGBl. 2008 No. 333.
2 § 39 amended by LGBl. 2012 No. 26.
3 § 39a inserted by LGBl. 2012 No. 26.

§ 39b[1]

1) Personal data shall be acquired from the person concerned and in such a manner that this can be detected by such person, provided that this does not endanger the proceedings or cause disproportionate procedural efforts.

2) If the acquisition of data happened in such a manner that it could not be detected by the person concerned, such person shall be notified of it forthwith. Such notification may be refrained from or delayed for the protection of overriding public or private interests.

3) As long as proceedings are pending, the parties and the other participants of the proceedings shall have the right - subject to their respective right to access the files - to be informed of any personal data being processed that concern them.

§ 39c[2]

The court, the public prosecutor, and the National Police may disclose personal data from pending proceedings for use in other pending proceedings if it can be assumed that the data might provide major insights.

§ 39d[3]

1) Incorrect data and data acquired contrary to the provisions of this Act shall be corrected or deleted immediately. The court, the Prosecution Service, and the National Police shall forthwith give notice of the correction to the authorities to which they have disclosed incorrect data.

2) Subject to the admissibility of further processing pursuant to other legal provisions, access to the first and last names of a person shall otherwise be prevented:

1. in the event of a conviction, no later than ten years from the time as from which the penalty has been executed; but where no penalty has been awarded or where a penalty has been awarded but suspended, from the time of conviction;

1 § 39b inserted by LGBl. 2012 No. 26.
2 § 39c inserted by LGBl. 2012 No. 26.
3 § 39d inserted by LGBl. 2012 No. 26.

2. in the event of acquittal, of the discontinuation of proceedings, or the (final) withdrawal from prosecution, no later than ten years from the decision.

3) All direct access data shall be deleted sixty years after the times given in Para. (2).

4) Personal data obtained exclusively as a result of an establishment of identity (§ 91a), a physical examination (§ 95a), or a molecular genetic examination (§ 95b) may only be processed as long as there is reason to fear - due to the way the offence was committed, to the personality of the person concerned, or to other circumstances - that this person is going to commit a punishable act with not just slight consequences. If the defendant has been finally acquitted or if the investigation has been discontinued without a reservation of later prosecution, this data shall be deleted. Other legal provisions, in particular the Police Act, and special provisions of international treaties shall remain unaffected.

5) As far as data that has been obtained by the surveillance of electronic communication may be used as evidence in criminal proceedings, such data may also be used in connected civil or administrative proceedings and for defence against judicially punishable acts subject to a penalty of more than one year of imprisonment as well as for defence against major danger to the life, limb, or freedom of a person or to substantial material and financial assets.

§ 40

1) The Government shall be notified of any initiation and discontinuation of criminal proceedings against persons who work in the civil service, members of a municipal council or any other representative body for the administration of public affairs or who have been awarded public titles or orders or decorations.

2) The same shall apply as to members of the clergy with the difference that the notification shall be to the bishop or the spiritual leader to whose parish the accused belongs.

Title VII
The investigation in general, joinder and severance of criminal cases

§ 41

1) It shall be the purpose of the investigation to ascertain the facts, find the perpetrator, the accomplices, and the participants, and to collect the suspicions and evidence for guilt on the one hand and the means to justify the accused on the other.

2) The ascertainment of the facts shall consist in finding out whether a punishable act which the court has learned about has in fact taken place and what the nature of such punishable act is in view of all its circumstances and effects. In particular, it shall be investigated whether the offence was committed deliberately or negligently; what aggravating and mitigating circumstances surrounded it; who may know about it; and what amount of damage was caused by it.

3) The investigating judge may initiate an investigation only for such punishable acts and against such persons as to which and whom an application to such effect has been submitted to him by a justified prosecutor.[1]

4) If the public prosecutor applies for the initiation of the investigation, he shall provide the investigating judge with the criminal complaint as well as with the evidence that has come to his attention and with the results of any preliminary inquiry that may have been initiated.[2]

5) The investigating judge shall decide by way of a ruling on the application to initiate the investigation.[3]

§ 42

The investigating judge shall investigate the punishable acts with the assistance of a sworn keeper of the minutes.

1 § 41(3) inserted by LGBl. 2007 No. 292.
2 § 41(4) inserted by LGBl. 2007 No. 292.
3 § 41(5) inserted by LGBl. 2007 No. 292.

§ 43

1) The prosecutor and the accused shall have the right to submit applications to the investigating judge concerning individual investigative measures, and the investigating judge shall decide on these. Otherwise, however, the investigating judge shall take action *ex officio* without waiting for further applications from the prosecutor, with the objective of finding the perpetrator and of determining the evidence serving the accused's conviction or defence as far as is required by the purposes of the investigation. [1]

2) Except for the cases regulated in this Act (§§ 69(2), 115a, 147(3)), the prosecutor, the civil claimant, the victim, and the defence counsel must not be present during the formal examination of the accused or of the witnesses by the investigating judge. The prosecutor and the defence counsel shall also have the right to be present during inspections, searches of premises, and the searching of papers, and to designate the items to which such investigative measures are to be extended. For this reason, the investigating judge shall as a rule notify the prosecutor and the defence counsel of the fact that such acts are going to take place; however, if there is imminent danger, the investigating judge shall carry out such investigative acts without the prior notification of said persons.[2]

§ 44

If it is necessary to consult court witnesses during an investigative measure, these must be of age, respectable persons not involved with the case, and they must affirm by handshake that they will direct their full attention at everything that will be done and said before them, will watch over correct recording, and will keep everything that they have learned during the investigative measure confidential until the trial. Calling in court witnesses shall only be necessary:

1. during an inspection;
2. during a search of premises and a personal search;
3. during the examination of the accused, if he so demands.

1 § 43(1) amended by LGBl. 2007 No. 292.
2 § 43(2) amended by LGBl. 2012 No. 26.

§ 45

It shall be a general civic duty to act as a court witness during investigative measures. This duty shall first of all be that of the inhabitants of the municipality in which the investigative measure is carried out.

§ 46

The investigating judge shall appoint the court witnesses subject to §§ 44 and 45 of this Act. The following persons shall be under no duty whatsoever to act as a court witness:

a) pastoral workers;

b) civil servants and officials;

c) teachers, healthcare professionals, and all whose professional work cannot be interrupted without infringement of the public service.

§ 47

1) All investigative measures shall be recorded; a sworn keeper of the minutes shall be present at all times in addition to the civil servant carrying out or administering the measure.

2) Any statements of persons outside a formal examination and other important events shall be recorded in writing in such a manner that their essential content can be verified. Such official memoranda shall be signed in all cases by the recording person and by other persons, if applicable. [1]

§ 48

1) The records of court hearings shall be recorded immediately when they are carried out and, where this is not feasible, directly afterwards.

2) Unless ordered otherwise (§ 202(4)), each record shall contain the location, the year and day of the recording, the persons present, the content of testimonies, and other material events during the official act, any applications that may have been submitted, and the signatures of the persons examined.[2]

1 § 47(2) inserted by LGBl. 2012 No. 26.
2 § 48(2) amended by LGBl. 2012 No. 26.

3) The questions shall be written down only insofar as this is necessary to understand the corresponding answer. Typically, only the essential content of answers shall be recorded, and in narrative form. Only where this is important for assessing the matter, where it can be expected that the record will have to be read in the trial, or where the person being examined so requests shall the testimony of the person being examined be put on the record using that person's own expressions and in such a manner that it is identifiable as a verbatim rendering of the testimony.[1]

4) The person leading the official act shall dictate the record aloud, so that the persons present can hear it. However, the person being examined shall be free to dictate his answer to the keeper of the minutes. If the person being examined misuses this right, it may be withdrawn from him by the judge. The record shall be written in full text. However, it shall be admissible to temporarily use shorthand or to record the record with a technical aid. At any rate, the fact of such procedure as well as any ruling that is announced shall be immediately noted in full text. Shorthand and audio recordings shall be converted into full text immediately, and if any of the participants so requires, the audio recording shall be played back before such transfer in addition; shorthand and audio recordings shall be subject to § 202(4).[2]

§ 49[3]

Every record shall be read to the persons examined or otherwise consulted or shall on request be handed over to them for reading, and the fact of such handing over and of the approval given shall be noted in the record. The record shall then be signed by the persons examined by affixing their signature or hand sign on each sheet, and the record shall be signed at its end by the officials present, the keeper of the minutes, the court witnesses consulted, and any other persons who took part. If the person examined refused to sign, this shall be noted in the record together with the reason for refusal.

1 § 48(3) amended by LGBl. 2012 No. 26.
2 § 48(4) inserted by LGBl. 2012 No. 26.
3 § 49 amended by LGBl. 2012 No. 26.

§ 50[1]

Nothing substantial may be deleted from, added to, or changed in what has been written down. Any deleted text shall still remain readable. Any substantial additions or corrections which a party being examined adds to his testimony shall be noted at the margin of the record or in an addendum and shall be approved and signed in the manner described in § 49. As far as the person being examined has the right to access the files, such person shall on request be provided with a copy or photocopy immediately unless this conflicts with legitimate interests of the proceedings or of third parties; § 30a shall apply.

§ 50a[2]

1) Following express information to such effect of the person being examined, it shall be admissible to make an audio or video recording of an examination as long as such recording covers the entire examination. Where a witness is being examined, this shall not be done if and as soon as the witness objects to such recording, without prejudice to special legal provisions (§§ 69, 115a, 195a, 197(3)).

2) In the event of a recording pursuant to Para. (1), a written summary of the content of the examination may be produced instead of a record, which summary the investigating judge shall sign and make part of the files. Furthermore, the rules of § 48 shall be applied to such summary.

§ 51

1) If the record consists of several sheets, these must be stapled together with the court seal added.

2) The investigating judge shall keep a directory in which all files of the investigation shall be recorded daily.

§ 52[3]

The person leading the official act shall be responsible for keeping order and decency. To this end, he shall have the authority to order

1 § 50 amended by LGBl. 2012 No. 26.
2 § 50a inserted by LGBl. 2012 No. 26.
3 § 52 amended by LGBl. 2012 No. 26.

away or remove from the official act either temporarily or for the entire duration of the official act any persons who despite prior admonition and threat of being sent away refuse to follow his instructions or behave aggressively or otherwise in a grossly inappropriate manner towards any person present. Furthermore, §§ 183(2), 184(2), and 185 shall apply *mutatis mutandis* in the investigation. However, the administrative fines mentioned there may only be imposed by the investigating judge. Fines may be imposed against legal counsels of the parties only if they are not subject to the disciplinary power of a professional association. Any such directions shall be recorded in the files.

§ 53

1) If a public authority learns of the suspicion of a punishable act that concerns its legal sphere of activity and is subject to *ex officio* prosecution, it shall be under the obligation of filing a criminal complaint with the public prosecutor or the National Police.[1]

2) There shall be no obligation to file a criminal complaint pursuant to Para. (1):

1. if the criminal complaint would inhibit an official activity the effectiveness of which depends on a personal relationship of trust, or
2. if and as long as there are sufficient grounds for the assumption that as a result of measures to make good the damage, the act will soon no longer be punishable.[2]

3) At any rate, the authority shall do everything necessary to protect the injured person or other persons from danger; if necessary, a criminal complaint shall be filed even in the cases of Para. (2).[3]

4) The duty of the National Police and of the courts to file criminal complaints as well as any duty laid down in other laws to file criminal complaints shall remain unaffected.[4]

1 § 53(1) amended by LGBl. 2004 No. 236.
2 § 53(2) amended by LGBl. 2004 No. 236.
3 § 53(3) amended by LGBl. 2004 No. 236.
4 § 53(4) amended by LGBl. 2012 No. 26.

§ 54

1) The courts in particular shall also be subject to the duty to file criminal complaints described in more detail in § 53.

2) The courts shall provide the public prosecutor and the criminal court (§ 12) with all necessary clarifications and with originals or certified copies of all files that these require.

§ 55[1]

1) Anyone who learns of a punishable act shall report it. Not only the Prosecution Service but also the investigating judge and the National Police shall accept criminal complaints. They shall forward the complaint to the Prosecution Service.

2) If there are sufficient reasons to assume that a person is carrying out, has just carried out, or is wanted for a punishable act, anyone may stop such person in an adequate manner. However, he shall report such stopping forthwith to the nearest available officer of the National Police.

§ 56

1) The public prosecutor shall review all criminal complaints of punishable acts that are subject to *ex officio* prosecution and to follow the traces of such punishable acts as he learns of. He shall also contribute to the discovery of unknown perpetrators by investigating suspicions leading thereto.

2) Where criminal complaints from an anonymous source or from a completely unknown person contain specific circumstances describing the punishable act in a credible manner, these circumstances shall be investigated; however, in doing so, all public attention shall be avoided and the highest amount of care shall be taken to preserve of the honour of the persons being accused.

3) Where the Prosecution Service learns by criminal complaint or by any other kind of report of a criminal act that is not just subject to prosecution at an involved party's request, it shall effect the examination of such person, follow the complaint or report with the assistance of the

1 § 55 amended by LGBl. 2012 No. 26.

National Police until its origin, and make certain as much as possible whether this constitutes grounds for a suspicion.[1]

4) Repealed[2]

§ 57

1) As long as there is no application from the public prosecutor, the investigating judge shall only carry out such investigative measures as cannot be delayed without endangering the purpose or exceeding a legal time-limit. He shall inform the public prosecutor of all measures carried out and shall then await the latter's applications.

2) The investigating judge shall with the utmost speed forward to the public prosecutor the records taken of any investigative measures pursuant to Para. (1), so that the public prosecutor is able to submit applications.

§ 58

Where a criminal complaint originates from an anonymous or unknown person but contains specific circumstances credibly describing the punishable act, these circumstances shall be investigated.

§ 59

1) Where a punishable act has left traces, these shall be ascertained in a suitable manner, in particular by inspection pursuant to the provisions on inspection contained in the next Title below.

2) Thus, proper care shall be taken to ensure that until such ascertainment, such traces be left in the state they were in at the time when the punishable act was discovered, as far as this is possible without greater damage.

§ 60

1) Items concerning which or using which the punishable act was committed or which the perpetrator probably left at the scene of the

1 § 56(3) amended by LGBl. 2012 No. 26.
2 § 56(4) repealed by LGBl. 2012 No. 26.

offence, and generally all items which are to be recognized by the accused or by witnesses or which may serve in any other way to build evidence for the case shall be impounded by the court as far as this is possible. They shall either be put into an envelope to be closed with the court seal, or a court sign protected against planting or confusion shall be affixed to them.

2) If the items found include items consecrated for religious service, the court shall ensure that these are separated from all other items and are kept in a suitable manner.

§ 61

1) The investigating judge shall examine all persons who are probably able to provide information on the circumstances of the offence or on the identities of persons who were involved in it as well as the manner of such involvement, and he shall in particular also examine the person injured by the punishable act.

2) Persons who have already been interrogated may nonetheless be examined anew by the investigating judge as far as this appears relevant to supplement or clarify their previous testimonies.

§ 62

If the damage or lost profit caused by a punishable act cannot be reliably determined from the injured party's testimony or if there are reasons to suspect that the injured party estimated his damage in a too high amount, the amount of damage shall be determined by examining witnesses or expert witnesses in cases where it has an effect on the classification of the offence as a crime, on the penalty, or on the awarding of compensation.

§ 63

The investigating judge shall have any documents that are not written in the German language and are relevant for the investigation translated by a sworn translator and put them into the files together with the translation.

§ 64[1]

1) The investigating judge shall discontinue the investigation by way of a direction as soon as the prosecutor withdraws from criminal prosecution.

2) Except for this case, the investigation may only be discontinued by way of a ruling of the investigating judge (§ 66) or the Court of Appeal.

§ 65

1) If the investigation is discontinued, the prosecutor, the victim, the civil claimant, and the accused shall be informed of this; if the latter is in detention, he shall be released immediately.[2]

2) At the accused's request, an official certificate shall be issued to him stating that there is no reason for judicial prosecution against him.

3) Repealed[3]

§ 66[4]

The investigation shall be discontinued by way of a ruling of the investigating judge if it is clear on the basis of the results of the inquiries that there are no facts in the sense of a punishable act, or if all reasons for suspicion against the accused have been mended, or if it is not expected that further inquiries will result in any better clarification as to the facts or as to the perpetrator.

§ 67

1) The jurisdiction of a court for the direct perpetrator shall also lead to such court's jurisdiction for the other participants (§ 12 StGB).

2) If the same accused is charged with several punishable acts, or if several persons participated in the same punishable act, or if any of these persons has committed punishable acts in association with other persons, the criminal proceedings shall as a rule be conducted against all these

1 § 64 amended by LGBl. 2007 No. 292.
2 § 65(1) amended by LGBl. 2012 No. 26.
3 § 65(3) repealed by LGBl. 2012 No. 26.
4 § 66 amended by LGBl. 2007 No. 292.

persons and for all these punishable acts at the same time, and judgment shall be rendered on all associated criminal cases.

3) However, the court may decree on application or *ex officio* that the criminal proceedings shall be conducted and concluded separately with regard to individual punishable acts or individual accused persons if this appears expedient to prevent the proceedings from being delayed or becoming more cumbersome or to shorten the time of detention for an accused.

4) In each such case, the prosecutor shall immediately be demanded to declare whether he reserves prosecution concerning the separated counts raised against the same accused. If he does so, the proceedings concerning such counts shall be continued and completed without undue delay; if he does not, the investigation concerning these counts shall be discontinued.

§ 68

If the punishable acts in terms of § 67(2) include punishable acts for which there is a special option for resort to a foreign instance of appeal as a result of international treaties, the criminal proceedings for these punishable acts shall be conducted separately.

Title VIII
Evidence by inspection and expert witnesses

I. Evidence by inspection and consultation of expert witnesses in general

§ 69

An inspection shall be carried out as often as this seems necessary to clarify a circumstance that is relevant for the investigation. There shall always be no less than two court witnesses, and if it appears expedient for the recognition of the items to be investigated or for receiving information, the accused shall be brought in, too. The accused's defence counsel cannot be prohibited from taking part in the inspection; also, an

already appointed defence counsel shall be informed that the inspection will be carried out unless there are special concerns.

2) If in the course of an inspection a person is examined in the process of reconstructing the probable events of the offence at the scene of the offence and an audio or video recording is made of such examination (reconstruction of the offence), the public prosecutor, the accused, the victim, the civil claimant, and their representatives shall be given the opportunity to take part. They shall have the right to ask questions and to demand supplementary investigations and statements.[1]

3) The accused may be temporarily excluded from participation in terms of Para. (2) if his presence might endanger the purpose of the proceedings or if this is required by special interests (§ 197(1)). The victim and the civil claimant shall temporarily be prohibited from taking part if there is a concern that their presence might influence the accused or witness in making a free and full testimony. In these cases, the participants concerned shall receive a copy of the record forthwith. However, the participation of the defence counsel must not be restricted. Furthermore, § 50a shall apply.

§ 70

The record to be kept on the inspection shall be written with such specificity and in such detail that it permits a full and true view of the inspected items. For this purpose, drawings, plans, or sketches shall be added to the record if necessary; the measurements, weights, sizes, and local circumstances shall be described using well-known and unequivocal terms.

§ 71

1) An expert witness shall be brought in for the inspection if necessary.

2) Two expert witnesses shall be brought in only where this is necessary due to the difficulty of observation or assessment.

1 § 69(2) inserted by LGBl. 2012 No. 26.

§ 72

1) The choice of expert witness shall be up to the investigating judge. If experts are permanently employed with the court for a certain subject, he shall consult others only if there is imminent danger or if the permanently employed experts are prevented by special circumstances or appear questionable in the individual case.

2) If an expert witness does not follow the summons issued to him or if he refuses to take part in carrying out the inspection, the investigating judge may impose a fine of up to 1,000 Swiss francs upon him.

§ 73[1]

Persons who must not be examined as witnesses in an investigation or who must not be required to take an oath or who are in a special relationship with the accused or the injured party as listed in § 107(1)(1) shall not be used as expert witnesses on penalty of voidness of the act. As a rule, both the prosecutor and the accused shall be informed before the inspection is carried out; if substantial objections are raised and if there is no imminent danger, other expert witnesses shall be brought in.

§ 74

1) Expert witnesses who have already sworn an oath in general shall be reminded of their oath by the investigating judge before the official act commences.

2) Before evidence is taken by inspection, any unsworn expert witnesses shall swear under oath that they will carefully investigate the object of the inspection, that they will record their observations faithfully and completely, and that they will report their findings and opinion to the best of their knowledge and belief and according to the rules of their science or skill.

§ 75

1) The subjects of the inspection shall be investigated and examined by the expert witnesses in the presence of the court persons except where the latter consider it appropriate for reasons of moral decency to leave or where the required perceptions - such as in the examination of poisons - can only be made by continued observation or long-term experiments.

1 § 73 amended by LGBl. 2012 No. 266.

2) However, during any such incidence of the court persons leaving the location of the inspection, the credibility of the examination to be carried out by the expert witnesses shall be ensured by suitable measures.

3) If the expert witnesses' procedure can be expected to destroy or change one of the items to be examined by them, part of such item shall remain in the court's custody as far as this seems feasible.

§ 76

1) The investigating magistrate shall lead the inspection. Taking into account as much as possible the applications submitted by the prosecutor and by the accused or his defence counsel, he shall determine the items at which the expert witnesses are to direct their observations and shall ask the questions the answers to which he considers necessary. The expert witnesses may demand that they be given information from the files or by the examination of witnesses to clarify certain points to be specified by them, which they consider to be required for the expert's opinion to be rendered.

2) If the expert witnesses deem access to the files of the investigation to be indispensable for rendering a thorough expert's opinion, the files may be disclosed to them if and as far as there are no special concerns against this.

§ 77

The information given by the expert witnesses on their perceptions (findings) shall be recorded by the keeper of the minutes forthwith. The expert witnesses may either put the expert's opinion and the grounds supporting it on the record forthwith or reserve the rendering of a written expert's opinion, for which they shall be given an adequate time-limit.

§ 78

If the findings are obscure, unspecific, contradictory (either inherently or with ascertained circumstances of the case), or if the information given by two experts on the facts perceived by them deviate substantially from each other, and if such concerns cannot be removed by examining the expert witnesses once again, the inspection shall be repeated, if possible using the same expert witness or witnesses. If necessary, other expert witnesses may be brought in instead of them.

§ 79

If there are such contradictions or defects with regard to the expert's opinion or if it turns out that it contains conclusions which have not

been drawn correctly from the given premises, and if these concerns cannot be removed by examining the expert witnesses once again, an expert's opinion from one or more other expert witnesses shall be obtained.

II. Procedure for the investigation of killings and bodily harm

§ 80

1) If a death is suspected to have been caused by a punishable act, a post-mortem examination and autopsy must be carried out before burial.

2) If the corpse has already been interred, it shall be exhumed for this purpose if under the given circumstances a substantial result may still be expected from this and there is no imminent risk for the health of the persons who have to take part in the post-mortem examination.

3) Before the autopsy is started, the corpse shall be described in detail and its identity shall be put beyond any doubt by the interrogation of persons who knew the deceased. If necessary, these persons shall be demanded to give a detailed description of the deceased before the acknowledgement of identity. But if the deceased is completely unknown, a detailed description of the corpse shall be published in public newspapers.

4) In the post-mortem examination, the investigating judge shall ensure that the position and condition of the corpse, the place where and the clothing wherein it was found, as well as anything which under the circumstances might be of importance for the investigation be accurately noted. In particular, wounds and other external traces of suffered violence shall be accurately noted by their number and condition, the means and tools by which they were probably caused shall be stated, and any tools found and possibly used shall be compared with the injuries found.

§ 81

1) The post-mortem examination and autopsy shall be carried out by one, if necessary by two doctors (§ 71).

2) The doctor who treated the deceased for the illness possibly preceding his death shall be asked to be present during the autopsy if this may contribute to clarifying the facts and may happen without delay.

§ 82

1) The expert's opinion shall state what in the subject case was the direct cause of death, and where such cause originated from.

2) If injuries are perceived, it shall be discussed in particular:

1. whether these were inflicted upon the deceased by an act of another persons, and if so,
2. whether such act caused death
   a) as a result of the general nature of such act alone,
   b) as a result of the specific personal characteristics or of any special condition of the deceased,
   c) as a result of the random circumstances under which the act was carried out, or
   d) as a result of interim causes that occurred randomly but were caused by or originated from the act, and finally, whether
   e) death could have been prevented by proper aid in time.

3) Insofar the expert's opinion does not discuss all circumstances relevant for the decision, the investigating judge shall ask particular questions on this of the expert witnesses.

§ 83

If there is the suspicion of infanticide, it shall be investigated whether the child was born alive in addition to the investigations stated above.

§ 84

If there is the suspicion of poisoning, a chemist shall be consulted in addition to a doctor to ascertain the facts if necessary. Depending on the circumstances, the investigation of the poisons proper may also be carried out by the chemist alone at a location suitable for this. § 71 shall apply *mutatis mutandis*.

§ 85[1]

In the event of physical damage, too, the examination of the victim shall be carried out by a doctor as an expert witness, who shall after a detailed description of the injuries also state in particular which of the existing injuries or health disorders alone or by their interaction are to be considered light, serious, or life-threatening (absolutely or under the special circumstances of the case), what effect damage of this kind will typically have, and what effects were caused in the subject individual case, and also by what means or tools or in what manner such damage was inflicted. § 71 shall apply *mutatis mutandis*.

§ 86

If a woman is to be examined, a female doctor shall be consulted if possible.

III. Procedure in cases of doubt regarding mental disorders or criminal responsibility

§ 87

1) If doubts arise as to whether the accused is of sound mind or whether he suffers from a mental disorder as a result of which he might not be criminally responsible, the examination by two doctors of the accused's state of mind and emotional state shall be effected at any time.

2) These doctors shall report on the result of their observations, summarize all facts influencing the assessment of the accused's state of mind and emotional state, examine them by significance both individually and by interaction; and if they consider the accused to suffer from a mental illness, they shall determine the nature of the illness, its type and degree, and to discuss according to the files and according to their own observations the influence which the illness exerted and still exerts on the imagination, drives, and acts of the accused, and whether and in what amount such clouded state of mind existed at the time of the offence committed.

1 § 85 amended by LGBl. 2012 No. 266.

IV. Examination of handwriting

§ 88

If doubts arise as to the authenticity of a document or if it is to be determined whose hand produced a certain handwriting, a comparison with documents that are authentic beyond any doubt may be carried out by one or two expert witnesses.

V. Procedure for the investigation of punishable acts against the security of transactions with money, securities, and stamps

§ 89

1) In cases of punishable acts against the security of transactions with money, securities, and stamps, the investigating judge shall normally hand over to the Government the items that form the subject of the investigation in order to receive the verdict on their authenticity or lack of authenticity and the additional information as to in what manner the forgery was carried out, whether prepared tools facilitating reproduction were used, and finally whether and where such forged items have already been encountered.

2) This is also where the forged items and all tools, material, and other corresponding items originating from the punishable act shall be sent after the final conclusion of the criminal proceedings. As soon as these items are required for a new official act in terms of criminal justice, they shall be demanded back.

VI. Procedure for the investigation of arson

§ 90

In the case of arson, it shall be ascertained in particular in what manner the fire has been started, and whether and which flammable material was used; also, the place where and the time when the fire was started, and whether it happened by day or by night; whether it was

started under such circumstances that a conflagration of other people's property was actually caused or whether there was at least the risk danger of such conflagration; whether the life of any person was at risk, and whether - if broken out - it would have been easy for the fire to spread; finally, where a fire actually broke out, the amount of the damage caused by it shall be determined.

VII. Procedure for the investigation of other damage

§ 91

In the case of punishable acts by which damage to or risk for life or property was caused in any other way than just above mentioned, the inspection shall primarily serve to ascertain the nature of the violence or cunning used, the means or tools used, the amount of the damage or loss of profit caused or intended, or the risk for life, limb, and physical safety of persons and for other people's property.

Title IX

Identification, searches of premises and persons, physical and molecular genetic investigations, seizure, surveillance of electronic communication, surveillance, undercover operations, undercover transactions, and protection of clerical and professional secrecy [1]

I. Identification, searches of premises and persons, physical and molecular genetic investigations[2]

§ 91a[3]

1 Heading before § 91a inserted by LGBl. 2012 No. 26.
2 Heading before § 91a inserted by LGBl. 2012 No. 26.
3 § 91a inserted by LGBl. 2012 No. 26.

1) The identification of persons, that is the ascertainment and determination of data (Art. 3(1)(a) DSG) which distinctively characterizes a specific person, shall be admissible if it can be assumed on the basis of certain circumstances that a person participated in an offence, may be able to provide information on the circumstances of the committing of an offence, or has left traces that may further the investigation.

2) The National Police shall have authority to ascertain a person's names, gender, date of birth, place of birth, profession, and residential address, to determine the height of the person, photograph the person, and record the person's voice and fingerprints as far as this is necessary to determine such person's identity.

3) Every person shall be obliged to cooperate in a manner adequate under the circumstances in determining his identity; the National Police shall on request state the reason for the identification.

4) If the person does not cooperate in the identification or if the person's cannot be determined immediately for other reasons, the National Police shall have the right to carry out a search of the person pursuant to § 92(2) on their own initiative.

§ 92[1]

1) A search of premises, i.e. a search of the residence or other premises forming part of the household, shall be permissible if there is a justified suspicion that a person suspected of a crime or misdemeanour has concealed himself within it or that there are items or traces there which may be of significance or are to be evaluated for the investigation.

2) A personal search, i.e. a search of the clothing of a person and the items which the person has with him, shall be permissible if such person has been arrested or caught in the act, is a suspect of an offence and it must be assumed as a result of certain facts that the person has with him or has traces on him of items which are subject to seizure, or if as a result of an offence such person has suffered injuries or could have suffered other physical changes the ascertainment of which is necessary for the purposes of criminal proceedings.

1 § 92 amended by LGBl. 2012 No. 26.

§ 93

1) A search shall normally be carried out only after the prior interrogation of the person with or concerning whom it is to take place and only insofar as the interrogation has neither caused the voluntary delivery of what is being sought nor the removal of the reasons causing the search.

2) Such interrogation may be dispensed with in the case of persons of infamous reputation or where there is imminent danger or where the premises searched are open to the public.

3) Normally, the search may only be conducted on the basis of a judicial warrant. Such warrant shall be served upon the person concerned either immediately or within the next twenty-four hours.[1]

4) Searches of land, facilities, or containers that are not open to the public and do not form part of the household (§ 92(1)) and personal searches in terms of § 92(2) may be carried out by the National Police on their own initiative.[2]

5) If however, the observation of the unclothed body of a person turns out to be necessary, this shall be ordered by the court; but if there is imminent danger, the National Police may carry out this kind of search, too, without a warrant. Such a search must always be carried out by a person of the same sex or by a doctor, the dignity of the person to be searched being preserved.[3]

6) In no case may the victim be forced to be searched against his will.[4]

§ 94

1) For the purpose of the administration of criminal justice, a search of premises may also be carried out by the National Police on its own initiative if it has been ordered that a person be brought before the court or arrested, or where a person is caught in the act, is made suspect of a punishable act by public pursuit or public call, or is found to be in possession of items that indicate participation in a punishable act.[5]

1 § 93(3) inserted by LGBl. 2012 No. 266.
2 § 93(4) inserted by LGBl. 2012 No. 266.
3 § 93(5) inserted by LGBl. 2012 No. 266.
4 § 93(6) inserted by LGBl. 2012 No. 266.
5 § 94(1) amended by LGBl. 2012 No. 26.

2) In this case and if the National Police carries out a search pursuant to § 93(4) und (5), a confirmation that the search has been conducted and of the reasons for such search shall be served upon the person concerned on his request immediately or no later than within the next twenty-four hours.[1]

§ 95

1) Searches of premises shall always be carried out whilst avoiding any unnecessary attention and any avoidable and unnecessary harassment or inconvenience of the persons concerned, with the best possible protection of their reputation and of their private secrets that are not connected with the subject of the investigation, and with the most diligent preservation of morals and decency.[2]

2) Normally, the search of premises shall be conducted in the presence of the investigating judge. In minor cases, the investigating judge may have such investigative measures carried out by the National Police.[3]

3) The person concerned shall have the right to bring in a person of his trust; § 115(2) shall apply to such confidant *mutatis mutandis*. The holder of the facility to be searched shall be requested to be present during the search. If the holder is prevented or absent, such request shall be issued to an adult member of his family or lacking such, to an unconcerned trustworthy person. This may only be refrained from in the event of imminent danger. In the event of a search of facilities exclusively dedicated to the professional purposes of any of the persons mentioned in § 108(1) Items (2) to (4), a representative of the professional association concerned or the owner of the media, resp., or a representative designated by him shall be brought in.[4]

4) In addition, a keeper of the minutes and two court witnesses shall always be brought in to the search.[5]

5) The record made of the search shall be signed by all persons present. The person concerned shall on request be provided with a copy (photocopy) of the record. If nothing suspicious has been found, a

1 § 94(2) amended by LGBl. 2012 No. 266.
2 § 95(1) amended by LGBl. 2012 No. 266.
3 § 95(2) amended by LGBl. 2012 No. 266.
4 § 95(3) amended by LGBl. 2012 No. 26.
5 § 95(4) amended by LGBl. 2012 No. 26.

confirmation to such effect shall on request be issued to the person concerned.[1]

§ 95a

1) A body search, i.e. a body cavity search, the taking of a blood sample, and any other infringement of the physical integrity of a person shall be admissible where[2]

1. it must be assumed as a result of certain facts that a person has left traces the securing and investigation of which is essential for clarifying an offence,[3]
2. it must be assumed as a result of certain facts that a person is concealing items within his body that are subject to seizure, or[4]
3. facts that are of crucial for the investigation of an offence or for assessing mental soundness cannot be ascertained in any other way.[5]

2) A body search in terms of Para. (1) Item (1) shall also be admissible against persons who belong to a group of persons that can be individualized by certain characteristics, and where it must be assumed as a result of certain facts that the perpetrator is within that group of persons and the investigation of a crime would otherwise be rendered substantially more difficult.[6]

3) A body search shall be ordered by the investigating judge on application of the Prosecution Service. The National Police may carry out a cheek swab sample on their own initiative unless it is to be taken for the reasons mentioned in Para. (2) or an order from the court would be required under the Treaty between the Principality of Liechtenstein and the Swiss Confederation on Cooperation concerning the Swiss Information Systems for Fingerprints and DNA Profiles.[7]

4) Surgical interventions and all interventions that might cause a health disorder of more than three days' duration shall be inadmissible. Other interventions may be carried out if the person to be examined has given his express consent, having received detailed information on the

1 § 95(5) amended by LGBl. 2012 No. 26.
2 § 95a(1) introductory sentence inserted by LGBl. 2012 No. 26.
3 § 95a(1)(1) inserted by LGBl. 2012 No. 26.
4 § 95a(1)(2) amended by LGBl. 2012 No. 266.
5 § 95a(1)(3) inserted by LGBl. 2012 No. 26.
6 § 95a(2) inserted by LGBl. 2012 No. 26.
7 § 95a(3) inserted by LGBl. 2012 No. 26.

possible consequences. The taking of a blood sample or a similarly minor intervention in which the occurrence of other than minor consequences is excluded may be carried out without the consent of the person concerned if

1. the person is suspect of having committed an offence against life or limb by performing a dangerous activity under the influence of alcohol or any other intoxicating substance, or
2. the physical examination of the accused is required to investigate an offence subject to a penalty of more than five years of imprisonment or a crime pursuant to Title 10 of the Criminal Code.[1]

5) Any physical examination shall be carried out by a doctor; however, a cheek swab sample may also be taken by any other person specifically trained for this purpose. Furthermore, the provisions of §§ 93(1), 94(2), 95(1), (3), and (5) on searches shall apply *mutatis mutandis*.[2]

6) On penalty of voidness, the results of a physical examination may only be used as evidence where

1. the requirements for a physical examination were met,
2. the physical examination was lawfully ordered, and
3. such use serves to prove an offence for which the physical examination was or could have been ordered.[3]

7) The results of a physical examination which was carried out for other reasons than criminal proceedings may be used as evidence in criminal proceedings only where this is required to prove an offence for which the physical examination could have been ordered.[4]

§ 95b[5]

1) For the purpose of investigating an offence, it shall be admissible to examine biological traces on the one hand and material that pertains or probably pertains to a specific person on the other by methods of molecular genetics in order to associate the trace with a person or to

1 § 95a(4) inserted by LGBl. 2012 No. 26.
2 § 95a(5) amended by LGBl. 2012 No. 266.
3 § 95a(6) inserted by LGBl. 2012 No. 26.
4 § 95a(7) inserted by LGBl. 2012 No. 26.
5 § 95b inserted by LGBl. 2012 No. 26.

determine the identity or ancestry of a person, and to match the data with the results of molecular genetic examinations that were obtained on the basis of other legal provisions.

2) A molecular genetic examination, i.e. the determination of those parts in a person's DNA that serve identification, shall require an order from the investigating judge unless it is merely a biological trace at the scene of the offence or a sample taken from a person in a non-invasive manner (§ 95a(3) last sentence); the National Police may have these examined on their own initiative.

3) A Liechtenstein or foreign forensic institution or laboratory shall be commissioned with molecular genetic examination. The material to be examined shall be delivered to such institution or laboratory in anonymised form. It shall generally be ensured that data from molecular genetic examinations can be associated with a specific person only as far as this is necessary for the purpose of the examination (Para. (1) and (4)).

4) Sample material that pertains or probably pertains to a specific person and the results of the examination may be used and processed only as long as a match with the trace or the determination of identity or ancestry is not impossible; it shall then be destroyed. Other legal provisions, in particular those of the Police Act, and special rules based on international treaties shall remain unaffected.

5) Data obtained on the basis of this provision shall be transferred to the National Police at the latter's request as far as the recording and processing of such data would be admissible under other rules.

II. Seizure

§ 96

1) Where items are found that may be of importance for the investigation or which are subject to confiscation or sequestration, these shall be recorded in an inventory and put in judicial custody or judicial safekeeping or seized (§ 60).[1]

1a) The seizure of items for reasons of evidence shall be inadmissible and shall at any rate be lifted on request of the person concerned as far as and as soon as the purpose as evidence can be fulfilled by image, audio, or other recordings or by copies of written documentation or by

1 § 96(1) amended by LGBl. 2016 No. 162.

electronically processed data and if it is not to be assumed that the items themselves or the originals of the seized information will have to be inspected during the trial. If applicable, seizure shall be limited to the recordings and copies.[1]

2) Everybody shall be obliged (§ 9(4)) to hand over on request any items that are to be seized - in particular including documents - or enable seizure in another way. If the surrender of an item the possession of which has been admitted or has been proven otherwise is refused and if such surrender cannot be effected by way of a search of premises, the holder may - unless he is himself a suspect of the offence or is privileged from testifying - be caused to deliver the item by a coercive fine of up to 10,000 Swiss francs and, if refusal continues and the case is important, by coercive imprisonment for up to six weeks (§ 9(5) and (6)).[2]

2a) Where information saved on data carriers is to be seized, everybody must grant access to this information and on request hand over an electronic data carrier in a commonly used file format or permit such data carrier to be produced. Also, he shall suffer the making of a backup copy of the information stored on the data carriers.[3]

3) Where the person obliged to hand over items or information is not himself suspect of the offence, such person shall on request be reimbursed for all reasonable costs that he necessarily incurred as a result of the separation of documents or other items relevant as evidence from others or as a result of the delivery of copies (photocopies, recordings).[4]

4) Seizure shall be discontinued as soon as its requirements cease to exist. Such discontinuation shall happen by returning the seized items or by destroying the recordings and copies.[5]

§ 96a

1) Even if there is no imminent danger (§ 10(1)), the National Police shall be entitled to seize objects on their own initiative,[6]

1. if those objects[7]

   a) are not subject to anyone's power of disposal,[8]

1 § 96(1a) inserted by LGBl. 2012 No. 26.
2 § 96(2) amended by LGBl. 2012 No. 26.
3 § 96(2a) inserted by LGBl. 2012 No. 26.
4 § 96(3) inserted by LGBl. 2003 No. 237.
5 § 96(4) inserted by LGBl. 2012 No. 26.
6 § 96a(1) introductory sentence inserted by LGBl. 2012 No. 26.
7 § 96a(1)(1) introductory sentence inserted by LGBl. 2012 No. 26.
8 § 96a(1)(1)(a) inserted by LGBl. 2012 No. 26.

b) were taken from the injured party through the offence,[1]

c) were found at the scene of the offence and might have been used to commit the offence or might have been intended for that purpose, or[2]

d) are of little value or can easily be replaced on a temporary basis,[3]

2. if the possession of such objects is generally prohibited (§ 356a(1)), or[4]

3. are found on a person arrested on the grounds of § 127(1)(1) or found in a search the National Police are permitted to carry out on their own accord (§ 93(4)).[5]

2) § 96 shall apply *mutatis mutandis* to the securing of such objects.[6]

§ 97

If objects are found during a search of premises or persons that indicate the commission of a punishable act other than the act for which the search was conducted, then such objects shall be seized if the act is subject to prosecution *ex officio*; however, a separate record must be compiled on such seizure and immediately communicated to the public prosecutor. If the public prosecutor does not apply for the initiation of criminal proceedings, the seized objects shall be returned immediately.

§ 97a

1) On application by the Prosecution Service, the court must give the following orders in order to protect the forfeiture (§ 20 StGB) or extended forfeiture (§ 20b StGB) if it is to be feared that collection would otherwise be endangered or considerably impeded:[7]

1. the seizure, custody and administration of tangible movable items, including the depositing of money,

1 § 96a(1)(1)(b) amended by LGBl. 2012 No. 266.
2 § 96a(1)(1)(c) inserted by LGBl. 2012 No. 26.
3 § 96a(1)(1)(d) inserted by LGBl. 2012 No. 26.
4 § 96a(1)(2) inserted by LGBl. 2012 No. 26.
5 § 96a(1)(3) amended by LGBl. 2012 No. 266.
6 § 96a(2) inserted by LGBl. 2012 No. 26.
7 § 97a(1) introductory sentence amended by LGBl. 2016 No. 162.

2. the judicial prohibition of the alienation or pledging of tangible movable items,
3. the judicial prohibition of the disposition of credit balances or other assets,
4. the judicial prohibition of the alienation, encumbrance, or pledging of real estate or rights registered in the Land Register.

As a result of to the prohibition in accordance with Item (3), the State acquires a pledge with regard to the credit balances and other assets.[1]

2) The order may also be issued if the exact amount to be secured pursuant to Para. (1) is not yet certain.[2]

3) The order may provide for a certain amount of money the depositing of which will suspend the enforcement of the order. Once the deposit has been made, the order shall be lifted in this respect at the request of the party concerned. The amount of money shall be assessed so that the presumable forfeiture or the presumable extended forfeiture is covered.[3]

4) The court shall lay down a period of time not exceeding two years for which the order given will be valid. On application, this time-limit may be extended by a maximum of one year each.[4]

5) The order shall be lifted as soon as the circumstances under which it has been given have lapsed, in particular also if it is to be assumed that the forfeiture or extended forfeiture will not take place or if the period determined in accordance with Para. (4) has expired.[5]

6) A ruling deciding on the order or its cancellation may be appealed by objection to the Court of Appeal by the Prosecution Service, the accused, and any persons otherwise concerned by its issuing (§ 354).[6]

1 § 97a(1) amended by LGBl. 2000 No. 257 and LGBl. 2003 No. 167.
2 § 97a(2) amended by LGBl. 1998 No. 174.
3 § 97a(3) amended by LGBl. 2016 No. 162.
4 § 97a(4) amended by LGBl. 2016 No. 162.
5 § 97a(5) amended by LGBl. 2016 No. 162.
6 § 97a(6) amended by LGBl. 1998 No. 174.

III. Search and seizure of documents

§ 98

1) When searching documents, it must be ensured that unauthorized persons do not gain knowledge of their content.

2) Documents that have been taken under judicial custody and that cannot be recorded immediately must be put into an envelope to be closed with the seal of the court. Any persons concerned who are present during the search shall also be allowed to add their seal. When the seals are to be broken, the person concerned shall be summoned to attend. If he does not respond to such a summons or if the summons cannot be served due to his absence, the seals shall be broken nonetheless.[1]

§ 98a

1) Banks, investment firms, insurance companies, asset management companies, management companies under the UCITSG (*Gesetz über bestimmte Organismen für gemeinsame Anlage in Wertpapieren*, Act on Undertakings for Collective Investment in Transferable Securities) and the IUG (*Gesetz über Investmentunternehmen*, Act on Investment Undertakings), and managers of alternative investment funds (AIFM) under the AIFMG (*Gesetz über die Verwalter alternativer Investmentfonds*, Act on Alternative Investment Fund Managers) (hereinafter collectively: "Institutions") shall upon court ruling to such effect do the following if this is necessary in the investigation of a case of money laundering in terms of the Criminal Code, a predicate offence to money laundering, or an offence in connection with organized crime:[2]

1. disclose the name, other data known to them about the identity of the holder of a business relationship, and such person's address;[3]

2. disclose whether a suspect person maintains a business relationship connection with that institution, is a beneficial owner or authorized person of such business relationship and, to the extent this is the case, provide all information necessary to identify that business

1 § 98(2) amended by LGBl. 2012 No. 26.
2 § 98a(1) introductory sentence amended by LGBl. 2016 No. 53.
3 § 98a(1)(1) inserted by LGBl. 2003 No. 237.

relationship and deliver all documentation concerning the identity of the holder of the business relationship and his power of disposal;[1]

3. surrender all documents and other material concerning the type and scope of the business relationship as well as business transactions and other business events related to such business relationship from a certain past or future period of time.[2]

The same shall apply where it must be assumed as a result of certain facts that the business relationship was or is being used for the transaction of a pecuniary advantage that is subject to forfeiture (§ 20 StGB) or extended forfeiture (§ 20b StGB).[3]

1a) Under the requirements stated in Para. (1), persons working for Institutions must testify as a witness on facts that they have been entrusted with or have had access to on the basis of the business relationship.[4]

2) It shall be possible to surrender copies of documents and other material instead of their originals if there is no doubt that those are true copies. If data carriers are used, the Institution shall deliver or have produced permanent copies that are readable without any additional aids; if electronic data processing is used to manage the business relationship, an electronic data carrier in a common data format may be surrendered. § 96(3) shall apply *mutatis mutandis*.[5]

3) A ruling pursuant to Para. (1) shall be served upon the Institution in any event. Service to the other persons with power of disposal that are obvious and have become known from the business relationship may be delayed as long as such service would endanger the purpose of the investigation. The Institution shall be notified of this and must for the time being maintain secrecy towards clients and third parties with respect to all facts and processes associated with the judicial order. Under these conditions, it shall also be prohibited for persons working for the Institution to inform the contract partner or third parties about pending investigations.[6]

4) If the Institution is unwilling to deliver certain documents or other material or is unwilling to provide certain information, procedure shall

1 § 98a(1)(2) inserted by LGBl. 2003 No. 237.
2 § 98a(1)(3) inserted by LGBl. 2003 No. 237.
3 § 98a(1) final sentence amended by LGBl. 2016 No. 162.
4 § 98a(1a) amended by LGBl. 2013 No. 40.
5 § 98a(2) amended by LGBl. 2013 No. 40.
6 § 98a(3) amended by LGBl. 2013 No. 40.

be as described in §§ 96 et sqq. *mutatis mutandis*. This shall not affect the prohibition to give notice pursuant to Para. (3).[1]

IV. Seizure and opening of letters and other consignments

§ 99[2]

If the accused is already serving a term of imprisonment of more than one year due to a punishable act committed with intent, or if it has been ordered that he be brought before the court or be arrested because of such act, the investigating judge may seize telegrams, letters, or other consignments sent by the accused or addressed to him and request that they be handed over by the transportation company. Furthermore, these companies shall at the request of the Prosecution Service be required to hold back such consignments until a court order has arrived; but if such an order is not issued by the investigating judge within three days, they may no longer delay conveyance.

§ 100

1) The seized consignments may only be opened by the investigating judge.

2) In the course of such opening - a record of which shall be made - the seals must not be broken; envelopes and addresses shall be kept.

§ 101

The accused or, if he is absent, one of his relatives, shall be notified of the seizure of consignments immediately or no later than within twenty-four hours. If the consignments have been opened, originals or copies of letters and telegrams shall - if there is no risk that communicating their content will have a detrimental effect on the investigation - be communicated in full or in part to the accused or to the person at whom they were addressed. If the accused is absent, communication shall be to one of his relatives. If the accused has no relatives, the letter shall be returned to the sender if the judge considers this to be in the interest of

1 § 98a(4) amended by LGBl. 2013 No. 40.
2 § 99 amended by LGBl. 2012 No. 26.

the sender; or if the letter or telegram must remain with the files, the sender shall be notified of the fact that seizure has taken place.

§ 102

Seized consignments the opening of which has not been considered necessary shall be handed over forthwith to the addressee or be returned to the transportation company.

V. Surveillance of electronic communication[1]

§ 103

1) Ordering the surveillance of electronic communication including the recording of its content shall be admissible only where it is to be expected that this will further the investigation of a punishable act committed with intent and subject to a penalty of more than one year of imprisonment and if

1. the holder of the communication equipment is himself strongly suspect of having committed the offence, or
2. there are reasons to assume that a person strongly suspect of the offence is staying with the holder of the equipment or is going to contact him using the equipment, unless the holder is one of the persons listed in § 107(1)(2), or
3. the holder of the equipment expressly agrees to surveillance.[2]

2) The surveillance of electronic communication may be ordered by the investigating judge, but he shall immediately obtain the approval of the President of the Court of Appeal. If such consent is denied, the investigating judge shall immediately cancel the order and have the recordings destroyed.[3]

2a) The order in terms of Para. (2) and the extent of the surveillance of electronic communication as well as any obligation to keep the facts and procedures connected with the order secret towards third parties

1 Heading before § 103 amended by LGBl. 2006 No. 91.
2 § 103(1) amended by LGBl. 2006 No. 91.
3 § 103(2) amended by LGBl. 2006 No. 91.

shall be imposed upon the provider in terms of the *Kommunikationsgesetz* (Communication Act) by way of a separate ruling; such ruling shall consist in the verdict of the ruling in which the order is decided upon. § 9(4) and the provisions on the search of premises and on personal searches shall apply *mutatis mutandis*.[1]

3) The National Police shall be asked to implement the surveillance of electronic communication in cooperation with the providers in terms of the Communication Act (§ 10). There shall be no notification of parties or other participants of the proceedings for the time being.[2]

4) The ordered surveillance shall be limited to three months. If the requirement of surveillance continues to exist after that period has expired, the procedure described in the above paragraphs shall be repeated.

§ 104

1) As soon as the requirements for the continued surveillance of electronic communication have lapsed, the investigating judge shall order the immediate lifting of surveillance.[3]

2) After surveillance has ended, the investigating judge shall notify the holder of the monitored communication equipment and the suspect (defendant) of the fact of surveillance. At the same time, the holder of the communication equipment shall be given the opportunity to inspect the recordings; the suspect (accused), if he is not himself the holder of the communication equipment, shall be given the same opportunity, but only as far as the recordings might be of importance for the present criminal proceedings or for criminal proceedings yet to be initiated in the future. In the course of inspection, the holder of the communication equipment and the suspect (accused) may demand that the recordings inspected by them be preserved. If no such demand is made, the investigating judge shall include the recordings in the files only as far as they might be of importance for the present criminal proceedings or for criminal proceedings yet to be initiated in the future; he shall have any recordings destroyed that were not included in the files.[4]

1 § 103(2a) inserted by LGBl. 2016 No. 162.
2 § 103(3) amended by LGBl. 2012 No. 26.
3 § 104(1) amended by LGBl. 2006 No. 91.
4 § 104(2) amended by LGBl. 2006 No. 91.

3) What shall be destroyed at any rate is recordings of conversations between a suspect (accused) and his defence counsel (§ 108(1)(2)), unless both demand in mutual agreement that such recordings be preserved.[1]

4) If the holder of the monitored communication equipment considers himself to be aggravated by the fact that surveillance was ordered, approved, or maintained, or that the preservation of a recording was ordered, he shall have the right to appeal by objection to the Court of Appeal within fourteen days from notice by the investigating judge. If the objection is considered justified, it shall be ordered at the same time that all recordings gained by inadmissible surveillance be destroyed unless their preservation has been demanded pursuant to Para. (2) or (3).[2]

VI. Surveillance, undercover operations, and undercover transactions [3]

§ 104a[4]

1) The National Police shall have the right to secretly monitor the behaviour of a person (surveillance) if this may further the investigation of an offence or the ascertainment of an accused's whereabouts.

2) The following shall be admissible to support surveillance provided that it would otherwise be futile or considerably more difficult:[5]

1. the undercover use of devices serving the recording and transfer of images at public areas, and
2. the undercover use of devices which through the transfer of signals permit the location of the monitored person, as well as the opening of vehicles and containers for the purpose of inserting such devices.

3) As far as surveillance

1. is supported by the use of devices pursuant to Para. (2) or[6]
2. is to be carried out over a period of more than 48 hours,

1 § 104(3) amended by LGBl. 2012 No. 26.
2 § 104(4) amended by LGBl. 2006 No. 91.
3 Heading before § 104a inserted by LGBl. 2012 No. 26.
4 § 104a inserted by LGBl. 2012 No. 26.
5 § 104a(2) amended by LGBl. 2013 No. 74.
6 § 104a(3)(1) amended by LGBl. 2013 No. 74.

it shall be admissible only if there is the suspicion of an offence which has been committed with intent and which is subject to a penalty of more than one year of imprisonment, and if it is to be assumed as a result of certain facts that the monitored person has committed the punishable act or will contact the accused, or that it will thereby be possible to determine the whereabouts of a fugitive or absent accused.

4) Surveillance pursuant to Para. (3) shall be ordered by the investigating judge on application of the Prosecution Service for such time as is probably required to achieve its purpose, but for no longer than three months. The National Police shall be asked to carry out the surveillance (§ 10). However, if there is imminent danger, the Liechtenstein Police may begin surveillance on its own initiative; but it shall forthwith report to the Prosecution Service, which shall then apply for an order to such effect from the court, unless surveillance must already be ended before. A renewed order shall be admissible if the requirements continue to apply and it is to be expected as a result of certain facts that continued surveillance will be successful. The parties or other participants of the proceedings shall not be notified for the time being.

5) Surveillance shall be terminated if its requirements have ceased, its purpose has been fulfilled or probably can no longer be fulfilled, or if the investigating judge orders its termination. Following the end of surveillance pursuant to Para. (3), the accused and the parties concerned - if their identities are known or can be determined without major procedural effort - shall be informed of the fact of surveillance. This notification may be delayed as long as it would endanger the purpose of the investigation in these or in other proceedings.

§ 104b[1]

1) The National Police may on their own initiative employ their officers or other persons - who will neither disclose their official capacity or their mission nor let it be known (undercover investigation) - on their behalf if this may further the investigation of an offence.

2) A systematic long-term undercover investigation shall be admissible only where the investigation of an offence which was committed with intent and which is subject to a penalty of more than one year or the prevention of an offence planned in the framework of a criminal or terrorist organisation (§§ 278 to 278b StGB) would otherwise

1 § 104b inserted by LGBl. 2012 No. 26.

be rendered substantially more difficult. As far as this is indispensable for investigation or prevention, it shall also be admissible to manufacture documents to deceive about the identity of an officer of the National Police and to use such documents in business transactions for fulfilling the purpose of the investigation.

3) An undercover investigation pursuant to Para. (2) must be decreed by the investigating judge on application of the Prosecution Service; the investigating judge shall order the National Police to carry it out (§ 10(1)). Surveillance in terms of Para. (2) may only be ordered or approved for such period of time as is probably required to achieve its purpose, but not for a longer period than three months. It may be ordered anew if the requirements are met and it is to be assumed on the basis of certain facts that a continued undercover investigation will be successful. The undercover investigator shall be directed and monitored regularly by the National Police. His service and the detailed circumstances of it as well as any information and notices obtained through such service shall be noted in an official memorandum (§ 47(2)) if they may be of importance for the investigation. Undercover investigators may enter apartments and other locations protected by domestic authority only with the holder's consent. Such consent must not be obtained through deceit on access authorization.

4) An undercover investigation shall be discontinued if the requirements for it no longer exist, if its purpose has been achieved or can probably no longer be achieved, or if the investigating judge orders its termination.

5) There shall be no notifications of parties and other participants of the proceedings for the time being. After the undercover investigation pursuant to Para. (2) has ended, the accused and the parties concerned - if their identities are known or can be determined without major procedural effort - shall be informed of the fact of the undercover investigation. However, this notification may be delayed as long as it would endanger the purpose of the investigation in these or in other proceedings.

§ 104c[1]

1) On application of the Prosecution Service and after a ruling to such effect has been issued by the Court of Justice, the National Police shall have the right to conduct an undercover transaction (Para. 2) if otherwise

1 § 104c inserted by LGBl. 2012 No. 26.

the investigation of a crime (§ 17(1) StGB) or the securing of items or assets originating from a crime or threatened by confiscation (§ 19a StGB), forfeiture (§ 20 StGB), extended forfeiture (§ 20b StGB), or seizure (§ 26 StGB) would be made substantially more difficult. Under these requirements, it shall also be admissible to contribute to the carrying out of an undercover transaction by third parties (§ 12 third case StGB).[1]

2) An undercover transaction in terms of this Act shall be the attempted or apparent commission of offences as far as these consist in the acquisition, obtainment, holding, import, export, or transit of items or assets that have been stolen, originate from a crime or are dedicated to committing a crime, or whose possession is absolutely prohibited.

3) An undercover transaction must be ordered by the investigating judge on application of the Prosecution Service, and the judge shall order the National Police to carry out the transaction (§ 8).

3) After an undercover transaction has been carried out, the accused and any other parties concerned - if their identities are known or can be determined without major procedural effort - shall be informed of the fact of the undercover transaction. However, this notification may be delayed as long as it would endanger the purpose of the investigation in these or in other proceedings.

VII. Protection of clerical and professional secrecy[2]

§ 104d[3]

1) Clerical secrecy shall be protected (§ 106(1)); it must not be circumvented on penalty of voidness, in particular not by ordering or carrying out the investigative measures contained in this Title.

2) Ordering or carrying out the investigative measures contained in this Title shall also be inadmissible as far as this circumvents a person's privilege to refuse testimony in terms of § 108(1) Items (2) to (4).

1 § 104c(1) amended by LGBl. 2016 No. 162.
2 Heading before § 104d inserted by LGBl. 2012 No. 26.
3 § 104d inserted by LGBl. 2012 No. 26.

3) There shall be no prohibition of circumvention in terms of Para. (1) and (2) if the person concerned is himself strongly suspect of the offence.

Title X
The examination of witnesses

§ 105[1]

1) As a rule, anyone summoned to appear as a witness shall be under an obligation to comply and to testify on what he knows about the subject of the investigation.

2) The summons must state the subject matter of the proceedings and of the examination as well as the place, date and time of commencement of the examination. Victims shall be informed in the summons about their essential rights in the proceedings (§ 31a), as far as this has not already been done. Everybody shall comply with such a summons and may be brought before the court under the requirements listed in § 113 in the event of an unjustified failure to appear, if this has been expressly threatened in the summons.

§ 106[2]

1) On penalty of voidness, the following must not be examined as witnesses:

1. the clergy, concerning what they have been entrusted with in confession or otherwise under the seal of ministerial secrecy;
2. civil servants (§ 74(1) Items (4) and (4a) StGB), if they would violate the official secrecy incumbent on them, insofar as they have not been released from this obligation by their superiors;
3. persons who at the time they are to give testimony are incapable of stating the truth as a result of a mental illness, a mental disability, or for another reason.

1 § 105 amended by LGBl. 2012 No. 26.
2 § 106 amended by LGBl. 2012 No. 26.

2) However, there shall be no obligation of secrecy in terms of Para. (1)(2) insofar as the witness has made perceptions on the subject matter of the proceedings in the service of the administration of penal justice or there is an obligation to file a criminal complaint (§ 53).

§ 107[1]

1) The following shall not be under an obligation to give testimony:

1. persons who are to testify in proceedings against a relative (§ 72 StGB), the capacity of a person as a relative by marriage or registered partnership in terms of the privilege to refuse testimony being maintained even if the marriage or registered partnership does no longer exist, and the same applying *mutatis mutandis* to de facto cohabitation;

2. persons who may have been injured by the offence which the accused is charged with and who at the time of their examination have not yet reached the age of eighteen years or whose sexual integrity may have been violated, provided that the parties had the opportunity to participate in a previous examination subject to considerate examination rules (§§ 115a, 195).

2) An adult person who participates in the proceedings as a civil claimant (§ 32) shall not be exempt from testifying in terms of Para. (1)(1).

3) If in proceedings against several defendants a person is privileged from testifying only with regard to one of them, the witness shall be privileged with regard to the others only if a separation of the testimonies is not possible. The same shall apply if the reason for the privilege refers to only one of several facts.

4) Witnesses shall be informed of their right to refuse testimony before their examination or as soon as the reason for the privilege from testifying becomes known, and the witness's statement as to this shall be put on the record. The witness may also be instructed by an expert witness (§ 115a(2)). In each case, the age and condition of the witness shall be taken into account in instructing him. If a witness has not expressly waived his privilege from testifying, his whole testimony shall be void.

1 § 107 amended by LGBl. 2012 No. 26.

§ 108[1]

1) The following persons may refuse to give testimony:

1. persons who by giving testimony would expose themselves or a relative (§ 107(1)(1)) to the risk of criminal prosecution or - in connection with criminal proceedings against them - to the danger of self-incrimination beyond their testimony so far;

2. defence counsels, lawyers, legal agents, chartered accountants, and patent attorneys, on matters that have become known to them in this capacity ;

3. medical specialists for psychiatry and psychotherapy, non-medical psychotherapists, psychologists, probation officers, mediators under the *Zivilrechts-Mediations-Gesetz* (Civil Law Mediation Act), and employees of recognized institutions for psycho-social counselling and care and for the counselling of women concerning unwanted pregnancies, on matters that have become known to them in that capacity;[2]

4. owners (publishers) of media, media employees, and employees of media enterprises or media services on questions that concern the identity of the author, sender, or source of articles and documents or that concern information given to them in respect of their work;

5. persons entitled to vote, with regard to how they exercised a right to vote or elect that has been declared by law to be subject to secrecy.

2) The following persons may refuse to answer individual questions:

1. anyone who by answering such questions would expose themselves or a relative (§ 107(1)(1)) to shame or to the danger of a direct and substantial pecuniary disadvantage;

2. anyone whose sexual integrity was or may have been violated by the offence which the defendant is charged with, as far as they would have to reveal details of the offence which they consider to be unacceptable for them to tell about;

3. anyone who would have to disclose circumstances from their personal sphere or from the personal sphere of another person.

3) On penalty of voidness, the right of the persons listed in Para. (1) Items (2) to (4) to refuse testimony must not be circumvented; in

1 § 108 amended by LGBl. 2012 No. 26.
2 § 108(1)(3) amended by LGBl. 2015 No. 112.

particular, it must not be circumvented through the attachment and seizure of documents and of information stored on data carriers which has been newly created by the relationship of assistance, nor through the examination of aides or persons who participate in the professional activity pursuant to Para. (1) Items (2) to (4) for the purpose of training.

4) The persons listed in Para. (2) may be directed to testify despite their refusal to do so if this is indispensable because of the grave importance of their testimony for the subject of the proceedings.

5) Witnesses shall be advised of their right to refuse testimony in full or concerning certain questions before their examination or as soon as there are indications for such right. § 107(4) second and third sentence shall apply *mutatis mutandis*. If a witness who has a right to refuse testimony pursuant to Para. (1), Items (2) to (5), has not been informed about such right in time, that part of his testimony to which the privilege refers shall be void. The concerned parts of the record taken of such testimony shall be destroyed.

§ 109

Persons who cannot attend court as a result of illness or infirmness may be examined in their home.

§ 110

Members of the Princely House shall be examined at home

§ 111

If witnesses must be examined who are abroad, a request for examination by the competent foreign judge shall be made as a rule. Such foreign judge shall be informed of the subjects and questions which the examination is to be about, and he shall be asked to extend his questions also to matters that result from what the witness actually testified, depending on the circumstances. If, however, the personal appearance of such a witness before the court seems a necessity, and the witness does not appear voluntarily, the investigating judge shall report to the Government about this.

§ 112

1) If the person to be examined is an official or in Government service and has to appoint a representative during his absence in order to preserve public safety or other public interests, his direct superior shall be informed of the summons of such person at the same time.

2) This rule shall also apply if the persons to be summoned are employees of a railway company or of another company where for reasons of public safety special measures might apply to the substitution of the persons summoned, if the persons to be summoned are employed in the health sector by the State or a municipality, or if they are employed by the State Forest Service or a private forest service.

§ 113

If a witness does not follow a summons served upon him, he shall be summoned again and be threatened with a fine of up to 1,000 Swiss francs and with being brought before the court in case he fails to appear. If the witness still fails to appear without a valid excuse, the investigating judge shall award a fine against him and issue a warrant to bring him before the court. In urgent cases, the investigating judge may issue such warrant already after the witness's first unjustified failure to appear. The witness shall defray the cost of being brought before the court.

§ 114

If the witness appears but refuses to give testimony or to take the witness's oath without providing a legal reason for either, then the investigating magistrate may coerce him by awarding a fine for contempt of up to 1,000 Swiss francs, and in important cases and in the case of continued refusal by up to six weeks of imprisonment for contempt, all of which shall not affect the continuation or discontinuation of the investigation.

§ 115

1) As a rule, each witness shall be examined individually and in the absence of the prosecutor, the civil claimants, the accused, their representatives, or other witnesses.[1]

1 § 115(1) amended by LGBl. 2012 No. 26.

2) However, if so requested by the witness, a person whom he trusts shall be permitted to be present during the examination. This right and the right to be advised, accompanied, and represented by the Victim Advisory Centre (§ 31a(2)) shall be pointed out in the summons. Anyone who is suspect of having participated in the offence, who has been or is to be examined as a witness, or who is otherwise involved in the proceedings, or regarding whom there are concerns that his presence may influence the witness in making a free and full testimony may be excluded as a person of confidence. Persons of confidence shall keep secrecy on the perceptions made by them in the course of the examination (§ 301(2) StGB).[1]

3) Where a person who is not yet eighteen years old, a person suffering from a mental illness, or a mentally disabled person is to be examined, a person of confidence shall be brought in at any rate if is in the best interests of the person to be examined.[2]

§ 115a

1) If there are concerns that the examination of a witness will not be possible for factual or legal reasons, the investigating judge shall give the prosecutor, the civil claimant, the accused, and their representatives the opportunity to take part in the examination and ask the witness questions. §§ 186 and 197(1) and (2) shall be applied *mutatis mutandis*. The investigating judge may effect an audio or video recording of the examination. In this case, a written summary of the content of the examination may be produced instead of a record, which summary shall be signed by the judge and included in the files. Insofar as this is necessary to assess the case, the testimony shall be quoted verbatim in the summary.[3]

2) In the best interests of the witness, in particular with respect to his young age or his mental state, or in the interests of ascertaining the truth, the investigating judge may limit participation insofar as the parties and their representatives may follow the witness's examination - if necessary using technical equipment for audio and video transmission - and may exercise their right to ask questions without being present at the examination. The investigating judge may instruct an expert witness to carry out this kind of examination, in particular where the witness has not yet reached the age of eighteen years. In any case, care shall be taken

1 § 115(2) amended by LGBl. 2012 No. 26.
2 § 115(3) amended by LGBl. 2004 No. 236.
3 § 115a(1) inserted by LGBl. 2004 No. 236.

to ensure that any encounter between the witness and the accused is avoided if possible.[1]

3) A witness who has not yet reached the age of eighteen years and whose sexual integrity may have been violated by the offence which the accused is charged with shall always be examined by the court in the manner described in Para. (2), and the other witnesses mentioned in § 107(1) if they or the Prosecution Service so request.[2]

4) Before the examination, the investigating judge shall instruct the witness on his rights in terms of Para. (3) and on the fact that audio or video recordings may be played during the trial even if he refuses to testify in the future proceedings. These instructions and statements made with regard to these shall be included in the record; they may also be made given by the expert witness (Para. 2). The witness's age and condition shall be taken into account with every instruction.[3]

§ 116

If a witness does not speak German, an interpreter shall be brought in unless both the investigating judge and the keeper of the minutes speak the foreign language. The witness's testimony shall only be recorded in that language in the record or in exhibits if it is necessary to have a verbatim record of the own expressions of the person examined (§ 48 (3)).

§ 117

If a witness is deaf, he shall be asked the questions in writing, and if he is mute, he shall be asked to answer in writing. If one or the other way of examination is impossible, the witness must be examined in the presence of one or several persons who are in command of the witness's sign language or who are otherwise able to communicate with deaf-mute persons, and who shall be sworn as interpreters before.

1 § 115a(2) inserted by LGBl. 2004 No. 236.
2 § 115a(3) amended by LGBl. 2012 No. 26.
3 § 115a(4) inserted by LGBl. 2004 No. 236.

§ 118

Before his examination, the witness shall be admonished to answer the questions he will be asked to the best of his knowledge and belief, to conceal nothing, and to make his testimony in such a way that he will be able to confirm it by an oath if necessary.

§ 119[1]

1) The witness shall then be asked to state his first name and last name, date of birth, place of birth or home community, profession, place of residence or other suitable address for summons, and if necessary his relation to the accused. If other persons are present, this shall happen in such a manner that these circumstances do not become publicly known if possible.

2) No questions concerning possible criminal proceedings against the witness and concerning their outcome and no questions on circumstances from the witness's personal sphere shall be asked, unless this seems to be absolutely indispensable under the special circumstances of the case.

§ 119a[2]

If there is a concern as a result of certain facts that by stating his name and other personal details (§ 119(1)) or by answering questions that permit deductions as to these, the witness will expose himself or a third party to a serious risk for life, limb, physical integrity, or freedom, it may be permitted to him not to answer such questions. In this case, the witness may also change his appearance in such a manner that he cannot be recognized. However, it shall be inadmissible for him to hide his face so much that his facial expressions cannot be perceived to such a degree as is indispensable for assessing the credibility of his testimony.

§ 120

In the examination on the subject itself, the witness shall first be asked to tell a continuous tale of the facts forming the subject of the testimony. He shall then be asked to supplement that tale and clarify any

1 § 119 amended by LGBl. 2004 No. 236.
2 § 119a amended by LGBl. 2012 No. 26.

uncertainties or contradictions. The witness shall in particular be asked to state the basis for his knowledge. Questions that confront the witness with facts that are supposed to be found by his answer shall be avoided if possible, and if they are asked, they must be visible in the record.

§ 121[1]

1) Several persons, one of whom is a suspect, may be lined-up to be identified by a witness, be it openly or in a concealed manner. The witness shall first be asked to describe the suspect's distinctive characteristics; the persons used in the line-up shall be of a likeness to that description that is as great as possible. The witness shall then be asked whether he recognizes any one, and if so, on the basis of what circumstances. This procedure shall be included in the record and may be supported by suitable imaging techniques.

2) The same shall apply in the reviewing of photographs and the hearing of voice samples. Where the witness is supposed to recognize items that are of importance as evidence, he shall also be asked first to describe such item and if applicable its distinctive characteristics.

3) Otherwise, a confrontation of the accused or of a witness with other witnesses or accused persons shall be admissible where the respective testimonies substantially deviate from each other and it is to be assumed that such confrontation may help to clarify the contradictions. The persons taking part in a confrontation shall be specifically examined on every single circumstance concerning which their respective testimonies deviate from or contradict each other, and the answers of both sides shall be put on the record.

§ 122

Following the end of the testimony, every witness who has testified anything important for the case or whom the investigating magistrate considers necessary to be sworn in order to obtain full certainty of such witness having nothing more to testify on the subject shall swear an oath on his testimony.

1 § 121 amended by LGBl. 2012 No. 26.

§ 123

The following persons must not be sworn on penalty of nullity of the oath:

1. persons who have themselves been proven to have committed or are under suspicion of having committed or participated in the punishable act concerning which they are being examined;
2. persons who are the subject of an investigation for a punishable act committed deliberately and subject to a penalty of more than one year of imprisonment, or persons who have been sentenced to imprisonment for such an offence, if the sentence must still be served;
3. persons who have already been convicted for false testimony;
4. persons who have not yet reached the age of fourteen years at the time of their testimony;
5. persons who suffer from a substantial deficiency of memory or perception;
6. persons who live in enmity with the persons against whom they testify, if such enmity is suitable in view of the personalities and the circumstances involved to exclude the full credibility of the witnesses;
7. persons whose testimony about major facts has been proven to be untrue, and who cannot prove that they have merely made an error.

§ 124

1) The injured person shall in particular be asked during his examination whether he wants to join the criminal proceedings as a civil claimant.[1]

2) Even if that person appears as the prosecutor (§ 173), all provisions on the examination of witnesses shall apply to him.[2]

1 § 124(1) amended by LGBl. 2012 No. 266.
2 § 124(2) amended by LGBl. 2012 No. 26.

Title XI
The summons, enforced appearance, arrest, and pre-trial detention of the accused [1]

I. Summons and enforced appearance[2]

§ 125

1) Where not provided otherwise by the law, the accused shall be summoned for examination first.

2) Such summons shall happen by serving a written and closed summons signed by the investigating judge and addressed to the person being summoned. The summons shall give the name of the court and of the person being summoned, a general indication of the subject of the investigation, the place, the date, and the hour of appearance, and the addition that the person being summoned is to be examined as an accused and will be brought before the court if he fails to appear.

§ 126

1) If the person summoned fails to appear without having submitted a sufficient excuse, a written warrant of enforced appearance shall be issued against him.

2) The investigating judge may order that the suspect be brought before the court for immediate examination if it is to be assumed as a result of certain facts that the suspect will otherwise evade the proceedings or inhibit evidence. If such a warrant cannot be obtained in a situation of imminent danger or if the suspect is either caught in the act of committing an offence or is credibly accused of being the perpetrator immediately afterwards or is caught with items that indicate his participation in the offence, the National Police may bring him before the court on their own initiative.[3]

1 Heading before § 125 amended by LGBl. 2012 No. 266.
2 Heading before § 125 amended by LGBl. 2012 No. 266.
3 § 126(2) inserted by LGBl. 2012 No. 266.

II. Arrest and pre-trial detention[1]

§ 127

1) The investigating judge may order the arrest of a suspect of a crime or misdemeanour even without a preceding summons: [2]

1. if the suspect is caught in the act or is either caught in the act or is credibly accused of being the perpetrator of a crime or misdemeanour immediately afterwards or is caught with weapons or with items that otherwise indicate his participation in the offence;
2. if the suspect is a fugitive or in hiding or if there is the danger as a result of certain facts that he will flee the criminal proceedings, in particular by leaving his place of residence without permission or by not following a summons to trial, or that he will flee or go into hiding because of the amount of the penalty probably expecting him or for other reasons;[3]
3. if he tries to influence witnesses, expert witnesses, and co-suspects, to remove the traces of the offence, or otherwise to make the ascertainment of the truth more difficult, or if there is the danger as a result of certain facts that he will attempt to do so, or
4. if it is to be assumed as a result of certain facts that he is going to commit a punishable act that is directed against the same legal interest as the one he is charged with, or that he will execute the attempted or threatened offence that he is charged with.[4]

2) If the offence in question is a crime which according to the law must be punished by a penalty of at least ten years of imprisonment, it must be ordered that the suspect be arrested, unless it is to be expected as a result of certain facts that all reasons for arrest listed in Para. (1) Item (2) to (4) can be excluded.[5]

3) Ordering the suspect's arrest pursuant to Para. (1) and (2) shall be inadmissible if detention is disproportionate to the significance of the matter.[6]

1 Heading before § 127 inserted by LGBl. 2012 No. 266.
2 § 127(1) introductory sentence amended by LGBl. 2012 No. 266.
3 § 127(1)(2) amended by LGBl. 2012 No. 26.
4 § 127(1)(4) amended by LGBl. 2007 No. 292.
5 § 127(2) amended by LGBl. 2007 No. 292.
6 § 127(3) inserted by LGBl. 2007 No. 292.

§ 128[1]

1) The investigating judge shall order the suspect's arrest by way of a ruling containing grounds for the reasons for arrest (§ 127); a counterpart of that warrant shall be served upon the suspect immediately upon his arrest or no later than within the next 24 hours.

2) If any of the persons mentioned in § 112 is arrested, their direct superior shall be notified immediately and, if there are no special concerns against it, even before the arrest warrant (Para. (1)) is issued. If detention is lifted, this shall also be communicated immediately.

3) The investigating judge and the public prosecutor shall be informed of the arrest immediately, stating the date, our, and time; the public prosecutor shall submit an application for release or pre-trial detention forthwith, but no later than within 48 hours.

§ 128a[2]

During the arrest or immediately afterwards, every detained person shall be informed of the suspicion existing against him and of the reason for his arrest as well as of the fact that he may notify a relative or other person of confidence and a defence counsel, and that he has the right not to testify. In this, it shall be pointed out to him that his testimony may serve for his defence but also as evidence against him.

§ 129

1) As an exception, the suspect may be arrested by the National Police without a written warrant for the purpose of bringing him before the investigating judge:[3]

1. in the case of § 127(1)(1);
2. in the cases of § 127(1) Items (2) to (4) and § 127(2) if obtaining the warrant from the investigating judge in advance is not feasible because there is imminent danger.

2) The arrested shall be immediately examined concerning the subject matter and the requirements for arrest, and if it turns out in this that no reason for arrest applies any longer, he shall be released immediately. If

1 § 128 amended by LGBl. 2007 No. 292.
2 § 128a inserted by LGBl. 2007 No. 292.
3 § 129(1) introductory sentence amended by LGBl. 2012 No. 26.

his release is out of the question, the public prosecutor shall be notified immediately; if he declares that he will not apply for the imposition of pre-trial detention, the arrested shall be released immediately. Otherwise, the Prosecution Service shall immediately notify the court of the accused's arrest (§ 128(3) first sentence) and shall submit the application for pre-trial detention forthwith, but no later than within 48 hours from arrest.[1]

3) Detention must not be maintained if its purpose can be achieved by less severe means pursuant to § 131(5) Items (1) to (4) and (5) to (7). In this case, the National Police shall - subject to the public prosecutor's consent - issue the necessary instructions immediately, accept the vows from him, or take away from him the documents mentioned in § 131(5) Items (5) and (6) and release the suspect. The results of the inquiries plus the records of the instruction given, of the vows made, and plus the documents taken away shall be forwarded to the Prosecution Service with the results of the inquiries within 48 hours from the time of arrest. The investigating judge shall decide on maintaining these less severe measures by way of a ruling.[2]

4) Both arrest and the continuation of detention pursuant to Para. (1) and (2) shall be inadmissible if they are disproportionate to the significance of the matter.[3]

§ 130[4]

1) Every arrested person shall be examined by the investigating judge forthwith, but no later than within 48 hours from receipt of the application to impose pre-trial detention. At the beginning of the examination, the investigating judge shall inform the arrested of the charges raised against him and point out to him that he is free to comment or not to comment on the matter and to consult a defence counsel beforehand. It shall be pointed out to the accused that his testimony may serve his defence but may also be used as evidence against him.

2) Following the examination, the investigating judge shall immediately issue a ruling as to whether the accused be released - possibly subject to the application of less severe measures (§ 131(5)) - or

1 § 129(2) amended by LGBl. 2007 No. 292.
2 § 129(3) amended by LGBl. 2012 No. 26.
3 § 129(4) inserted by LGBl. 2007 No. 292.
4 § 130 amended by LGBl. 2007 No. 292.

whether he be taken into pre-trial detention. However, the investigating judge may carry out or have carried out immediate inquiries before his decision if it is to be expected that their result will have crucial influence on the assessment of the suspicion and the reasons for arrest. In any event, the investigating judge shall decide on pre-trial detention within 48 hours from the time the accused is handed over.

3) The investigating judge's ruling plus grounds shall immediately communicated to the accused; this shall be noted in the record. A ruling for the accused's release shall be served upon the public prosecutor within 24 hours; any probation officer who may have been appointed shall also be provided with a copy. If the ruling is for pre-trial detention, service upon the accused within 24 hours shall be effected; copies shall be sent forthwith to the Liechtenstein Prison and to any probation officer who may have been appointed. The accused cannot validly waive service.

4) The ruling for pre-trial detention shall state the following:

1. the name and additional personal information of the accused,
2. the offence of which the accused is strongly suspect, the time, place, and circumstances of its commission, and its legal designation,
3. the reason for arrest,
4. the specific facts on which the strong suspicion and the reason for arrest are based, and the reasons as a result of which the purpose of detention cannot be achieved by using less severe measures,
5. the information until what date the ruling for detention will be effective at the latest, and that a detention hearing will take place before any continuation of detention unless any of the cases mentioned in § 132(3), (4), or (6) occurs,
6. the information that the accused may notify a relative or another person of confidence of the imposition of pre-trial detention or have him notified,
7. the information that the accused must be represented by a defence counsel as long as he is in pre-trial detention,
8. the information that the accused has the option to appeal by objection to be submitted the Court of Appeal within seven days from service of the ruling, and that he may apply for his release at any time.

5) A ruling pursuant to Para (2) may be challenged by the accused and by the public prosecutor by objection to the Court of Appeal to be submitted within seven days from service. An objection by the accused against the imposition of pre-trial detention will upon receipt trigger the detention time-limit of one month (§ 132(2)(2)). A subsequent ruling of the Court of Appeal to continue pre-trial detention will trigger the detention time-limit of two months (§ 132(2)(3)). The time-limit shall start running with the date of the decision. Para. (4) Items (1) to (5) shall apply *mutatis mutandis*.

§ 131

1) Pre-trial detention may only be imposed or continued on application of the public prosecutor and only if an investigation has been initiated or an indictment has been issued against the accused, the accused is strongly suspect of a specific offence, one of the reasons for arrest listed in Para. (2) or (7) applies, and the accused has already been examined by the investigating judge on the matter and on the requirements of pre-trial detention. It must not be imposed or continued if it is disproportionate to the significance of the matter or to the penalty to be expected, or if its purpose can be achieved by using less severe measures (Para. 5).[1]

2) Apart from the cases of Para. (7), the imposition of pre-trial detention requires that as a result of certain facts there is the danger that if he were free, the accused would: [2]

1. flee, go into hiding, or evade the criminal proceedings in some other way, in particular by leaving his place of residence without permission or not following a summons to trial because of the amount of the penalty probably expecting him or for other reasons (danger of absconding),[3]
2. try to influence witnesses, expert witnesses, and co-suspects, remove the traces of the offence, or otherwise make the ascertainment of the truth more difficult (danger of collusion), or
3. regardless of the criminal proceedings conducted against him

1 § 131(1) amended by LGBl. 2007 No. 292.
2 § 131(2) introductory sentence amended by LGBl. 2007 No. 292.
3 § 131(2)(1) amended by LGBl. 2012 No. 26.

a) commit a punishable act with grave consequences that is directed against the same legal interest as the punishable act with grave consequences that he is charged with;

b) commit a punishable act with not just minor consequences that is directed against the same legal interest as the punishable act that he is charged with, provided that he has either been already convicted for such a punishable act or that he is now being charged with repeated or continuous acts;

c) commit a punishable act with grave consequences which just like the punishable act that he is being charged with is directed against the same legal interest as the punishable acts for which he has already been convicted twice;

d) execute the attempted or threatened offence that he is charged with.[1]

3) Danger of absconding shall not be assumed under any circumstances if the accused is suspect of a punishable act that is subject to a penalty not exceeding five years of imprisonment, lives a well-organized life, and has a permanent residence in Liechtenstein, unless he has already made arrangements to flee or has made other preparations to evade the proceedings. When assessing the reason for arrest of Para. (2)(3), it shall be of particular importance if the accused constitutes a danger for the life and limb of people or if a risk of the commission of crimes in a criminal organization or terrorist association (§§ 278a und 278b StGB) emanates from the accused. When assessing this reason for arrest, it shall also be taken into consideration to what extent such risk has been reduced by the fact that the circumstances have changed under which the offence the accused is being charged with was committed.[2]

4) Pre-trial detention must not be imposed or maintained if the purposes of arrest can also be achieved by concurrent penal detention or detention of any other kind. If the imposition or maintenance of pre-trial detention is refrained from because of concurrent penal detention, the investigating judge shall decree those deviations from the execution of penal detention that are indispensable for the purposes of the investigation.[3]

1 § 131(2)(3)amended by LGBl. 2007 No. 292.
2 § 131(3) amended by LGBl. 2012 No. 26.
3 § 131(4) amended by LGBl. 2007 No. 292.

5) The following less severe measures shall be applicable:

1. the vow to neither flee nor go into hiding nor leave the place of residence without permission from the investigating judge until the criminal proceedings have finally ended;

2. the vow to make no attempt to thwart the investigation;

2a. in cases of domestic violence (Art. 24g(1) of the Police Act), the vow to refrain from any contact with the person in danger and to comply with the instruction not to enter a specific apartment or its immediate surroundings or with an existing access injunction pursuant to Art. 24g(2) and (3) of the Police Act or with a provisional injunction pursuant to Art. 277a of the Execution Act, all keys to the apartment being taken away from the accused;[1]

3. the instruction to live at a specific location, with a specific family, to avoid a specific apartment, specific places, or specific company, to refrain from consuming alcoholic beverages or other intoxicating substances, or to pursue a steady job;

4. the instruction to report every change of abode or to report to the court or to another institution at specific intervals;

4a. with the accused's consent, the instruction to undergo treatment of addiction or other medical treatment or psychotherapy (§ 51(3) StGB) or to submit to a health-related measure;[2]

5. temporarily taking away the travelling documents;

6. temporarily taking away the documents necessary to drive a vehicle;

7. the deposit of a security pursuant to §§ 142 to 144;

8. the ordering of preliminary supervised probation pursuant to § 144b.[3]

6) If the purposes of detention cannot be achieved by concurrent penal detention or detention of any other kind or if the investigation would be made substantially more difficult by maintaining penal detention or detention of any other kind, the examining judge shall impose pre-trial detention. In the case of penal detention, this shall lead to the interruption of the serving of the penal sentence.

7) If the offence in question is a crime which according to the law must be punished by a penalty of at least ten years of imprisonment, pre-

1 § 131(5)(2a) inserted by LGBl. 2007 No. 292.
2 § 131(5)(4a) inserted by LGBl. 2006 No. 99.
3 § 131(5)(8) inserted by LGBl. 2006 No. 99.

trial detention must be imposed, unless it is to be expected as a result of certain facts that all reasons for arrest listed in Para. (1) can be excluded.

8) Repealed[1]

9) Repealed[2]

§ 132[3]

1) Rulings for the imposition or continuation of pre-trial detention and rulings of the Court of Appeal for pre-trial detention to continue (§ 132a(4)) shall be effective only for a specific period of time (detention time-limit); the date of expiry shall be stated in the ruling. Before the detention time-limit expires, a detention hearing shall be carried out or the accused be dismissed.

2) The detention time-limit shall be

1. 14 days from the imposition of pre-trial detention;
2. one month from the first continuation of pre-trial detention;
3. two months from any further continuation of pre-trial detention.

3) If indictment status has become final for the proceedings or if a date and time has been appointed for the trial by the single judge, the current detention time-limit shall end no sooner than two months after such time; however, if the single judge orders the trial within the first detention time-limit (Para. 2(1)), that time-limit shall end one month after such order. In all cases where the detention time-limit would expire before the commencement of the trial and the accused cannot be released, the presiding judge (single judge) shall carry out a detention hearing. The same shall apply where the accused applies that he be released and this cannot be decided upon in the trial without delay.

4) If due to an unforeseeable or unavoidable event, the detention hearing cannot be possibly carried out before the detention time-limit expires, the detention hearing may be postponed to one of the three working days following the date of expiry; in this case, the detention time-limit shall extend accordingly. The reasons for postponement shall be stated in the ruling (§ 132a(3)).

5) If two detention hearings have taken place already, the accused may waive an imminent further detention hearing. In this case, the

1 § 131(8) repealed by LGBl. 2007 No. 292.
2 § 131(9) repealed by LGBl. 2007 No. 292.
3 § 132 amended by LGBl. 2007 No. 292.

ruling on the discontinuation or continuation of pre-trial detention (§ 132a(3)) may be issued in writing without a prior oral hearing.

6) Furthermore, starting with the commencement of the trial, the effectiveness of the latest ruling issued for the imposition or continuation of pre-trial detention shall no longer be limited by the detention time-limit; *ex officio* detention hearings shall no longer take place as from such commencement.

§ 132a[1]

1) The detention hearing shall be led by the investigating judge; it shall be a hearing in chambers. The public prosecutor, the legal representative, the defence counsel, and the probation officer shall be summoned to the hearing; the accused shall be informed of the appointed date and time.

2) The accused shall be brought before the court for the hearing, unless this is impossible due to an illness. He must be represented by a defence counsel.

3) First, the public prosecutor shall present his application to continue pre-trial detention and the grounds for it. The accused, his defence counsel, and his legal representative shall have the right to reply. The probation officer may comment on the question of detention. The parties may request supplementary findings from the files. The investigating judge may examine witnesses or take other evidence *ex officio* or upon suggestion by the parties as far as he considers this to be expedient; the parties shall have the right to ask questions. The achievement of the investigation's purposes must not be endangered by the hearing. The accused or his defence counsel shall have the right of last statement. The investigating judge shall then decide on the discontinuation or continuation of pre-trial detention by way of a ruling; the latter shall be announced orally and be issued in writing. § 130(4) Items (1) to (5) and (8) shall apply *mutatis mutandis*.

4) A ruling pursuant to Para. (3) may be appealed by the accused and by the public prosecutor by objection to the Court of Appeal, to be submitted within three days from the announcement of the ruling (§ 239). If the Court of Appeal decides that pre-trial detention is to be continued, § 130(4) Items (1) to (5) shall apply *mutatis mutandis*.

1 § 132a inserted by LGBl. 2007 No. 292.

III. Execution of pre-trial detention[1]

§ 133[2]

1) It shall be the exclusive purpose of pre-trial detention to counteract the reason for detention (§ 131(2)).

2) Life in pre-trial detention shall be structured so to be as similar as possible to general living conditions. Restrictions may be ordered or imposed only as far as this is admissible by law and to achieve the purpose of detention or to maintain security and order in the Liechtenstein Prison.

3) In the execution of pre-trial detention, it shall be taken into particular consideration that

1. accused persons are presumed to be innocent,
2. accused persons must have enough time to prepare their defence, and
3. the negative consequences of confinement be counteracted in a suitable manner.

4) The execution or pre-trial detention shall be subject to the provisions of the Enforcement of Sentences Act *mutatis mutandis*, as far as these are consistent with the securing purpose of pre-trial detention, unless the Code of Criminal Procedure specifically provides otherwise. The execution of pre-trial detention shall not be postponed or interrupted for the reason alone that there are grounds for the postponement of a sentence because of unsuitability for execution.

5) The provisions on the execution of pre-trial detention shall also apply to the execution of detention pursuant to §§ 127 and 129.

§ 134[3]

1) Pre-trial detainees shall not be housed together with penal detainees. During outdoor exercise, work, religious service, events, and health care, however, such separation may be dispensed with, as far as separation is not possible in the facilities available.

1 Heading before § 133 amended by LGBl. 2007 No. 296.
2 § 133 amended by LGBl. 2007 No. 296.
3 § 134 amended by LGBl. 2007 No. 296.

2) As far as is necessary to achieve the purposes of detention, pre-trial detainees who are suspect of participation in the same offence shall be housed in such a way that they cannot have contact with each other. As long as the investigating judge has not yet rendered a decision on this, such pre-trial detainees shall be housed separately in any case.

3) Female pre-trial detainees shall be housed separately from male pre-trial detainees in any case.

§ 135[1]

1) Pre-trial detainees shall be housed with respect for their personality and sense of honour and with the utmost consideration of their person. If a pre-trial detainee does not have suitable clothing, he shall be provided with such clothing for court hearings, statements, and transfers by public transportation.

2) Pre-trial detainees shall have their right to obtain consumer goods and other amenities at their own expense as far as this is consistent with the purpose of detention, does not endanger security, does not substantially impair order in Liechtenstein Prison, and does not annoy any co-detainees.

§ 136[2]

1) Pre-trial detainees shall be under no obligation to work. However, a pre-trial detainee fit for work may work under the conditions applying to penal detainees (Art. 42 to 46 of the Enforcement of Sentences Act) if he declares his readiness to do so and there are no concerns of disadvantages to the proceedings.

2) The compensation for work shall be credited to the pre-trial detainee as house money in full, following the deduction of the contribution to execution costs (Art. 28(2) first case and Para. (3)). If the accused is acquitted or the criminal proceedings are discontinued, the retained contribution to execution costs shall be paid out to him.

3) If no work can be assigned to a pre-trial detainee who is willing to work and concerning whom the purpose of detention does not conflict with being used for work, the accused shall retroactively be credited with

1 § 135 amended by LGBl. 2007 No. 296.
2 § 136 amended by LGBl. 2007 No. 296.

an amount of 5% of the wage of domestic servants pursuant to the standard labour contract as house money.

§ 137[1]

1) Pre-trial detainees may receive visitors within the normal visiting hours as often and in such amount as to time as the handling of such visits can be managed without unacceptable efforts. Otherwise, Art. 84 to 87 of the Enforcement of Sentences Act shall apply subject to the following conditions:

1. Pre-trial detainees must not be prohibited from receiving visits of at least thirty minutes at least twice per week.
2. Surveillance shall extend to the content of talks between a pre-trial detainee and a visitor only if so ordered by the investigating judge for the purpose of securing the purpose of detention or by the director of the facility for the purpose of security in Liechtenstein Prison.
3. Visits from specific persons regarding which there are concerns that these may endanger the purpose of pre-trial detention or the security in Liechtenstein Prison may be prohibited or aborted.

2) Pre-trial detainees may at their own expense have written correspondence and telephone conversations with other persons unless the extraordinary amount of correspondence or telephone conversation impairs surveillance or security or order. In that case, the limitations respectively required shall be ordered. Letters concerning which there is reason to fear that they will impair the purpose of detention shall be retained unless the provisions of Art. 81 of the Enforcement of Sentences Act on written correspondence with public institutions, legal counsel, and advisory institutions provide differently. The surveillance of the content of telephone conversations shall be subject to Para. (1)(2).

3) The surveillance of the oral and written contact of pre-trial detainees with their defence counsels shall be subject to § 30(3) and (4).

§ 137a[2]

1) The investigating judge shall have jurisdiction for the decision as to with whom pre-trial detainees may have contact and what visits they

1 § 137 amended by LGBl. 2007 No. 296.
2 § 137a inserted by LGBl. 2007 No. 296.

may receive, for the surveillance of their correspondence and their visits, and for all other decisions that relate to interaction with the outside world. The surveillance of mail correspondence and telephone conversations may only be refrained from insofar as there are no reasons to fear that they will impair the purposes of detention.

2) The investigating judge shall be informed of any contraventions committed by the pre-trial detainees. The same shall apply to incidences concerning which there is reason to fear that they will impair the purposes of detention.

IV. Payment of bail, maximum term, and lifting of pre-trial detention [1]

§ 138

1) If danger of absconding (§ 131(2)(1)) is the only reason for detention or cannot be excluded (§ 131(7)), the accused may be released or the pre-trial detention imposed on him be lifted against bail or guarantee and against making the vows mentioned in § 131(5) Items (1) and (2); detention must not happen or must be discontinued against the listed assurances if the punishable act is subject to a penalty of no more than five years. The amount of the bail or guarantee shall be assessed by the investigating judge considering the weight of the punishable act the accused is charged with, the personal situation of the arrested, and the wealth of the person depositing the security.[2]

2) The sum of the bail or guarantee shall be deposited in court either in cash or in such securities - at the stock exchange price of the date of deposition - as under the current laws may be used for investing the money of minors or of persons for whom a guardian has been appointed, or be secured by a pledge on immovable assets or by suitable guarantors (§ 1374 ABGB) who assume the liability as guarantor and payer.[3]

3) The decision of the investigating judge shall be subject to appeal by the accused and the public prosecutor by way of objection to the Court of Appeal to be submitted within 14 days.[4]

1 Heading before § 138 amended by LGBl. 2007 No. 292.
2 § 138(1) amended by LGBl. 2007 No. 292.
3 § 138(2) amended by LGBl. 2012 No. 26.
4 § 138(3) amended by LGBl. 2007 No. 292.

§ 139[1]

1) If the accused makes arrangements to flee after his release has been permitted or if new circumstances appear that require his arrest, he shall be arrested despite the security deposit; if he has been arrested in these cases, the bail or guaranteed amount shall be released.

2) The same shall apply as soon as the criminal proceedings have been finally terminated by discontinuation or by final judgment; but if the accused is sentenced to unconditional imprisonment, only after the convicted offender has started to serve his sentence.

3) The decision on the release of the bail or the guaranteed amount shall be taken by the investigating judge; however, after indictment status for the proceedings or the ordering of trial has become final, that decision shall be taken by the single judge or by the presiding judge (single judge).

§ 140

1) The bail or guaranteed amount shall be declared forfeit by the court if the accused evades the investigation or, if he has been sentenced to unconditional imprisonment, evades the serving of his sentence, in particular by leaving his place of residence without permission or failure to appear in court within three days following his summons, which shall be served pursuant to Art. 8(2) ZustG.[2]

2) That decision may be enforced as soon as it has become final, just like any judgment. The forfeited security deposits shall go to the State, but the person injured by the punishable act shall have the right to demand that his claims for compensation be satisfied from these primarily.[3]

§ 141

1) All public authorities participating in the criminal proceedings shall be under the obligation to ensure that the period of detention is as short as possible.[4]

1 § 139 amended by LGBl. 2007 No. 292.
2 § 140(1) amended by LGBl. 2008 No. 346.
3 § 140(2) amended by LGBl. 2007 No. 292.
4 § 141(1) amended by LGBl. 2007 No. 292.

2) Detention and the use of less severe measures shall be discontinued as soon as its requirements do no longer apply or their duration would be disproportionate.[1]

3) If the National Police learns of a circumstance which alone or in connection with the results of the inquiries so far might have the effect that pre-trial detention would have to be discontinued (Para. (2)), they shall inform the investigating judge and the public prosecutor of this forthwith. Also, they shall ensure that no later than before the first detention hearing, the investigating judge (three copies) and the Prosecution Service (one copy) have available all results of inquiries that they do not have yet.[2]

4) If it is the opinion of the public prosecutor that pre-trial detention should be lifted, he shall apply in this sense to the investigating judge, who shall order the accused's release forthwith.[3]

5) If the accused applies that he be released and if the public prosecutor objects, the investigating judge shall appoint a detention hearing forthwith. The same shall apply if it is the opinion of the investigating judge that detention may have to be lifted and the public prosecutor opposes the accused's release.[4]

6) The investigating judge shall order the discontinuation of less severe measures if the accused so applies and the public prosecutor consents. Otherwise, decisions on the lifting or modification of less severe measures shall be taken by the investigating judge by way of a ruling after hearing the public prosecutor. The accused and the public prosecutor shall have the right to appeal that ruling by objection to the Court of Appeal to be submitted within three days. The public prosecutor's objection shall have suspensive effect.[5]

7) As far has the victim has applied for this, the victim shall be informed forthwith of any release of the accused before the judgement in the first instance has been rendered, stating the reasons for such release and the less severe measures imposed on the accused. At any rate, victims of domestic violence pursuant to § 31b(3) shall *ex officio* be informed accordingly. Such notification shall be effected by the National

1 § 141(2) amended by LGBl. 2007 No. 292.
2 § 141(3) amended by LGBl. 2012 No. 26.
3 § 141(4) amended by LGBl. 2007 No. 292.
4 § 141(5) amended by LGBl. 2007 No. 292.
5 § 141(6) amended by LGBl. 2007 No. 292.

Police, but if the accused is released from pre-trial detention, the Court of Justice.[1]

§ 142[2]

1) Pre-trial detention on the grounds of danger of collusion (§ 131(2)(2)) must not be longer than two months.

2) At any rate, the accused shall be released if he has been in pre-trial detention for six months already, if the offence in question is a crime, for one year already, if it is a crime subject to a penalty of more than five years of imprisonment, for two years already, without the trial having started.

3) Pre-trial detention may be maintained for longer than six months only if this is unavoidable due to special difficulties or due to the large extent of the investigation and in view of the weight of the reason for detention.

4) If an accused who was released from pre-trial detention in compliance with the above provisions must be arrested once again to carry out the trial, this may only happen for a maximum period of six additional weeks each.

§ 143[3]

Repealed

§ 144[4]

Repealed

§ 144a[5]

Repealed

1 § 141(7) inserted by LGBl. 2012 No. 26.
2 § 142 amended by LGBl. 2007 No. 292.
3 § 143 repealed by LGBl. 2008 No. 346.
4 § 144 repealed by LGBl. 2007 No. 292.
5 § 144a repealed by LGBl. 2012 No. 26.

V. Preliminary supervised probation[1]

§ 144b[2]

1) Preliminary supervised probation shall be ordered if the accused agrees and if it appears appropriate to thereby further the efforts of the accused for a way of life and for an attitude that will keep him from committing punishable acts in the future.

2) If the accused has a legal representative, the latter shall be informed of the ordering of preliminary supervised probation.

3) Temporary supervised probation shall end with the final termination of the criminal proceedings at the latest. Otherwise, the provisions on supervised probation shall apply *mutatis mutandis*.

Title XII
The examination of the accused

§ 145

1) In the investigation, the person charged shall be examined by the investigating judge in the absence of the prosecutor or other persons not legally entitled to this. The examination shall as a rule be conducted orally, although in the case of complicated points the investigating judge may also permit a written response. Court witnesses shall only be brought in for the examination of the accused if the investigating judge considers this necessary or the accused so demands.

2) If an arrested person has been handcuffed, these handcuffs must be removed from him before he is examined, provided this can be done without risk.

3) If he is not familiar with the German language, or if he is deaf or mute, the provisions of §§ 116 and 117 shall be observed.

1 Heading before § 144b inserted by LGBl. 2006 No. 99.
2 § 144b inserted by LGBl. 2006 No. 99.

§ 146

The investigating judge shall examine the accused without delay as soon as it can happen, and he shall not interrupt such examination for any longer period of time unless there is a major obstacle. In particular, there shall be no interruption if the accused is in the process of admitting his guilt or of coherently demonstrating his innocence, or if it is perceived that as a result of the questions he has been asked he has been brought to a point where he can no longer evade the truth, or if there is any other opportunity to come closer to uncovering the truth.

§ 147[1]

1) Before the examination starts, the investigating judge shall instruct the accused (§ 23(3)) in terms of § 130(1) second and third sentence. The accused shall then be asked about his first and last name, date of birth, religion, place of birth, place of residence, marital status, trade or occupation, and also - if it appears necessary for the purposes of the investigation - about his family and financial situation, his curriculum vitae, and in particular whether and if so, why he has already been subject to any investigation or penalty.

2) The accused shall have the right to consult a defence counsel for his examination; such counsel must not himself take part in the examination in any way, but may ask the accused supplementary questions after the examination has ended. During the examination, the accused must not discuss the answers to individual questions with his counsel. However, calling in a defence counsel may be refrained from as far as this seems necessary to avert any danger to the investigation or any impairment of evidence. In this case, an audio or video recording (§ 50a) shall be made if possible.

3) If the concern stated in § 115a(1) exists with regard to an accused, that accused may be examined by the investigating judge subject to § 115a in the manner described there.

§ 148[2]

Following the examination on the personal situation, the investigating judge shall cause the accused to comment on the facts that form the

1 § 147 amended by LGBl. 2012 No. 26.
2 § 148 amended by LGBl. 2007 No. 292.

subject of the accusation in the form of a coherent and detailed tale. The additional questions shall be directed - avoiding all unnecessary circuitousness - at the removal of uncertainties and contradictions and shall in particular be asked in such a way that the accused learns of all suspicions against him and of all testimonies of other persons and gets full opportunity to refute these suspicions and exonerate himself. If he states facts or evidence exonerating him, these must be ascertained unless they are obviously stated for the sake of causing delay.

§ 149

1) The questions to be directed at the accused must not be vague, equivocal, or catch questions; they must flow one from the other according to their natural order. Thus, it shall be avoided in particular to ask questions in which a fact that has not been conceded by the accused is implied to have been conceded.

2) Questions by which the accused is confronted with circumstances which are to be determined by his very answer or by which the other participants yet to be ascertained are designated by name or other easily recognizable characteristics may be asked only after the accused could not be led to commenting on these in any other way. In that case, the questions shall be put on the record verbatim.

§ 150

Items that refer to the offence or that serve to convict the accused shall be presented to him for identification after their preliminary description, and if the presentation of these items is not possible, he shall be led to them for the purpose of their identification. If this seems expedient for the removal of doubts concerning the authenticity of a document that was supposedly written by the accused, he shall be asked to write a few words or sentences in court; however, no coercive measures may be used for this purpose.

§ 151

Neither promises nor pretences, nor threats nor coercive measures may be used to make the accused state a confession or make other specific statements. Also, the investigation must not be delayed by efforts to obtain a confession.

§ 152

If the accused refuses to answer in general or to certain questions, or if he pretends to be deaf, mute, mad, or stupid, and if in the latter cases the investigating judge is convinced either by his own perceptions or by the examination of witnesses or expert witnesses that the accused merely pretends, it shall merely be pointed out to the accused that his conduct will not hinder the investigation and that by his conduct he might cause reasons for his defence to be lost.

§ 153

If later statements of the accused deviate from what he testified before, in particular if he revokes any former confessions, he shall be asked about the reasons for such deviations and about the reasons for his revocation.

§ 154

1) If substantial points of the testimony of an accused deviate from the testimony of a witness or participant testifying against him, he shall be confronted with these in the course of the investigation only if the investigating judge considers this necessary to solve the case.

2) The procedure prescribed in § 121 shall be observed in such confrontations.

§ 155[1]

1) The accused's testimonies and the testimonies of witnesses and persons also accused must not be used as evidence to the disadvantage of an accused - except against a person who is being accused of a violation of rights in connection with an examination - as far as these

1. have come about under torture (Art. 7 of the International Covenant on Civil and Political Rights, Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Art. 1(1) and 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), or

1 § 155 amended by LGBl. 2012 No. 26.

2. have otherwise be obtained by unlawful interference with the freedom of self-determination or the free statement of intent or through inadmissible methods of examination, as far as these violate fundamental principles of lawful proceedings and their exclusion is indispensable for the restitution of such violation.

2) Testimonies which have come about or have been obtained in the manner described in Para. (1) shall be void.

§ 156

Confessions of the accused shall not release the investigating judge from the duty to ascertain the facts as far as possible.

Title XIII
The indictment

§ 157

As soon as the investigating judge has finished the investigation, he shall forward the files to the prosecutor for application.

§ 158

1) The prosecutor shall submit his applications within fourteen days. Non-compliance with the time-limit shall have the consequences pursuant to § 11 for the public prosecutor and the consequences pursuant to § 31(3) for the private prosecutor.

2) If it is the opinion of the public prosecutor in his capacity as the prosecutor that the requirements of § 42 StGB are met, he shall submit an application to the investigating judge for the proceedings to be discontinued. The decision of the investigating judge shall be subject to appeal by objection to the Court of Appeal to be submitted within fourteen days from service. There shall be no further resort to a higher court.

§ 159

If the prosecutor applies a supplementation of the investigation and the investigating judge does not agree with this, the Court of Appeal shall decide on such application without any further resort to a higher court.

§ 160

After the application for supplementation has been dismissed or the supplements have been made, the investigating judge shall send the files to the prosecutor once again, who shall then have once again a term of fourteen days to submit his applications (§ 158(1)).

§ 161

If the prosecutor issues the indictment, he shall accurately state the offence for which he requests the accused's conviction. It shall be presumed that the prosecutor applies for the discontinuation of the criminal proceedings as to any counts of the charges disregarded by him. These counts must not be discussed in the subsequent trial.

§ 162

The indictment shall be issued in writing. The prosecutor may add applications for evidence to the indictment application, in particular for the summons of witnesses and expert witnesses; in this, he shall not be limited to apply for the repeated examination of witnesses and expert witnesses already examined during the investigation proceedings but may extend his applications to others.

§ 163

1) The prosecutor must submit a formal bill of indictment to the criminal tribunal.[1]

2) The bill of indictment must contain the following:

1. the name of the accused;

1 § 163(1) amended by LGBl. 2011 No. 593.

2. a list of the punishable act or acts which the accused is charged with by the prosecutor, broken down by their legal distinctions leading to the application of a specific penalty, adding any special circumstances of location, time, subject and so on as far as this is necessary for the exact description of the offence;

3. the legal designation of the punishable act or acts at which the indictment is directed and a list of those provisions of the Criminal Code whose application is applied for.

3) The bill of indictment shall contain short but exhaustive grounds in which the facts as they are evident from the files shall be told in a coherent manner.

4) Also, the bill of indictment shall contain or have attached a list of the witnesses and expert witness to be summoned and of the other evidence which the prosecutor intends to use in the trial.

§ 164[1]

The public prosecutor may also apply in the bill of indictment for the arrest of the accused and for the imposition of pre-trial detention.

§ 165

1) The bill of indictment shall be submitted to the investigating judge, regardless of whether or not there has been an investigation.

2) The investigating judge shall provide the accused with the bill of indictment plus attachments and shall instruct him of his rights of defence (§§ 24 et sqq.), in particular on his right to protest the bill of indictment (§ 166(2)) and to request that the Court of Appeal decide on the admissibility of the indictment, and that he will require a defence counsel for the trial.[2]

3) The investigating judge shall also decide on a concurrently submitted application to arrest the accused (§ 128).[3]

1 § 164 amended by LGBl. 2007 No. 292.
2 § 165(2) amended by LGBl. 2007 No. 292.
3 § 165(3) amended by LGBl. 2007 No. 292.

§ 166

1) If the accused is already in detention, the bill of indictment shall be served upon him within 24 hours; but if his arrest is ordered on the basis of the bill of indictment, it shall be served upon him together with the warrant.[1]

2) The arrested shall have a time-limit of 14 days to submit a protest; in the last case of Para. (1), this time-limit shall start running from the time at which the court was notified of the arrest. The arrested may put the protest on record orally or in writing with the investigating judge.[2]

3) If the bill of indictment is served upon the accused's defence counsel at the accused's request, the time-limit to submit the objection shall start running from the time of service upon the defence counsel.

4) If the accused remains at liberty, the bill of indictment shall be served upon him with the instruction that he has the right to submit a protest against it within 14 days to the investigating judge orally or in writing, and that he will require a defence counsel for the trial.[3]

§ 167

1) If no objection has been submitted within the legal time-limit or if the accused has expressly waived his right to protest, the investigating judge shall submit the files to the presiding judge of the court of decision in the first instance, who shall immediately order the trial.

2) In the opposite case, the investigating judge shall send the files to the Court of Appeal after the protest has been submitted, and he shall notify the prosecutor at the same time.

3) The Court of Appeal shall decide on the protest in chambers after hearing the prosecutor.

4) The procedure shall be the same if the accused protests the fact that detention has been imposed on him by the investigating judge (§ 165(3)); in this case, too, the Court of Appeal shall proceed as if a protest against the bill of indictment had been lodged.[4]

1 § 166(1) amended by LGBl. 2007 No. 292.
2 § 166(2) amended by LGBl. 2007 No. 292.
3 § 166(4) amended by LGBl. 2007 No. 292.
4 § 167(4) inserted by LGBl. 2007 No. 292.

§ 168

1) The Court of Appeal shall preliminarily reject the bill of indictment if it considers this to be necessary to mend a formal defect or for the better clarification of the facts.

2) The prosecutor shall thereupon submit his applications (if any) to the investigating judge within fourteen days or submit a bill of indictment once again (§ 158(1)).

§ 168a[1]

1) If the Court of Appeal decides that the requirements for discontinuing the proceedings pursuant to Title IIIa are met, it shall reject the bill of indictment to the investigating judge with the instruction to proceed in accordance with the provisions of that Title.

2) If the proceedings are not discontinued in terms of §§ 22c(1), 22d(5), 22f(4), or 22g(1) in connection with § 22b or if the proceedings must be initiated or continued subsequently (§ 22h), the prosecutor shall submit the bill of indictment once again or else submit the applications necessary for the continuation or discontinuation of the criminal proceedings.

§ 169

1) If the Court of Appeal decides that an indictment is prevented by any of the following reasons:

1. that the act the accused is charged with does not constitute a punishable act subject to the jurisdiction of the courts of law;
2. that there are insufficient reasons to consider the accused a suspect of the act;
3. that there are circumstances cancelling the punishability of the act or precluding prosecution for the act; or that the requirements of § 42 StGB apply; or
4. that the application required by the law of a person competent to submit such application is missing;

1 § 168a inserted by LGBl. 2006 No. 99.

the Court of Appeal shall decide that an indictment is not permitted and that the proceedings are discontinued. In this case, the Court of Appeal shall at the same time give the orders for the release of a detained accused.

2) If that decision is not rendered with regard to all counts of the indictment, the Court of Appeal shall order that the counts as to which such decision has been rendered shall be removed from the bill of indictment.

§ 170

If a reason for which the indictment is not permitted is also to the advantage of any co-accused who has not submitted a protest, the Court of Appeal shall proceed as if there were such a protest.

§ 171

1) If none of the cases mentioned in §§ 168 to 170 applies, the Court of Appeal shall decide that the indictment is permitted.

2) In this case, a ruling shall be issued at the same time on all applications concerning the joinder or separation of several indictments and concerning the summons of witnesses or expert witnesses.

§ 172

The grounds for decisions pursuant to §§ 168 to 171 shall be given in such a way that the decision of the court of decision in the main issue shall not be prejudiced. There shall be no resort to a higher court against decisions pursuant to §§ 168 und 171.

§ 173

1) Insofar as the criminal proceedings are discontinued or not initiated because the public prosecutor withdraws from prosecution or applies for discontinuation, the civil claimant (§ 32) shall have the right to continue criminal prosecution in the public prosecutor's stead as a subsidiary prosecutor by submitting within fourteen days from his notification an application for the initiation or continuation of the investigation to the Court of Justice or by submitting the bill of indictment (§ 163).

2) These subsidiary rights of prosecution of the civil claimant shall not apply to any case in which the court has discontinued criminal proceedings pursuant to § 42 StGB.

3) The Court of Appeal shall decide on the admissibility of the initiation or discontinuation of criminal proceedings as a result of a subsidiary application of the civil claimant, to the exclusion of any resort to a higher court.

§ 174

1) Regardless of their right to protest the bill of indictment, if either of the defence counsel and the accused thinks that there is in fact a circumstance of the offence that must be inquired about or that other witnesses or expert witnesses should be summoned to the trial in addition to those applied for by the prosecutor, the defence counsel and the accused may each submit applications to such effect to the court within fourteen days from service of the indictment.

2) Thereupon, the investigating judge shall supplement the investigation files in the necessary manner before the trial by way of subsequent inquiries. As a rule, the discussion of the results of such subsequent inquiries shall be reserved for the trial.

3) If the investigating judge does not feel compelled or feels unable to proceed pursuant to Para. (2), he shall enclose the oral or written request of the accused or his defence counsel to such effect with the other files for decision in the trial.

Title XIV
The trial

§ 175

1) The Court of Justice as criminal tribunal shall decide as a collegiate judicial body on the crimes and misdemeanours assigned to it pursuant to § 15(2) for judgment following an oral trial.[1]

2) The trial shall be based on the indictment submitted.

1 § 175(1) amended by LGBl. 2011 No. 593.

§ 176

1) In the individual case, the criminal tribunal shall consist of the President as the presiding judge, a Princely Judge (*Landrichter*), and three additional Criminal Judges. The keeper of the minutes shall also be a member. Further details shall be determined by the Rules for the Allocation of Cases.[1]

2) If any of them is prevented from attending, they shall be replaced by the Substitute Judges appointed for their substitution.

3) The judge who was in charge of the investigation must not be a member of the Senate which is to decide on the case.

§ 177

As soon as the indictment has been issued / become final and any supplementations to the investigation have been carried out (§ 174(2)), the investigating judge shall submit the criminal files to the competent presiding judge at the utmost speed for inspection and for the appointment of the trial.

§ 178

The trial shall take place on a weekday before the tribunal composed pursuant to the above provisions.

§ 179

The prosecutor, the accused - under threat of the consequences of default - and his defence counsel, and the witnesses and expert witnesses whose examination has been applied for by the parties and who the presiding judge has determined to have to appear shall be summoned to the hearing. The civil claimant shall be summoned with the addition that the hearing will take place even if he fails to appear, and that in this case his applications will be read from the files.

1 § 176(1) amended by LGBl. 2011 No. 593.

§ 180

On application of the prosecutor, the accused, or his defence counsel, the presiding judge of the tribunal may grant an adjournment of the ordered trial for important reasons; however, the information must whenever possible be provided to the Princely Court of Justice in time in order to be able to order the adjournment of the trial.

§ 181[1]

1) The trial shall be public on penalty of voidness.

2) A trial hearing may only be attended by unarmed persons as participants or spectators. However, persons who are obliged to bear arms as a result of their public service must not be prohibited from attending for this reasons.

3) Minors may be excluded as spectators from the trial if their presence might give rise to concerns as to their personal development.

4) There shall be no television or radio recordings and broadcasts, nor any film recordings or photographs of hearings in court.

§ 181a[2]

1) The public may only be excluded from a trial for reasons of decency and public order. The tribunal shall order such exclusion *ex officio* or on application of the prosecutor or the defendant, doing so by way of a ruling following discussion and deliberation in chambers. The ruling with grounds shall be announced in a public hearing and shall be documented in the record of the hearing. There shall be no separate resort to a higher court against this ruling.

2) Before discussing circumstances from the personal sphere or from the sphere of secrecy of the defendant, any witness, or any third party, or before examining a witness whose personal information is to remain undisclosed (§ 119a), the tribunal shall exclude the public *ex officio* or on application if legitimate interests prevail. Any such ruling shall be subject to Para. (1) *mutatis mutandis* as to all other aspects.

1 § 181(1) amended by LGBl. 2004 No. 236.
2 § 181a inserted by LGBl. 2004 No. 236.

§ 181b[1]

1) Following the public announcement of this ruling, all spectators must leave.

2) Only victims, civil claimants, judges, trainee judges, public prosecutors, and lawyers must never be excluded. The defendant as well as the civil claimant or private prosecutor may demand that access be permitted to three person of his confidence. § 115(2) and (3) shall apply *mutatis mutandis*.[2]

§ 181c[3]

As far as the public has been excluded from a hearing, it shall be prohibited to publish any notice from such hearing. The court may also oblige the persons present to keep everything secret which they have learned as a result of the hearing. This ruling shall be documented in the record of the hearing.

§ 181d[4]

It may be requested at any time during the hearing that a hearing in chambers in terms of § 181a be ordered. The exclusion of the public may take place for only part of the proceedings or for the whole hearing. However, the judgment must always announced publicly.

§ 182

1) The presiding judge shall lead the hearing, examine the accused, the witnesses, and the expert witnesses, and he shall lay down the sequence in which those who demand the floor shall speak, in which the witnesses and expert witnesses shall be examined, in which the files of the investigation proceedings the reading of which he or the court consider necessary shall be read, and in which other evidence shall be set forth.

2) The presiding judge and the tribunal shall have the power to summon and examine witnesses and expert witnesses in the course of the trial even without an application by the prosecutor or the accused, if it is

1 § 181b inserted by LGBl. 2004 No. 236.
2 § 181(2) amended by LGBl. 2012 No. 266.
3 § 181c inserted by LGBl. 2004 No. 236.
4 § 181d inserted by LGBl. 2004 No. 236.

to be expected that such witnesses or expert witnesses will in view of the course of the proceedings clarify important facts. The presiding judge and the tribunal shall be generally obliged to further the ascertaining of the truth.

§ 183

1) The presiding judge shall maintain order and quiet and the decency in the courtroom that is in accordance with the dignity of the court.

2) Signs of acclaim or disapproval shall be prohibited. The presiding judge may call to order any persons who disrupt the hearing by such signs or in any other way, and if necessary may have individual spectators or all of them removed from the courtroom. If this is defied by anyone or if the disturbances are repeated, the presiding judge may impose an administrative fine of up to 1,000 Swiss francs, but if it is necessary to maintain order, an administrative penalty of up to eight days of imprisonment. In the latter case, he may order immediate arrest.

§ 184

1) If the defendant disrupts the order of the trial by inappropriate conduct and maintains such conduct regardless of the presiding judge's admonition and the threat that he will be removed from the hearing, the defendant may by ruling of the tribunal be removed from the trial temporarily or for the full duration of the trial, in which case the hearing shall continue in his absence and the judgment will be announced to him by a member of the tribunal in the presence of the keeper of the minutes.

2) If the defendant, the private prosecutor, the civil claimant, any witnesses, or any expert witnesses utter verbal abuse or obviously unfounded and irrelevant accusations against any of the persons being examined or against a representative, against the public prosecutor, or against a court person, or if the respect owed to the court is violated by indecent conduct, the tribunal may impose an administrative fine of up to 1,000 Swiss francs against the offender, and where this is indispensable for the maintenance of order, up to eight days of imprisonment.

§ 185

If the defence counsel is guilty of any such contravention, he shall be reprimanded by the court, and if he continues such inappropriate

conduct despite the admonishment or reprimand received, the presiding judge may forbid him to speak and in this case as well as in the case of his failure to appear at the appointed trial decide that the trial be adjourned at the expense of the guilty defence counsel. If legal counsels act as defence counsels, the tribunal may in such cases resolve that a disciplinary complaint be filed against them with the Court of Appeal.

§ 186[1]

1) In addition to the presiding judge, the other members of the tribunal, the prosecutor, the defendant, and the civil claimant as well as their representatives shall have the right to ask questions of any person to be examined after they have received the floor from the presiding judge for this purpose.

2) The presiding judge shall reject inadmissible questions; he may prohibit questions that appear inappropriate in any other way.

§ 187

1) The trial shall begin with the keeper of the minutes calling the case.

2) The accused shall appear unfettered if this can happen without danger; however, if he is in detention, he shall appear guarded by the police.

§ 188

After the trial has been opened, the presiding judge shall ask the prosecutor, the accused, the civil claimant, and the judges present whether there is any reason disqualifying any of the latter.

§ 189

The presiding judge shall then ask the defendant about his first name and last name, date of birth, competent community, religion, marital status, trade or occupation, and place of residence, and shall admonish him to pay attention to the proceedings that are going to follow.

1 § 186 amended by LGBl. 2004 No. 236.

§ 190

1) The witnesses and expert witnesses who have been summoned shall then be called and instructed to move to the room designated for them.

2) As to the expert witnesses, the presiding judge may order in all cases in which he considers this expedient for finding the truth that these shall remain in the courtroom during the examination of the defendant and of the witnesses.

3) The private prosecutor or civil claimant may - if he is to be examined as a witness - be instructed to leave the courtroom, notwithstanding his right to be represented at the hearing. The presiding judge shall also order such measures at his discretion as he considers fit to prevent conspiracies or consultations among the witnesses.

§ 191

The tribunal may have witnesses and expert witnesses who despite the summons issued to them fail to appear at the trial without demonstrating an unforeseen and unavoidable obstacle brought before the court and impose an administrative fine of up to 1,000 Swiss francs and possibly the reimbursement of the costs of the thwarted trial hearing upon them; however, the witness or expert witness may challenge that decision by protest to the court of decision within fourteen days from service of such decision.

§ 192

On penalty of voidness of the proceedings, the presiding judge shall then have the bill of indictment read.

§ 193

1) The defendant shall then be examined by the presiding judge on the content of the indictment. If the defendant replies to the indictment with the statement that he is not guilty, the presiding judge shall point out to him that the defendant has the right to make a coherent statement of the facts against the indictment and to comment on every piece of evidence after it has been demonstrated. If the defendant deviates from his earlier testimonies, he shall be asked about the reasons for this. In

this case and if the defendant refuses to answer, the presiding judge may have the record of the earlier testimonies read in part or in full.

2) The defendant cannot be forced to answer any questions he is asked.

3) During the trial, the defendant shall be free to consult with his defence counsel; however, it shall not be permitted to him to discuss the direct answer to questions that he has been asked with his defence counsel.

§ 194

Following the defendant's examination, the evidence shall be demonstrated in the sequence laid down by the presiding judge.

§ 195

1) Witnesses and experts shall be called individually and examined in the presence of the defendant. Before their examination, they shall be admonished to tell the truth. Expert witnesses who have already sworn the oath and witnesses who have been sworn during the investigation shall be reminded of the oath sworn.

2) Except in this case, each of these shall be sworn (on penalty of voidness) after the general questions have been answered and before his further examination, unless this is prevented by any of the reasons listed in § 123(1) to (6). If the prosecutor and the defendant agree on this, the swearing of an oath may be refrained from or be suspended until the examination of the witnesses has ended.

§ 195a[1]

1) A witness who is unable to appear in court as a result of his age, illness, frailty, or for any other important reason may be examined using technical equipment for the transmission of audio and video.

2) A witness who is unable or unwilling to appear in court because he is abroad may also be examined in the same manner if the competent authority abroad provides mutual legal assistance.

1 § 195a inserted by LGBl. 2004 No. 236.

§ 196

1) In examining the witnesses and expert witnesses, the presiding judge shall observe the rules laid down for investigating judges in the investigation as far as these do not seem to be unworkable by their nature during the trial. He shall ensure that a witness who has not yet been examined is not present at all during the taking of evidence, and that an expert witness who has not yet been examined is not present during the examination of any other expert witnesses on the same subject matter.

2) Witnesses whose testimonies differ from each other may be confronted with each other by the presiding judge.

3) Witnesses and expert witnesses shall remain at the trial after their examination until the presiding judge has dismissed them or has ordered that they leave. The individual witnesses must not hold to task each other on their testimonies.

4) After the examination of every single witness, expert witness, or co-defendant, the defendant must be asked whether he wishes to counter in any way the testimony that he has just heard.

§ 197[1]

1) The presiding judge may as an exception have the defendant leave the courtroom during the examination of a witness or a co-defendant. However, as soon as he has examined the defendant on the subject matter discussed in the latter's absence, the presiding judge must inform him of everything that has passed during his absence, in particular of the testimonies made in the meantime.

2) If such notification has not taken place, it must at any rate be made before the end of the taking of evidence, on penalty of voidness.

3) In the examination of witnesses, the presiding judge shall apply § 115a(1) sentences 3 to 5 and Para. (2) to (4) *mutatis mutandis*. In this, he shall also give the opportunity to those members of the tribunal who were not present during the examination to follow the witness's examination and ask the witness questions.

1 § 197 amended by LGBl. 2004 No. 236.

§ 198

Both the defendant and the prosecutor may demand that witnesses leave the courtroom after their examination and be called back in later, to be examined once again either alone or in the presence of other witnesses. The presiding judge may also order this *ex officio*.

§ 198a

1) On penalty of voidness, the reading or showing of judicial and other official records concerning the examination of co-defendants and witnesses, of other official documents in which testimonies of witnesses and co-accused persons are recorded, the opinions of expert witnesses, and technical recordings on the examination of witnesses (§ 115a) shall be permitted only in the following cases:

1. if the persons examined have meanwhile deceased;
2. if their whereabouts are unknown or if their personal appearance could justifiably not be brought about as a result of their age, of illness or frailty, of the distance of their place of residence, or of other important reasons;
3. if the persons examined during the trial deviate in essential points from their prior testimonies;
4. if witnesses justifiably refuse to testify (§ 107) and the parties had the opportunity to take part in a judicial examination (§§ 115a, 195);
5. if witnesses refuse to testify without being entitled to do so, or if co-defendants refuse to testify;
6. if the prosecutor and the defendant both agree on such reading.[1]

2) Any records of inspections and findings, any penal orders issued against the defendant at an earlier date, and any deeds and documents of any other kind that are important for the case must be read unless both sides waive such reading.[2]

3) Following each reading, the defendant shall be asked whether he wishes to comment.[3]

1 § 198a(1) inserted by LGBl. 2004 No. 236 and amended by LGBl. 2008 No. 333.
2 § 198a(2) inserted by LGBl. 2004 No. 236 and amended by LGBl. 2008 No. 333.
3 § 198a(3) inserted by LGBl. 2004 No. 236.

4) The provisions of Para. (1) must not be circumvented on penalty of voidness.[1]

§ 199

In the course or at the end of the trial, the presiding judge shall have the items that may serve to clarify the facts presented to the defendant and as far as is necessary to the witnesses and expert witnesses and shall ask them to declare whether they recognize them.

§ 200

1) After the presiding judge has closed the taking of evidence, the prosecutor shall first receive the floor to submit and present the grounds for his application for punishment.

2) The civil claimant shall be next to receive the floor after the public prosecutor.

3) The defendant and his defence counsel may reply to this. If the public prosecutor, the private prosecutor, or the civil claimant have anything to reply to this, the defendant and his defence counsel shall at any rate have the floor last.

§ 201

Once it has started, the trial shall interrupted only insofar as the presiding judge considers this to be necessary for recovery. Adjournment may take place:

a) in the event of the defendant's illness, unless he himself agrees that the proceedings will be continued in his absence and that the statement made by him during the investigation will be read;

b) if the court considers it necessary to initiate new inquiries or to examine a witness or expert witness who has not appeared or to have new evidence brought before the court.

1 § 198a(4) inserted by LGBl. 2004 No. 236.

§ 202

1) A record shall be taken of the trial on penalty of voidness. Such record shall contain the names of the members of the court who are present and of the parties and their representatives; it shall document all relevant formalities of the proceedings and shall in particular state which witnesses and expert witnesses have been examined, which parts of the files have been read, whether the witnesses and expert witnesses have been sworn or for what reason they were not, and finally all applications by the parties as well as the decisions taken on these by the presiding judge and the court. The parties shall be free to demand that individual points be noted in the record for the safeguarding of their rights.

2) Where it is crucial to have the verbatim wording, the presiding judge shall on request of a party immediately order that individual passages be read or played.

3) The answers of the defendant and the testimonies of witnesses and expert witnesses shall be mentioned only if they contain deviations from or changes or additions to the information laid down in the files, or if the examination of the witnesses or expert witnesses during the trial constitutes the first time that they are examined.

4) The keeping of the record shall happen as ordered by the presiding judge during the trial. Upon completion, the record shall be signed by the presiding judge and by the keeper of the minutes.

§ 203

A separate record shall be kept of the deliberations and votes during and at the end of the trial where the court has withdrawn to the conference room for decision-making.

§ 204

After the presiding judge has declared the trial to be completed, the tribunal shall withdraw to the conference room for rendering a judgment.

§ 205[1]

1) When rendering its judgement, the court shall take into account only what has been presented in the trial. Documents may serve as evidence only to the extent that they have been read out in the trial.

2) The court shall carefully and conscientiously assess the credibility and probative force of evidence both individually and in connection with each other. With respect to the question whether a fact shall be accepted as proven, the judges shall not decide in accordance with evidentiary rules under law, but rather in accordance with their own conviction gained from a conscientious review of all evidence presented for and against.

3) When evaluating the testimony of a witness who has been permitted under § 119a to refrain from answering certain questions, it shall be reviewed in particular whether the court and the parties have been given sufficient opportunity to assess the credibility of the witness and the probative force of his testimony.

§ 206

1) The reporting judge shall be first to submit his final applications, and the presiding judge shall then inquire around.

2) Each vote must be accurately listed in the record of deliberation together with the grounds offered.

3) The judgment shall be rendered by majority vote.

4) The voting procedure shall be such that the oldest member of the tribunal shall his vote first, and the presiding judge shall cast his vote last.[2]

5) If among several opinions there is one which has one half of the votes for it, the presiding judge shall tip the scales by joining it. But if the presiding judge has a different opinion or if there is no opinion at all that has one half of the votes in favour, the poll shall be repeated, and if a majority of votes cannot be achieved even then, the votes most disadvantageous for the accused shall be added to the next less disadvantageous until there is an absolute majority.

1 § 205 amended by LGBl. 2004 No. 236.
2 § 206(4) amended by LGBl. 2007 No. 350.

6) During the deliberation on the sentence, those members of the tribunal who have found the defendant not guilty of a punishable act he is charged with shall be free to cast their votes on the sentence on the basis of the decision taken on the question of guilt or to abstain from voting. In the latter case, their votes shall be counted as if they had joined that opinion among the opinions stated by the other voters which is the most favourable for the defendant.

§ 207

The defendant shall be acquitted of the indictment by judgment of the tribunal:

1. if it turns out that the criminal proceedings have been initiated without an application from a legally competent prosecutor or against the wish of such prosecutor;
2. if the prosecutor withdraws from the indictment after the trial has been opened but before the tribunal withdraws for deliberation and decision; in particular, it shall be considered a withdrawal if the private prosecutor fails to appear at the trial or has not submitted his final applications in the trial (§ 31(3));
3. if the tribunal decides that the act on which the indictment is based is not subject to any penalty by law or that the elements of the offence have not been fulfilled, or that it has not been proven that the defendant committed the act which he is charged with, or that there are circumstances as a result of which punishability is cancelled, or that prosecution is precluded for other reasons than those listed in Items (1) and (2);
4. if the tribunal decides that the requirements of § 42 StGB apply.

§ 208

1) If the defendant is found guilty, the criminal judgement must state the following:

1. of what offence the defendant has been found guilty, expressly stating the circumstances of the offence causing a specific penalty range;
2. what punishable act has been substantiated by the facts which are considered to be proven and of which the defendant has been found guilty, stating at the same time whether the punishable act is a crime or a misdemeanour;

3. the sentence awarded to the defendant;
4. what provisions of the Criminal Code have been applied to the defendant;
5. the decision on the asserted claims for reimbursement and on the cost of the proceedings.

2) If the defendant is sentenced to more than one year of imprisonment for deliberately and negligently committed offences, it shall be declared after the statement of the sentence whether a sentence of more than one year of imprisonment falls on one or more deliberately committed punishable acts.

3) If the declaration required pursuant to Para. (2) has not been made in the criminal judgment, it shall be made subsequently by way of a ruling by the court of decision *ex officio* or on application of a person entitled to lodge an appeal also in the cases in which no appeal has been lodged (§ 221(4)). Anyone entitled to lodge an appeal may challenge such ruling - which shall be served upon the prosecutor and the defendant - by way of an objection to the Court of Appeal to be submitted within fourteen days.

§ 209

If the tribunal finds that the facts on which the indictment was based constitute a different punishable act than the one designated in the indictment - be it by themselves or in connection with circumstances that have come up only during the trial - it shall render judgement in accordance with its own legal conviction without being bound by the designation of the offence contained in the indictment, having heard the parties on this or having decided on any application for adjournment.

§ 210

1) If during the trial the defendant is charged with another offence in addition to the one he is being indicted for, and if such additional offence is subject to *ex officio* prosecution, the tribunal may on application of the public prosecutor or of the person injured by such offence extend the trial to such additional offences; however, in all other cases such extension may happen only at the request of a person entitled to private criminal action. The defendant's consent shall only be required if he would because of such additional offence be subject to a provision of

criminal law that is more severe than the one applicable to the punishable act listed in the indictment.

2) If in such a case the defendant refuses his consent to immediate judgement or if such judgment cannot happen because more detailed preparation appears necessary, the judgment shall be limited to the subject of the indictment and the prosecutor shall - on his request - be declared to reserve separate prosecution for such additional offence; except for this latter case, prosecution for such additional offence shall no longer happen.

3) Depending on the circumstances, the tribunal may, if it does not render judgment of such additional offence immediately, also stop the trial and render in a new trial the decision on all punishable acts the defendant is charged with.

4) In both cases, the prosecutor must submit his applications concerning the initiation of the legal proceedings within fourteen days.

§ 211

If a criminal judgment is rendered against the defendant, the execution of such judgment shall not be hindered by the fact that prosecution for another punishable act is still being reserved.

§ 212

1) If the requirements as to time for conditional release from penal detention already apply at the time of the judgment as a result of the deduction of previous detention or of a sentence served abroad, the court shall by way of a ruling make the rest of the sentence conditional and set a probation period, provided that the other requirements stated in § 46 StGB are also met. In such ruling, the court shall if applicable also issue instructions and order supervised probation (§ 50 StGB).[1]

2) The ruling pursuant to Para. (1) and the proceedings after such conditional release shall be subject to the provisions of Title XXIII *mutatis mutandis*.

1 § 212(1) amended by LGBl. 2006 No. 99.

§ 213

The tribunal shall be bound by the prosecutor's applications only insofar as it cannot find the defendant guilty of an offence at which the indictment has not been directed.

§ 214

1) Immediately after the judgment has been rendered, it shall be announced by the presiding judge in the public hearing before the assembled court in the presence of the parties, giving a brief summary of the rationales and referring to the provisions of the law that have been applied; and the defendant shall be instructed on his rights to appeal.

2) It shall be pointed out in such instruction that the appeal must be lodged either orally on the court record or by written submission (§ 222). This instruction shall be documented in the trial record.

3) If an incorrect time-limit for appeal has been stated and if this is longer than the legal one, the time-limit shall be considered complied with during such longer term; if a shorter term has been stated, the legal time-limit for lodging the appeal shall apply; if there has not been an instruction on the lodging of appeal, the term for lodging an appeal could not start running at all.

4) If the instruction stated not the competent court but another court or another office to be the correct addressee for lodging an appeal, the time-limit for lodging an appeal shall be considered complied with even if the appeal has been lodged with such incorrect office. However, the incorrect office shall forward the lodging of the appeal to the competent court *ex officio*.

5) If the tribunal finds itself unable to proceed with the rendering and announcement of the judgement immediately after the end of the trial, the presiding judge shall announce the date and time of such announcement of the judgment.

§ 215

1) After having been announced, each judgment must be issued in writing and signed by the presiding judge and by the keeper of the minutes.

2) The written issue of the judgment must contain the following:

1. the designation of the court, the names of the attending members of the tribunal, and the names of the prosecutor and the civil claimant;
2. the first and last name of the defendant and - if applicable - the name under which the defendant is also known; his date of birth, citizenship, place of residence, marital status, profession, trade and occupation; and the name of his defence counsel;
3. the date of the trial and of the announcement of the judgment;
4. the tribunal's finding on guilt, which in the case of a criminal judgment shall contain all points listed in § 208;
5. the grounds for the decision; in these, it must be stated briefly but with full specificity what facts the tribunal has considered proven or not proven and for what reasons, respectively; what considerations it has applied in deciding the legal questions and in removing the submitted grievances; and in the case of a conviction, what aggravating and mitigating reasons it has found. If the defendant is sentenced to a fine assessed in daily rates, the circumstances relevant for assessing the daily rate (§ 19(2) StGB) shall be specified. If the defendant is acquitted, the grounds for the decision shall in particular state clearly for which of the reasons stated in § 207 the tribunal considered itself compelled to acquit the defendant;
6. the instructions as to appeal. These shall be subject to § 214(1) to (4) *mutatis mutandis*.

§ 216

If the defendant has not appeared for the announcement of the judgment, a written issue of the judgment shall be served upon him.

§ 217

1) If it turns out during the trial that a witness has probably given false testimony deliberately, the presiding judge may make a record of such witness's testimony and have it signed by the witness after it has been read to and approved by him. He may also have the witness arrested and brought before the investigating judge.

2) If another punishable act is committed in the courtroom during the trial and the perpetrator is caught in the act, a judgment on such offence may be rendered immediately - either after the trial has been interrupted or after the end of the trial - on application of the entitled prosecutor and

following the examination of the accused and the witnesses present. Appeals against such a judgment shall have no suspensive effect. If it is a higher court that has jurisdiction for such judgment or if immediate judgment is not feasible, the presiding judge shall have the perpetrator brought before the investigating judge. A separate record shall be produced on such procedure.

3) If the defendant has committed a punishable act during the trial, § 210 shall be applied.

§ 217a[1]

The decisions outside the trial shall be taken by the presiding judge, with the exception of the decisions pursuant to §§ 208(3) and 251(1) of this Act and pursuant to §§ 46, 47, 53, 54, and 55 StGB.

1 § 217a inserted by LGBl. 2004 No. 236.

Title XV
Resorts to higher courts

I. Appeal

§ 218

1) Every judgment rendered by the Criminal Tribunal shall be subject to appeal (*Berufung*) to the Court of Appeal unless the right to such appeal has been waived.[1]

2) The incorrect designation of a resort to a higher court shall be without any disadvantage as long as the correct request can be clearly recognized.

3) For the purpose of appeal, written issues of the judgment with the grounds for the decision shall be given to both the defendant and the persons representing him as well as to the private prosecutor or the civil claimant; the public prosecutor, however, shall receive the original of the written issue of the judgment or a copy for inspection.

4) An appeal to the advantage of the defendant may be lodged by himself, by his spouse, by his registered partner, by his relatives in the ascending and descending line, by his guardian, and by the public prosecutor, but against his wish only if the defendant is a minor, and then by his parents and by his guardian. As far as the assessment of the asserted reasons for voidness is concerned, an appeal lodged on the grounds of voidness by others to the defendant's advantage shall be considered lodged by himself.[2]

5) An appeal to the defendant's disadvantage may be lodged only by the public prosecutor or by the private prosecutor; it may also be lodged by the civil claimant or the subsidiary prosecutor with the restriction that the appeal may only refer to the decision on civil law claims and the costs that are in connection with such claims.

6) As far as the judgment also contains a decision on civil law claims and the connected costs, the heirs of the entitled party shall have the

1 § 218(1) amended by LGBl. 2011 No. 593.
2 § 218(4) amended by LGBl. 2011 No. 380.

right to appeal specified in Para. (4) and (5) after the entitled party's death.

§ 219

1) Before the appellate court, the proceedings on the criminal case shall be conducted and decided anew subject to the limits of the statement of appeal, the grounds for appeal, and the appeal applications (which may be for setting aside or for modifying the judgment), and for this purpose, new facts may be stated and new evidence be applied for without limitation.

2) The appeal may be lodged because the proceedings are void or defective and because of the decision on guilt (evidence issue), on the sentence, on the civil law claims, and on the costs of the criminal proceedings. If it is only the decision on costs that is challenged, only the objection (*Beschwerde*) shall be admissible.

§ 220

The judgment and the proceedings preceding such judgment may be challenged for the violation of principles or rules of criminal procedure (procedural reasons for voidness):

1. if the composition of the court was incorrect (in particular, if the number of judges present was not as prescribed or if there was no keeper of the minutes or if members of the court did not have the required qualification to be a judge), if not all judges took part in the whole trial, or if an excluded or justifiably challenged judge took part in the trial; however, the parties may expressly waive the assertion of this reason for voidness.

2. if in the case of compulsory defence (§ 26(3)) the trial was carried out without calling in a defence counsel. This ground for voidance cannot be asserted to the defendant's disadvantage;

3. if the court's statement contained in the judgment or in the grounds for decision is unclear, incomplete, or self-contradictory with regard to crucial facts, or if no reasons at all or no sufficient reasons are given for such statement as a whole or for part of it, or if there is a substantial contradiction between the statement in the grounds for the decision concerning the content of documents that are in the files or concerning judicial statements on the one hand and the files or records of the examinations and hearings themselves on the other;

4. if the tribunal has incorrectly declared itself to have no jurisdiction:
5. if the judgment rendered has not disposed of the indictment, or if it has exceeded the rules of §§ 209, 210, and 213; in particular, the indictment shall be deemed not disposed of where the judge has not used an act for which the indictment has been issued as the basis for his decision;
6. if a document concerning an act during the preliminary inquiry or during the investigation that is void by law was read during the trial despite the appellant's protest; [1]
7. if a rule was violated during the trial the observation of which is expressly prescribed by the law on penalty of voidness;
8. if during the trial an application of the appellant was not decided on, or if an interim decision rendered against his application or against his protest disregarded or incorrectly applied laws or procedural principles the observation of which is required by the nature of proceedings securing criminal prosecution and defence;
9. if there already is a convicting and final decision on the same defendant and on the same offence as is listed in the indictment.

§ 221

The judgment and the proceedings preceding such judgment may be challenged for the violation or incorrect application of the Criminal Code or a supplementary criminal law (substantive reasons for voidness):

1. where any law has been violated or incorrectly applied by the decision on the question of whether the act the defendant is charged with constitutes a punishable act at all or whether there are in fact circumstances as a result of which the punishability of the act would be precluded or cancelled, prosecution for such an act would be excluded or cancelled, or prosecution for such an act would be excluded (grounds precluding culpability, grounds for exemption from punishment, and grounds of justification), whether the requirements of § 42 StGB are met, or finally, whether the indictment required under the law for prosecution is missing;
2. where the act concerning which the decision was rendered has as a result of an incorrect interpretation of laws been subsumed under a

1 § 220(6) amended by LGBl. 2008 No. 333.

criminal law which is not applicable to such act, even if the penalty threatened by both laws is the same;

3. where the court has exceeded its power to impose penalties; has exceeded the limits of the legal penalty range (where this is based on aggravating and mitigating circumstances expressly stated in the law); has exceeded the limits for the assessment of a daily rates; has exceeded its power to increase or extraordinarily reduce the penalty; or has violated § 19(3) StGB in the assessment of alternative imprisonment or § 38 StGB in the deduction or non-deduction of prior detention; or where (in a new trial carried out as a result of a resort to a higher court lodged only to the defendant's advantage or in the case of a re-opening of proceedings to the defendant's advantage) the court has imposed a more severe sentence upon the defendant than the sentence that had been awarded in the challenged judgment;
4. if the declaration required pursuant to § 208(2) is missing;
5. if it would have been required to proceed pursuant to Title IIIa.[1]

§ 222

1) On penalty of the loss of the right to appeal, every appeal must be lodged (either orally on the record or in writing) within four days after the announcement of the judgment; there is no need for an appeal to be lodged if the judgment has been served on the absent defendant.

2) The time-limit to elaborate the appeal shall be fourteen days from the service of the written issue of the judgment / from the providing of the original or copy of the judgment.

3) For the spouse, the registered partner, the relatives, the guardian, and the heirs of a convicted offender, the above time-limits for lodging or elaborating an appeal shall start running on the same day on which they began running for the defendant.[2]

4) An appeal lodged or elaborated belatedly shall be rejected by the Court of Justice.

5) The lodging of an appeal, and if lodging it is not necessary, the elaboration of an appeal must include an express or clearly indicated declaration of appeal as to whether the entire content or only part of the

1 § 221(5) inserted by LGBl. 2006 No. 99.
2 § 222(3) amended by LGBl. 2011 No. 380.

judgment is appealed, and if the latter, what part; the statement of appeal; an appeal application; and grounds for appeal.

6) In the appeal proceedings, the applications and grounds of the appeal must not be extended with the exception of those referring to voidness, nor may new ones be asserted.

§ 223

1) During the time-limit for appeal and if an appeal has been filed against a judgment, the execution of the judgment shall be suspended as far as it has been challenged.

2) The release of an acquitted defendant may only be delayed because of an appeal by the public prosecutor and only if such appeal is lodged immediately after the judgment has been announced and if there are reasons to assume under the circumstances that the defendant is going to evade the proceedings by fleeing.

3) No resort to a higher court shall be admissible against release from detention.

4) If a person sentenced to imprisonment considers himself aggravated by the amount of the sentence only, he may start serving the sentence for the time being.

5) The same shall apply where the convicted offender has not appealed and the prosecutor's appeal is directed against the amount of the sentence only.

§ 224

1) The elaboration of the appeal shall be either put on record at the Court of Justice or be submitted in writing in duplicate; it may repeat the appeal applications and the grounds for appeal (grievances) and may contain factual and legal arguments (§ 222(6)).

2) A copy of the submitted elaboration of the appeal or a copy of the record replacing it shall be served upon the opponent to submit a reply (if so desired) within fourteen days from service of the former.

3) If a party has appointed a legal counsel or a defence counsel, such legal or defence counsel shall be granted access to the criminal files - to the exclusion of the record on deliberations - for the purpose of elaborating the appeal or any reply to an appeal.

§ 225

1) New facts and evidence including all circumstances serving the assessment of their significance shall be stated in the lodging or elaboration or in the reply to the appeal on penalty of their preclusion in the appeal hearing, so that the presiding judge of the Court of Appeal may have them ascertained (if applicable) himself or under certain circumstances by a judge delegated for this, all of which subject to a retroactively approving ruling of the court.

2) Witnesses and expert witnesses who have already been examined in the first instance shall be examined once again in particular where the Court of Appeal considers such examination necessary because of concerns about the correctness of the finding of facts in the judgement of the first instance.

§ 226

1) The Court of Appeal may at the presiding judge's discretion first of all deliberate on every appeal, doing so in chambers and without hearing the parties, and dismiss the appeal immediately:

1. if such appeal has been filed by a person who is entitled to a right of appeal either not at all or not in the direction in which it is being asserted, or who has validly waived such right;
2. if such appeal has been lodged late or if the lodging of the appeal does neither expressly state nor clearly indicate to what extent the judgment is challenged, and if the lodging or elaboration of the appeal does not contain any appeal applications or grievances, all of which subject to the reopening of the proceedings.

2) If the appeal is directed against the decision on the civil claims only, the Court of Appeal shall as a rule decide itself on the case in chambers.

§ 227

The Court of Appeal may already allow the appeal in chambers, set aside the judgment as far as it is being challenged, and remit the case to the competent court if it turns out already before the public hearing on the appeal that the judgment must be set aside and the trial in the first instance must be repeated.

§ 228

1) If a public hearing on the appeal is ordered, the summons shall be served upon the appellant and the appellee at least ten days before the day in court - so that they may assert their right to challenge judges - and upon the witnesses and expert witnesses in time.

2) It shall be pointed out to the defendant and to the prosecutor in the summons that if they fail to appear, the decision will be rendered in accordance with the law, taking into account what has been submitted in the elaboration of the appeal or in the reply to it.

3) If the Court of Appeal considers it necessary that the defendant appear in person at the appeal hearing, he may be threatened in the summons with being brought before the court in the event of his failure to appear.

4) The civil claimant shall be informed of the appointed day in court with the notice that he is free to attend.

5) If a defence counsel or representative has been appointed, a summons shall also be sent to him.

§ 229

1) As a rule, the hearing before the Court of Appeal shall be public, subject to the rules on the proceedings in the first instance.

2) It shall start with a discourse of a member of the Court of Appeal which shall contain neither expert's opinions nor applications but shall merely state the factual aspects of the case and the history of the case so far (as far as this is necessary to assess the grievances asserted), the essentials of any elaboration of the appeal or any reply to it that may have been submitted, and the resulting points at issue.

3) That part of the decision in the first instance which refers to the appeal items plus the grounds for the decision and, if the presiding judge considers this expedient, also the record produced on the trial in the first instance may be read at any time.

§ 230

1) Thereupon, any witnesses and expert witnesses summoned and the defendant (if he is present in person) shall be examined, observing the rules for the trial before the tribunal in the first instance.

2) Then, the party who has filed the appeal shall be asked to state his grounds for doing so, and after that, his opponent shall be asked to reply.

3) The defendant and his defence counsel shall at any rate have the right of last statement.

4) The tribunal shall then withdraw for deliberation and decision.

§ 231

1) The Court of Appeal shall dismiss the appeal if it turns out as late as during the public hearing that any of the reasons listed in § 226 applies. If the Court of Appeal arrives at the conclusion as a result of the new hearing that the proceedings and the judgement of the first instance are in accordance with the law, it shall dismiss the appeal.

2) However, the Court of Appeal may also set aside the proceedings and the judgment and depending on the circumstances either remit the criminal case to the court of the first instance for renewed proceedings and decision or decide the case itself after carrying out a trial.

3) If the court of the first instance has not assumed that the requirements of Title IIIa apply, the Court of Appeal shall set aside the proceedings and the judgment and remit the case to the court of the first instance with the instruction to proceed in accordance of that Title.[1]

§ 232

1) An appeal filed to the defendant's advantage against the decision on guilt shall also include an appeal against the sentence.

2) The Court of Appeal shall limit itself to the grievances and shall only set aside (if at all) those parts of the judgment of the first instance against which the appeal is directed.

3) If the Court of Appeal arrives at the conclusion on the occasion of an appeal submitted by whosoever that the Criminal Code has been applied incorrectly to the defendant's disadvantage (§ 221) or that the same grounds on which its decision for the defendant's benefit is based are also for the benefit of a co-defendant who has not submitted an appeal at all or not in the direction in question, it shall proceed as if such appeal had been submitted.

1 § 231(3) inserted by LGBl. 2006 No. 99.

4) Never, however, may a judgment be modified to the defendant's disadvantage as far as the sentence is concerned on the occasion of an appeal submitted to the advantage of the defendant.

§ 233

As far as no deviations are laid down or permitted by the above provisions, the proceedings before the Court of Appeal shall be subsidiarily subject to the provisions for the proceedings in the first instance as a collegiate court.

II. Appeal on points of law

§ 234

Unless the avoidance of a judgment rendered by the Court of Appeal is precluded, it may be applied from the Supreme Court that such judgment be set aside and modified:

1. pursuant to § 219(2);
2. if the court has violated the rule that the judgment must not be modified to the defendant's disadvantage (§ 232);
3. if an essential point of the decision of the Court of Appeal is based on a factual presupposition that contradicts the files of the proceedings in the first and second instance.

§ 235

1) The decision of the Court of Appeal shall be final as far as no sentence for more than one year of imprisonment has been imposed.[1]

2) Repealed[2]

3) If the challenged judgment has been set aside by the Court of Appeal and the Court of Justice has been ordered to carry out a new trial, the judgment of the Court of Appeal may only be challenged if it

1 § 235(1) amended by LGBl. 2013 No. 89.
2 § 235(2) repealed by LGBl. 2013 No. 89.

prescribes that the order to the Court of Justice shall be carried out only after the judgment of the Court of Appeal has become final.

4) Civil claimants and subsidiary prosecutors shall have no right to appeal on points of law.

§ 236

1) An appeal on points of law need not be lodged; rather, the appellant has to submit a notice of appeal on points of law in duplicate with the Court of Justice within fourteen days from service of the judgment of the Court of Appeal / from provision of the original written issue of such judgment or put the appeal on points of law on record with the Court of Justice.

2) A copy of the notice of appeal on points of law or of the record shall be served upon the appellee, and the latter may submit a reply to appeal in the form laid down in Para. (1) within the fourteen days following such service.

3) In the notice of appeal on points of law, the individual grievances shall be listed either expressly or by clear indication, and specific applications shall be submitted; in addition, the notice of appeal on points of law may also contain factual and legal comments.

4) This rule shall apply *mutatis mutandis* to the reply to the appeal on points of law.

5) After the latter notice or after the time-limit for submitting it has expired, all files of the criminal case in question shall be sent to the Supreme Court.

§ 237

1) As a rule, the Supreme Court decides on the appeal on points of law in chambers and without an oral hearing. However, it may order an oral hearing *ex officio* or on application. A judgment may only be amended to the defendant's disadvantage on the basis of an oral hearing.

2) The Supreme Court may decide in the matter itself or, if it considers this to be necessary under the circumstances, set aside the judgment and remit the criminal case to the court of the first or second instance for renewed proceedings and decision.

3) As a rule, the Supreme Court shall limit itself in its decision to the grounds for appeal asserted in the notice of appeal on points of law.

4) Otherwise, the provisions on the appeal shall be supplementarily applicable to the proceedings on appeals on point of law.

III. Objection

§ 238

1) All judicial decisions, rulings, and directions which are not judgments may - unless there are statutory exceptions - be challenged by way of an objection (*Beschwerde*) to the Court of Appeal on account of unlawfulness or inappropriateness.

2) The decisions and rulings by the court of decision at the trial preceding the rendering of the judgment may only be contested by the defendant concurrently with the judgment.

3) There shall be no further resort to a higher court against decisions of the Court of Appeal which do not allow an objection submitted to the Court of Appeal unless the law substantiates an exception.

4) An objection may be submitted to challenge the award as to costs only if the judgment is not challenged on other grounds at the same time.

§ 239[1]

1) In the investigation proceedings, everyone who feels aggrieved by any delays through the investigating judge or by any direction given with regard or in the course of the investigation shall have the right to obtain a decision of the Court of Appeal on this.

2) The Court of Appeal shall decide without delay on objections against the ordering of arrest, against rulings for the imposition or continuation of pre-trial detention, against inappropriate treatment of the arrested, or against the discontinuation of pre-trial detention or less severe measures (objections in connection with detention). In this, it shall if applicable also take into account circumstances that have come into being or have become known only after the ruling subject to

1 § 239 amended by LGBl. 2007 No. 292.

challenge; it may also demand clarification from the investigating judge or order supplementary inquiries if these can be carried out quickly. Before its decision, the Court of Appeal shall give the opponent of the objection the opportunity to reply within a reasonable time-limit to be assessed. This shall not apply as far as the subject of the objection is directed at orders whose success depends on the opponent of the objection not being aware of them before their implementation.

3) If the objection is justified but has become pointless in the meantime, the Court of Appeal shall decide that the law was applied incorrectly or violated by the direction or ruling subject to challenge.

4) If the Court of Appeal decides that pre-trial detention shall be lifted and if the circumstances relevant for this also apply to a co-accused who has not submitted an objection, the Court of Appeal shall proceed as if such objection had been submitted.

5) If the file is submitted because of a resort to a higher court, this must not delay the running of the proceedings; the investigating judge shall retain copies (photocopies) of those parts of the files that are necessary for continuing the proceedings or shall submit a full copy of the files.

§ 240

1) The decisions of the Court of Appeal may be challenged to the Supreme Court in the following cases:

1. by the prosecutor and the accused, concerning the separation of individual criminal matters from proceedings to be conducted jointly, concerning the amount of the bail, and concerning the forfeiture of the bail;

1a. by the accused, against rulings by which an objection against the imposing or continuation of pre-trial detention is dismissed;[1]

2. by the prosecutor, against rulings by which an application for initiating an investigation, for ordering arrest, or for imposing or continuing pre-trial detention is dismissed, or by which it is ruled that the investigation is to be discontinued;[2]

1 § 240(1)(1a) inserted by LGBl. 2007 No. 292.
2 § 240(1)(2) amended by LGBl. 2007 No. 292.

3. by anyone affected by an administrative or coercive fine pursuant to §§ 52 and 96(2);[1]

4. in all other cases in which the objection to the Supreme Court is not excluded and in which there are no confirming decisions in terms of § 238(3).[2]

2) Where the Supreme Court decides on an objection against a ruling of the Court of Appeal for the continuation of pre-trial detention (Para. (1)(1a)), it shall only decide on the lawfulness of the challenged ruling, but not on the continuation of pre-trial detention; such a ruling shall not trigger a detention time-limit.[3]

§ 241

1) An objection may be submitted by anyone who has the right to lodge an appeal or who is refused rights or incurs duties as a result of a ruling or a direction.[4]

2) As far as the law does not provide otherwise (§ 130(5), § 132a(4)), the time-limit to submit an objection shall be 14 days from service or oral announcement in all cases where the ruling takes effect towards the parties either by service of a written issue or by oral announcement of the ruling.[5]

3) Repealed[6]

4) Rulings and directions that have not been served or announced may be challenged by objection at any time as long as it is not pointless and the consequences of the ruling or the direction can still be reversed.

5) This shall apply to the investigation proceedings in particular.

§ 242

1) Unless the law provides otherwise, an objection shall not have suspensive effect. However, the presiding judge of the appellate court may *ex officio* or upon an application directed at this suspend the effect

1 § 240(1)(3) amended by LGBl. 2000 No. 257.
2 § 240(1)(4) amended by LGBl. 2000 No. 257.
3 § 240(2) inserted by LGBl. 2007 No. 292.
4 § 241(1) amended by LGBl. 2007 No. 292.
5 § 241(2) amended by LGBl. 2007 No. 292.
6 § 241(3) repealed by LGBl. 2007 No. 292.

of the ruling if there are circumstances that let such suspension seem justified. There shall be no further resort to a higher court against this decision.[1]

2) If in the investigation proceedings the investigating judge considers an objection to be justified, he may allow the objecting application directly, in which case the objection shall lapse.

§ 243

1) The appellate court shall decide by ruling without any prior oral hearing; the ruling shall be served upon the objecting party.

2) The appellate court shall reject any objections received late or submitted by a person not entitled to do so. Otherwise, however, it shall review the challenged ruling or the challenged direction and the preceding proceedings within the limits set by the appellant's declaration, by the objection application, and the grounds for objection.[2]

3) If voidness or other asserted grounds for objection are not already evident from the files, the appellate court or the president of the senate may either carry out the inquiries that seem necessary themselves or effect them. Such inquiries may in particular consist in one or both parties being asked to submit written statements or the appellant or his opponent being examined. Before the decision, the parties shall be given the opportunity to comment subject to § 239(2).[3]

4) The appellate court may either set aside the ruling or the direction and decide itself in the matter or remit the matter to the lower instance.[4]

5) In the decision on an objection submitted to the accused's advantage, the directions or rulings against which the objection is being conducted can never be modified to the accused's disadvantage. Otherwise, the appellate court may order that defects of the proceedings be mended to the accused's advantage even if an objection against such defects could not be or has not been submitted.

1 § 242(1) amended by LGBl. 2007 No. 292.
2 § 243(2) amended by LGBl. 2007 No. 292.
3 § 243(3) amended by LGBl. 2007 No. 292.
4 § 243(4) amended by LGBl. 2007 No. 292.

§ 244

As far as no deviation is laid down above, the objection shall be subject to the provisions on appeals and on appeals on points of law.

Title XVI
The execution of judgments

§ 245

Every defendant acquitted by the judgment shall, if he is in detention, be released immediately after the announcement of the judgment, unless an immediate appeal by the public prosecutor or other legal reasons require the continuation of such detention.

§ 246

Unless provided otherwise, every legal effect of a criminal judgment shall begin at the time such judgment becomes final.

§ 247

1) Every final judgment issued against a member of the clergy for a crime shall together with the grounds for such judgment be preliminarily communicated by the court to the bishop or other spiritual leader to whose parish the convicted offender belongs, so that any dismissal from clerical offices may be directed even before the criminal judgment is executed.

2) If such direction does not happen within thirty days, the judgment shall be executed without any further delay.

§ 248

1) Criminal judgments against persons who hold a public office shall be executed immediately upon finality; however, a copy of such judgment shall be sent to the Government together with the grounds for the decision.

2) The same shall apply in cases in which a conviction leads to the loss of nobility status, public titles or offices, awards, academic degrees, or other rights as a result of special provisions of the law.

§ 249

1) If the accused does not pay a fine imposed on him immediately after the judgment has become final, he shall be asked in writing to pay the fine within fourteen days on penalty of enforcement. The same shall apply to forfeiture pursuant to § 20(3) StGB.[1]

2) Fines shall be collected pursuant to the provisions of the Execution Act.

3) Alternative imprisonment shall be executed just like any other prison sentence. However, it shall not be executed if the convicted offender pays the outstanding fine or proves by unobjectionable document that it has been paid. This shall be pointed out in the order to execute the penalty and in the direction to start serving the sentence.[2]

4) Administrative fines shall be subject to Para. (1) to (3) *mutatis mutandis*.[3]

§ 250[4]

1) If the immediate payment of a fine or of an amount of money pursuant to § 20 StGB would be an inequitable hardship on the person obliged to pay, the presiding judge shall by ruling on application grant a reasonable respite for payment.

2) However, such respite

1. must not be more than one year where the whole fine or amount of money pursuant to § 20 StGB is paid in one amount or where a fine of no more than 180 daily rates is paid in instalments,
2. must not be more than two years where a fine exceeding 180 daily rates is paid in instalments, and

1 § 249(1) amended by LGBl. 2016 No. 162.
2 § 249(3) amended by LGBl. 2000 No. 257.
3 § 249(4) amended by LGBl. 2000 No. 257.
4 § 250 amended by LGBl. 2000 No. 257.

3. must not be more than five years where a fine or amount of money not assessed in daily rates is paid in instalments.

3) The granted respite shall not include periods during which the party obliged to pay was detained by Government order. If the party obliged to pay makes payments as damages or for making amends to a person injured by the punishable act, this shall be taken into account in the decision on an application for a respite. Taking into account payments for compensation that are made within the term set for the payment of the fine or of the amount pursuant to § 20 StGB, the respite may be extended by a reasonable time not exceeding one additional year.

4) The payment of a fine or of an amount pursuant to § 20 StGB in instalments may only be paid on the condition that all outstanding instalments will be payable immediately if the party obliged to pay is in default with the payment of at least two instalments.

5) The party obliged to pay may appeal against the ruling of the presiding judge by objection to the Court of Appeal, the decision of which shall not be subject to any resort to a higher court.

6) The payment of administrative fines shall be subject to Para. (1) to (5) *mutatis mutandis* provided that payment in instalments must not exceed a period of one year.

§ 251

1) The court which has decided in the first instance shall decide on application or *ex officio* in the form of a ruling on the subsequent mitigation of a sentence, on the reassessment of the daily rate, on the modification of the decision on forfeiture, on extended forfeiture (§ 31a StGB), or on an occupation ban (§ 220(3) and (4) StGB), doing so after ascertaining the circumstances relevant for the decision.[1]

2) The ruling pursuant to Para. (1) shall be subject to objection to the Court of Appeal by the convicted offender and by the prosecutor. There shall be no further resort to a higher court.[2]

3) If the purpose of the decision pursuant to Para. (1) could otherwise be thwarted as a whole or in part, the court shall temporarily suspend or interrupt the enforcement of the penalty, forfeiture, or extended forfeiture until its decision has become final, unless the application before it is obviously hopeless.[3]

1 § 251(1) amended by LGBl. 2016 No. 162.
2 § 251(2) amended by LGBl. 2000 No. 257.
3 § 251(3) amended by LGBl. 2016 No. 162.

§ 252[1]

The *Ausländer- und Passamt* (Aliens' and Passport Office) shall be informed forthwith of the conviction of any person who does not hold Liechtenstein citizenship.

§ 253

1) If the forfeiture, extended forfeiture, confiscation, or deprivation of assets or items has been ordered and if these are not already in court custody, the convicted offender or the jointly liable person (§ 30c) shall be directed in writing to pay or hand over such assets or items or transfer the power to dispose of them to the court, failing which such transfer will happen by coercion. If the person with power to dispose of these assets or items does not comply with this direction, he shall be deprived of them by way of execution.[2]

2) Repealed[3]

3) Forfeited or deprived items that are of scientific or historical interest or are of interest for tutorial, experimental, research, or other professional activity shall after consultation with the Government be handed over by the court to the national institutions and collections existing in Liechtenstein for this purpose. Items that can be used directly to cover the expenses of the judicial system shall be used for this, other items shall be sold pursuant to the provisions provided for this in the rules on execution proceedings. Items that can be neither sold nor utilized shall be destroyed.

§ 253a[4]

1) In the case of offences committed abroad, the Government may conclude an agreement with the state where the offence was committed with respect to the sharing of forfeited or deprived assets and may in particular include conditions in such agreement concerning the use of such assets.[5]

2) The Government shall be responsible for execution.

1 § 252 amended by LGBl. 1999 No. 88.
2 § 253(1) amended by LGBl. 1999 No. 88.
3 § 253(2) repealed by LGBl. 1998 No. 174.
4 § 253a inserted by LGBl. 2000 No. 257.
5 § 253a(1) amended by LGBl. 2016 No. 162.

§ 254

The deduction of any period of prior detention spent by the convicted offender after the judgment has been rendered in the first instance (§ 38 StGB) shall be decided upon in the form of a ruling by the presiding judge of the court that decided in the first instance. Such ruling shall be subject to objection to the Court of Appeal by the convicted offender and by the prosecutor, to be submitted within fourteen days; the decision of the Court of Appeal shall not be subject to any further resort to higher courts.

§ 255[1]

Upon the death of the convicted offender, the obligation to pay fines shall expire as far as they have not yet been executed. The same shall apply *mutatis mutandis* to administrative fines and substitute forfeiture.

§ 256

1) A mitigation or remission of a penalty that is incurred may only be granted by the Prince. Petitions to such effect shall be forwarded by the Court of Justice to the Court of Appeal, enclosing the files and an opinion from the court; the Court of Appeal may reject the petition immediately if it considers it to be unjustified but shall otherwise submit it to the Prince with its own opinion.

2) As a rule, petitions for pardon shall not hinder the execution of the criminal judgment. Only where a petition for pardon has been submitted before starting to serve the sentence and includes grounds that refer to circumstances worth considering that have occurred only after the judgement was rendered may the execution of the judgment be stopped insofar as the petition for pardon would otherwise be thwarted as a whole or in part. In submitting petitions for pardon, the court shall always also take into account the suspension of the execution of the sentence.

3) Immediately after rendering a judgment sentencing an adolescent person who has not yet reached the age of eighteen years, the court shall examine *ex officio* whether the convicted offender should be proposed for pardoning.

1 § 255 amended by LGBl. 2000 No. 257.

4) This examination of the matter of pardoning shall be documented in the record.

5) If special reasons apply which let the convicted offender appear worthy of pardoning, the court shall also submit a specific application on the amount in which the sentence should be rescinded or commuted. The files shall be sent to the Court of Appeal after the judgment has become final.

6) Where an adolescent who has not yet reached the age of twenty years has served the larger part of his sentence and has given convincing proof during his penal detention of having mended his ways, the Court of Justice may apply *ex officio* apply that the rest of the sentence be rescinded by way of lenience.

Title XVII

Findings and directions of the criminal tribunal regarding civil law claims

§ 257

1) The damage caused by the punishable act and the other concomitants that are relevant for civil law consequences shall be taken into account *ex officio*. If there are doubts as to whether the injured party knows that the criminal proceedings are taking place, the injured party shall be informed of them, so that he is able to exercise his right to join the criminal proceedings.

2) If the injured party joins the proceedings as a civil claimant, it shall be up him or - if he does not have the right to represent himself - his legal representative to explain his claims and set them forth sufficiently. The accused shall be examined on the topic, and the inquiries necessary to ascertain the damage shall be made. The civil claimant may abandon the pursuit of his claims at any time, even during the trial.

§ 258

1) If the accused is not convicted, the civil claimant shall be referred to civil litigation with his claims for reimbursement at any time.

2) If the accused is convicted, the tribunal shall as a rule decide on the civil law claims of the injured party at the same time. If the criminal court decides that the results of the criminal proceedings do not suffice to render a reliable judgment on the claims for reimbursement on the basis of these results, it shall refer the civil claimant to civil litigation. There shall be no resort to a higher court against such reference.

§ 259

1) If an item concerning which the court is convinced is owned by the civil claimant is found among the belongings of the accused, an accessory, or a participant of the punishable act, or if the item has been found at a location where it was put by these persons only for safekeeping, the tribunal shall order that the item be returned as soon as the judgment has become final. With the express consent of the accused, it may also be returned forthwith.

2) The investigating judge may restore such items belonging to the injured party before the trial if keeping such items is not required for convicting the accused, an accessory, or a participant, and if the accused and the public prosecutor agree.

§ 260

If the deprived item is already in the hands of a third party who did not participate in the punishable act and who acquired it in a valid manner of property transfer or as a pledge, or if ownership of the deprived item is disputed amongst several injured parties, or if the injured party is unable to sufficiently prove his right immediately, the request directed at the return of the property shall be referred to ordinary civil litigation.

§ 261

1) If the property taken away from the injured party cannot be returned and in all cases that are not about the return of an item that has been taken away but about reimbursement for damage suffered, profit lost, or compensation for an injury suffered, indemnification or satisfaction shall be awarded in the criminal judgment insofar as both the amount of the same and the person who is entitled to it can be reliably established.

2) If the inquiries carried out give rise to the assumption that the injured party has stated his damage in an excessive amount, the court may reduce the amount of such damage after taking into account all circumstances and possibly consulting an expert witness for valuation.

§ 262

1) If the defendant's guilt results in the part or full invalidity of a transaction entered into with the defendant or of a legal relationship, this and the resulting legal implications shall also be decided upon in the criminal judgment.

2) However, a legally effective decision to the effect that a marriage or registered partnership is invalid shall always remain reserved for the civil courts. The criminal court may assess the validity of a marriage or registered partnership as a preliminarily question only (§ 5).[1]

§ 263

The civil claimant shall be free to initiate civil litigation if he does not feel satisfied with the compensation awarded to him by the criminal court.

§ 264

A final decision by a criminal court on the civil law claims shall be a sufficient title for execution.

§ 265

Except where the criminal proceedings are reopened for other reasons, the convicted offender and his successors may only call upon the civil courts for the modification of the final decision of a criminal court on civil law claims as a result of newly found evidence and for the cancellation of the enforcement of a decision by a criminal court because of a circumstance of the offence that has turned up subsequently.

1 § 262(2) amended by LGBl. 2011 No. 380.

§ 266

If items are found with the accused that are obviously owned by someone else, but the accused is unable or unwilling to state the owner of such items, and if nobody has come up with a claim for ownership within a reasonable time, the investigating judge shall describe the item in such a manner that although it may be recognized by the owner, some essential characteristics are withheld to enable the owner to prove his rights by stating them.

§ 267

Such description shall be published by edict at the locations where the accused stayed or where the punishable acts he is charged with were committed. In that edict, the owner shall be asked to report within one year from the date of the edict and prove his right of ownership.

§ 268

If such property of other people is of such a nature that it cannot be kept for one year without the danger of deterioration or if keeping the property safe would be connected with costs, it shall be sold by public auction. The purchase price shall be deposited in court. At the same time, a detailed description of each item sold shall be included in the file, noting the buyer and the purchase price.

§ 269

1) If nobody sets forth his right of ownership of the described items within the time-limit of the edict, such items - or the proceeds of their sale, if they were sold on the grounds of urgency - shall be handed over to the accused on his request, unless it has been declared by ruling of the Court of Appeal that lawful possession by the accused is not plausible.

2) There shall be no resort to a higher court against these rulings.

§ 270

Items which have not been handed over to the accused shall be sold in the manner described in § 268, and the purchase price shall be delivered to the State Treasury. However, the entitled party may assert

his claims against the State Treasury to the purchase price within a term of thirty years from the date of the edict in civil proceedings.

Title XVIII

The reopening of criminal proceedings; *restitutio in integrum*

I. The reopening of proceedings

§ 271

1) Once criminal proceedings against a certain person have been concluded before the trial, be it by their discontinuation, by rejection of the indictment, or by withdrawal from prosecution, an application by the public prosecutor or private prosecutor to reopen the criminal proceedings may only be allowed where the punishability of the act has not yet ended as a result of the statute of limitations and if new evidence is provided that appears suitable to justify the punishment of the accused.

2) Once a private prosecutor has withdrawn his criminal action, the reopening of criminal proceedings may never be granted to him.

§ 272

An offender convicted in a final way may demand the reopening of proceedings even if the penalty has been executed:

1. if it is demonstrated that his conviction has been effected through the forging of a document or through false testimony or through bribery or through any other punishable act of a third party;
2. if he provides new facts or evidence which alone or in connection with the evidence ascertained earlier seem suitable to justify the acquittal of the accused or his conviction for an act subsumed under a less severe provision of the Criminal Code, or if
3. two or more persons have been convicted by different decisions for the same offence and a comparison of these decisions and their

underlying facts give rise to the assumption of a lack of guilt of one or more of these persons.

§ 273

It is only subject to the requirements listed in § 274 that the public prosecutor may apply for the reopening of the criminal proceedings to cause an offence for which the defendant has been convicted to be assessed under a more severe provision of criminal law, and in addition to that only if the actually committed offence

1. is subject to a penalty of at least ten years of imprisonment, while the defendant has merely been convicted for an offence subject to no more than ten years of imprisonment, or
2. is subject to a penalty of more than five years, while the defendant has merely been convicted for a misdemeanour, or
3. constitutes a crime, while the defendant has merely been convicted for a misdemeanour subject to no more than one year of imprisonment or for an infraction.

§ 274

The public prosecutor may apply for the reopening of proceedings for an act concerning which the defendant has been acquitted by a final judgment only if the punishability of the act has not yet ended as a result of the statute of limitations and if either

1. the decision has been effected through the forging of a document or through false testimony or through bribery or through any other punishable act of a third party or
2. the defendant makes a confession in court or out of court of the offence he was charged with, or other new facts or evidence appear which alone or in connection with the evidence seem suitable to convict the defendant.

§ 275

The reopening of proceedings must be applied for at the Court of Justice. The facts forming the grounds for the application shall be ascertained by the investigating judge through the necessary inquiries, and these shall be submitted to the Court of Appeal to decide on the

admissibility of a reopening of proceedings; the Court of Appeal shall decide on this without any resort to a higher court.

§ 276

The reopening of proceedings may be applied for to the defendant's advantage by himself and - even after his death - by all persons who would have the right to lodge an appeal to his advantage.

§ 277

1) The ruling ordering the reopening of the criminal proceedings shall set aside the prior judgment insofar as it concerns the punishable act regarding which such reopening has been ordered. The legal consequences of the conviction stated in the first decision shall continue for the time being and shall be deemed set aside only as far as they do not have to occur as a result of the new decision, too.

2) For the duration of the reopened proceedings, the decision in the prior judgment on civil-law claims may only be enforced until attachment.

§ 278

1) As a result of the reopening, the case shall as a rule (§ 279) revert to the status of an investigation. That investigation shall be conducted and supplemented according to the decision ordering the reopening of the proceedings and according to the new evidence. The rules concerning the discontinuation of the investigation and the issuing of the indictment shall apply here, too. If as a result, the proceedings are concluded without a trial, the accused may demand the public announcement of the discontinuation of the proceedings or of the decision by which the indictment was finally rejected (§ 173). These decisions shall have the same effect as a decision acquitting the accused.

2) If a new trial is carried out, the civil claimants shall also be notified of this; a new judgment shall be rendered after the evidence has been taken.

3) If the defendant is convicted by this decision, the punishment that has already been suffered shall be taken into account in assessing the sentence.

4) If the proceedings have been reopened only to the defendant's advantage, the new judgment cannot impose a more severe sentence on him than was imposed by the first decision.

5) The new decision shall be subject to appeal just like any other judgment.

§ 279

If the Court of Appeal declares the reopening of the criminal proceedings for the accused's benefit to be admissible, it may immediately render a judgment by which the accused is acquitted or in which his application to apply a less severe penalty range is allowed.

§ 280

1) The application of the convicted offender for the reopening of the criminal proceedings shall not suspend the execution of the sentence unless the Court of Appeal considers the suspension of execution to be adequate in view of the circumstances of the specific case.

2) If the reopening of the proceedings has been decided to be justified, the execution of the sentence shall be discontinued immediately (§ 277), and the accused's detention shall be decided upon pursuant to the provisions contained in Title XI.

§ 281

Regardless of the provisions and formalities applicable to the reopening of proceedings, the criminal proceedings may be initiated or continued by the Court of Justice pursuant to the general provisions:

1. if the investigation (§ 41) or the inquiry (§ 283) was discontinued before a specific person was treated as an accused or judicially treated as a suspect;
2. if a private prosecutor who still has the right to submit a criminal complaint does in fact submit it, while the prior proceedings were discontinued or ended with an acquitting judgment only because of a lack of the application from an involved party required by the law;
3. if the public prosecutor reserved the right of prosecution when he withdrew from prosecution pursuant to § 21(2) or in the statement pursuant to § 67(4) and no more than three months have passed since

the final conclusion of the Liechtenstein criminal proceedings or no more than one year has passed since the final conclusion of the foreign criminal proceedings; if in the conclusion of the criminal proceedings for a crime or misdemeanour, prosecution for other punishable acts has been reserved (§ 210(2)); or if suspicions concerning another punishable act committed earlier have only appeared later;

4. if as a result of the incorrect application of the law by the single judge, an act constituting a crime was treated as a misdemeanour subject to no more than six months of imprisonment or as an infraction (§ 317), provided that no more than twelve months have passed since the decision of the single judge.

II. *Restitutio in integrum*

§ 282

1) The accused may be granted reinstatement to the previous state (*restitutio in integrum*) against the failure to meet a time-limit for lodging or elaborating a resort to a higher court, if the accused:

1. is able to prove that unavoidable circumstances made it impossible for him to meet the time-limit without any negligence by himself or his representative;
2. has applied for reinstatement within fourteen days from the ending of the obstacle, and
3. lodges and elaborates the resort to the higher court at the same time.

2) The application shall be submitted to the Court of Justice, which shall - if necessary after carrying out the inquiries necessary to clarify the ground for reinstatement - submit the files to the Court of Appeal for decision. If, however, the application for reinstatement concerns the expiry of a time-limit that has already led to a ruling of rejection by the Supreme Court, the latter shall be the competent court for deciding on the application for reinstatement rather than the Court of Appeal.

3) As long as reinstatement has not been granted, the application shall not hinder execution, unless the court where the application is submitted considers it appropriate in view of the circumstances of the case to direct the suspension of execution.

4) No resort to a higher court shall be admissible against the granting of reinstatement.

5) If reinstatement to the previous state is granted against the failure to meet the time-limit for lodging a resort to a higher court, the term to elaborate such resort to a higher court shall start running on the date of service of the decision granting reinstatement.

Title XIX

Proceedings against unknown, absent and fugitive persons

§ 283

If the perpetrator of a crime or misdemeanour is unknown or cannot be tried, the investigation of the elements of the offence shall nevertheless be conducted with the prescribed diligence and accuracy. In such cases, the proceedings shall be discontinued until the future discovery or detection of the perpetrator only when no indications are left for further investigation.

§ 284

If an absent person who is however unlikely to be a fugitive is charged with a crime or misdemeanour and the requirements for an arrest warrant in terms of § 127 are not met, only the investigation of his whereabouts shall be initiated, and only after these have been ascertained and he fails to appear upon the summons served upon him shall an order be issued to bring him before the court or shall the measures listed in the following sections be applied against him depending on the circumstances.

§ 285

If it is to be assumed under the circumstances that the accused has taken flight or if an absent person is charged with a crime or misdemeanour under circumstances which pursuant to § 127 would justify his arrest, the authorities tasked with investigating and prosecuting the crimes and misdemeanours shall, depending on the

circumstances, use searches of premises, letters of request to other authorities in whose territory he can probably be found, legal prosecution, or warrants for apprehension.

§ 286[1]

If the requirements listed in § 103(1) Items (1) to (3) are met, the court may also order the surveillance of electronic communication in proceedings for a punishable act committed deliberately and subject to a penalty of more than one year of imprisonment if it is to be expected that such surveillance will provide the whereabouts of the fugitive or absent accused. § 103(2) and (3) and § 104 shall apply *mutatis mutandis*.

§ 287[2]

If there is hope to apprehend a fugitive accused by way of pursuit, the investigating judge and in urgent cases the National Police shall be obliged to have him pursued by persons specifically appointed for this purpose.

§ 288

1) Warrants for apprehension may only be issued against fugitives and against accused persons whose whereabouts are unknown if these are strongly suspect of a crime or of a misdemeanour subject to a penalty of more than one year of imprisonment. Warrants for apprehension may only be issued by the court.

2) A warrant for apprehension shall also be issued if a person arrested for any of the punishable acts listed in Para. (1) flees from pre-trial or penal detention.

3) A warrant for apprehension cannot be issued against accused persons who are only charged with a punishable act different from those listed in Para. (1); however, if it is very important to apprehend such persons, the authorities may be provided with a personal description with the request to report to the criminal court in the event they are found.

1 § 286 amended by LGBl. 2006 No. 91.
2 § 287 amended by LGBl. 2012 No. 26.

§ 289[1]

1) Every warrant for apprehension shall state the punishable act of which the accused is a suspect, provide a personal description that is to be as accurate as possible, and state the request for provisional arrest and detention. The warrants for apprehension shall be distributed and shall in particular be sent to the National Police and to the law enforcement authorities of the surroundings. If required, the publication of the warrants for apprehension by the public newspapers shall be effected, possibly including a picture of the accused.

2) The same procedure as with warrants for apprehension shall also be followed with the description and publication of items obtained by theft, robbery, or fraud, or of subjects of punishable acts against the security of transactions with money, securities, and stamps. The description shall be published in particular where the items are of great value or of such a nature that there is hope that publication will lead to the discovery of the perpetrators themselves or to the prevention of further evils or to compensation for the injured party. Everyone shall be obliged to report to the National Police or to the Prosecution Service what he has learned about the items described.

§ 290

If the reasons that have caused the warrant for apprehension no longer apply, it shall be lifted forthwith.

§ 291[2]

Where an absent or fugitive accused declares his willingness to come before the court against safe conduct, the court may grant such safe conduct after hearing the public prosecutor, if applicable against security, with the effect that the accused be exempt from detention until the judgment in the first instance has been rendered.

§ 292

Safe conduct shall have its effect only with regard to the punishable act concerning which it has been granted. It shall lose its effect if the accused

1 § 289 amended by LGBl. 2012 No. 26.
2 § 291 amended by LGBl. 2007 No. 292.

fails without sufficient justification to follow a summons issued to him, if he makes arrangements to flee, if he evades the continuation of the investigation by fleeing or by concealing his whereabouts, or if he fails to fulfil any of the conditions subject to which the safe conduct has been granted to him.

§ 293

1) If at the end of the investigation the prosecutor issues the indictment for a crime or misdemeanour against an accused whose whereabouts are unknown or not located in the Principality of Liechtenstein, the bill of indictment shall be served upon the defence counsel to be appointed for this purpose. Otherwise, the provisions of Title XIII shall be applied.

2) After indictment status has become final for the proceedings, this shall be published in the form of a warrant for apprehension if the offence is a crime and the whereabouts of the defendant are either unknown or in a state with which there is no extradition treaty.

§ 294

The criminal proceedings against persons upon whom the summons for the trial cannot be served shall be suspended until the persons in question are apprehended.

§ 295

1) If the defendant has not appeared at the trial, the trial may - on penalty of voidness and unless prescribed otherwise in this Act (§ 327) - be conducted and the judgment be rendered in his absence only if the offence that he is charged with falls within the competence of the single judge (§ 15(3)) or the criminal tribunal for the misdemeanours listed in § 15(2)(2); also, the defendant must already have been examined during the investigation and the summons for the trial must have been served on him personally.[1]

2) In this case, the justification stated by the defendant in the investigation shall be read, and a written issue of the judgment shall be

1 § 295(1) amended by LGBl. 2011 No. 593.

served upon him. If this is not possible due to his absence, the judgment shall be served pursuant to Art. 8(2) ZustG.[1]

§ 296

1) If, however, the trial cannot be carried out or continued in the absence of the defendant because the requirements stated above are not met or because the tribunal decides that a full and satisfactory clarification of the facts cannot be expected while the defendant is absent, it shall be effected that he be brought before the court.

2) If the defendant cannot be brought before the court, the criminal proceedings shall rest until he is apprehended.

§ 297

1) The defendant may challenge a judgment rendered in his absence within fourteen days from service of the judgment in absentia not only by appeal but also by protest to the Court of Justice. The appeal may also be elaborated within this time-limit (§ 222(1)).

2) The protest shall be allowed if it is demonstrated that the defendant was prevented from attending the trial by an unavoidable obstacle. In this case, a new trial shall be ordered. If the defendant fails to attend this, too, the judgment challenged by the protest shall be considered to be final towards the defendant.

§ 298

1) The protest shall be decided upon by the Court of Appeal in chambers. If it rejects the protest, the defendant shall not have any resort to a higher court against his.

2) If the convicted offender has also lodged an appeal against the judgment (§ 218) or if any other party has lodged an appeal, the Court of Appeal shall first decide on the protest, and only if the protest is rejected shall the Court of Appeal start to assess the appeal. Resorts to a higher court against the appeal decision shall be subject to the general provisions (§§ 234 et sqq.).

1 § 295(2) amended by LGBl. 2008 No. 333.

§ 299

The failure of a defendant to appear must not delay the proceedings against his attending co-defendants. If in such cases items that may serve the defendant's conviction are returned to their owners, it may be imposed on them to bring these items of evidence back before the court on request. At the same time, an exact description of the returned items shall be put on record.

Title XX
The costs of the criminal proceedings

§ 300

1) The fees to be paid for submissions, examinations, inspections, hearings, judgments, rulings etc. in addition to the court fees shall be laid down by law.

2) Wherever the reimbursement of costs is mentioned in the provisions below, this shall apply *mutatis mutandis* to the payment of fees.

§ 301

1) The costs concerning which reimbursement by the accused may take place shall include:

1. the expenditures for service, summonses, and delivery by messenger;
2. the costs for bringing and transporting the accused and other persons before the court;
3. the fees and allowances of witnesses and expert witnesses;
4. the fees of defence counsels and other attorneys of the parties;
5. the costs of the accused's accommodation during pre-trial detention:
6. the travelling expenses and daily allowances of the court persons and the public prosecutor;
7. the costs of the execution of a criminal judgment.

2) The fees listed under Items (1) to (3) and (5) to (7) as well as the fees of the legal aid defence counsel provided to the accused shall be advanced by the State Treasury.[1]

§ 302

1) The fees of expert witnesses, court persons etc. shall be assessed by the court unless the rates are regulated by special provisions.

2) Repealed[2]

3) Repealed[3]

§ 303

1) To such witnesses as live from daily or weekly wages and who would therefore suffer a loss of income even as a result of losing only a few hours, the court shall at their request award not only reimbursement for their necessary travelling expenses to the court and back but also for lost income and (if applicable) necessary higher costs of accommodation at the place of their examination, equitably taking into account all circumstances. Other witnesses may at their request only be granted reasonable reimbursement for their travelling expenses and for accommodation at the place of their examination, provided that the place of their examination differs from their habitual abode.

2) The private prosecutor shall not be entitled to witness's allowance; other injured parties shall be entitled to it only if they have been summoned to be examined as witnesses.

§ 304

The costs for the accommodation of the accused during pre-trial detention and of the convicted offender during penal detention shall include the expenses for food, bed, heating, electricity, necessary transportation (if applicable), and cleaning of linen and clothing, as well as the costs of illness and childbirth, if applicable.

1 § 301(2) amended by LGBl. 2016 No. 406.
2 § 302(2) repealed by LGBl. 2016 No. 406.
3 § 302(3) repealed by LGBl. 2016 No. 406.

§ 305

1) If a criminal judgment finds the defendant guilty of a punishable act, it shall also be stated in the judgment that he is to reimburse the costs of the criminal proceedings.

2) However, where the proceedings related to several punishable acts, the court shall - if feasible - exempt from the reimbursement of costs such costs as concern those acts which the defendant has not been found guilty of.

3) However, only the convicted offender personally shall be obliged to reimburse the costs; the obligation shall not vest in his heirs. If there are several co-defendants, each of them shall be ordered to pay those costs that have been respectively caused by his accommodation in pre-trial detention, his defence, the execution of his sentence, or by special events that only occurred with regard to him or through his particular fault. All defendants and participants shall be ordered to jointly and severally pay all other costs of the criminal proceedings, unless the court finds special reasons to limit this liability.[1]

§ 305a[2]

In the event of procedure pursuant to Title IIIa, the public prosecutor may withdraw from prosecution or the court discontinue the criminal proceedings only after the suspect has paid a lump-sum contribution to costs of up to 3,000 Swiss francs. The payment of a lump-sum contribution to costs shall be remitted insofar as this would endanger the maintenance necessary for a simple lifestyle for himself and for his family which he is obliged to support or would endanger restitution for the consequences of the offence.

§ 306

1) If the criminal proceedings are concluded in any way other than by a convicting judgment, the costs of the proceedings and of defence shall be borne by the State. If the accused (defendant) has contributed to the initiation or extension of the proceedings by his conduct or if he has increased the costs of the proceedings in any other way, the court may decide at its discretion whether the costs necessary for defence shall be

1 § 305(3) amended by LGBl. 2000 No. 257.
2 § 305a amended by LGBl. 2012 No. 26.

imposed on the State. However, as far as the criminal proceedings have taken place at the request of a private prosecutor or pursuant to § 32 only on application of the civil claimant, these shall be ordered in the decision closing the proceedings for the current instance to reimburse all costs incurred as a result of their intercession. However, civil claimants shall not have to reimburse costs if the criminal proceedings are concluded pursuant to Title IIIa.[1]

2) If several private prosecutors or civil claimants have unsuccessfully requested the punishment of the same persons for the same act, they shall be jointly liable for the costs of the criminal proceedings. If they have unsuccessfully requested the punishment of different persons or the punishment of the same persons for different acts, each shall be liable for the special costs that originated as a result of his application, and for the lump-sum contribution to costs that would have been payable if his indictment had formed the sole subject of the proceedings; the shares of the individual prosecutors in the joint costs shall be assessed by the court according to the degree of their participation in the proceedings.

3) Subject to official liability, the public prosecutor can never be ordered to reimburse the costs.

4) Finally, if the criminal proceedings were caused by a knowingly false criminal complaint, the complaining party shall reimburse the costs. The same shall apply to the defendant even in the case of acquittal if it was the defendant who caused the initiation of proceedings without a reason.

§ 307

The special costs caused by resort to a higher court or by a request for the reopening of proceedings shall be borne by the person who applied for such resort or for such reopening insofar as the former has remained entirely unsuccessful or the latter has been dismissed.

§ 308

1) However, the costs of the criminal proceedings shall be collected from the person liable to reimburse only as far as this impairs neither the maintenance necessary for a simple lifestyle for the person liable to reimburse and for his family which he is obliged to support nor the

1 § 306(1) amended by LGBl. 2006 No. 99.

fulfilment of the obligation originating from the punishable act to make good the damage suffered.

2) Persons who are paid alimony during the time of their detention shall pay from these the accommodation costs incurred for them.

3) The decision as to whether the costs are collectible shall if feasible be made when the judgment is rendered. The decision on the subsequent payment of the legal aid defence lawyer pursuant to § 26f shall remain reserved.[1]

§ 309

1) Objections against the decisions as to costs shall be connected with the appeal or appeal on points of law against the judgment.

2) Separate objections against decisions of the Court of Justice as to costs shall be decided on by the Court of Appeal, whose decision shall be final.

§ 310

Anyone who uses a defence counsel in criminal proceedings shall as a rule also defray the costs incurred for such representation, even if he was provided with such counsel by the court *ex officio*. The remuneration to be paid for representation shall be up to free agreement between the representative and the person obliged to pay for him; if no such agreement can be reached, each of the parties may apply to the Court of Justice for an assessment of these fees, and the Court of Justice shall make such assessment after hearing the other party and subject to appeal by objection to the Court of Appeal to be submitted within fourteen days. There shall be no resort to a higher court against the decision of the Court of Appeal. In its assessment of the fee, the court shall not be bound by any specific amount but shall equitably consider the efforts used in representation and the financial situation of the person represented.

1 § 308(3) amended by LGBl. 2016 No. 406.

§ 311

1) In those cases in which the accused, the private prosecutor, or the persons listed in § 306(4) are to pay the costs of the proceedings, these persons shall also pay all costs of defence and representation.

2) If no agreement can be reached, the procedure laid down in § 310 shall be used to assess the amount of these costs.

Title XXI
The proceedings before the single judge

§ 312

1) The proceedings before the single judge shall on penalty of voidness (§ 220(1)) take place only where the criminal tribunal does not have jurisdiction (§ 15).[1]

2) The single judge shall primarily apply the rules laid down in this Title. In all issues, however, about which there is no special rule here, the provisions applicable to proceedings for crimes in general shall apply.

§ 313

1) The proceedings before the single judge shall be initiated by a written application of the prosecutor to punish the accused. Such application shall contain the information listed in § 163(2) Item (1) to (3). The evidence which the prosecutor wants to use in the trial shall also be stated in the application. The public prosecutor may also apply for the accused's arrest at the same time.

2) The application for punishment shall be addressed to the single judge, and if no investigation has taken place, it shall also be submitted to him, and otherwise to the investigating judge. The investigating judge shall send the files to the single judge after carrying out any supplementations that may yet be necessary to conclude the investigation.

3) There shall be no resort to a higher court against the application for punishment. However, the single judge shall obtain the decision

1 § 312(1) amended by LGBl. 2011 No. 593.

from the President of the Court of Appeal if it is his opinion that there are concerns against the arrest of the accused.

§ 314

The preparation for the trial, the trial, and the judgment shall otherwise be subject to the provisions of Title XIII and XIV *mutatis mutandis*, with the following deviations and supplements:

1. The summons of the accused for the trial shall include a copy of the application for punishment. Except for the content prescribed in § 179, the summons of the accused shall also include the instruction to bring the evidence serving his defence or indicate such evidence to the court in time so that it may be procured for the trial. The accused shall also be instructed on his right to use a defence counsel (§ 26(1)) and on the prerequisites for being provided with a defence counsel pursuant to § 26(2).
2. As far as the provisions of §§ 168 and 201(b) make it possible that additional inquiries or investigative acts are carried out by the investigating judge, they shall be applicable only if such evidence cannot be taken during the trial.
3. If no investigation has been carried out, the public shall be excluded from the trial at the request of the accused.
4. The single judge shall have the powers and duties of the criminal tribunal and of the latter's presiding judge.
5. The application for punishment shall be read instead of the bill of indictment.
6. If the single judge arrives at the opinion that he does not have jurisdiction because the facts on which the application for punishment are based cause - by themselves or in connection with circumstances that appeared during the trial - the criminal tribunal to have jurisdiction, he shall declare his lack of jurisdiction by way of a judgment (§ 15(5)). As soon as this judgment has become final, the prosecutor shall submit within fourteen days (§ 158(1)) the applications necessary to initiate or continue the proceedings. If, however, the criminal tribunal or any other higher court remits the case to the single judge, he can no longer reject it on the grounds of a lack of

jurisdiction. The same shall apply in the event of remittal or assignment as a result of a decision by an appellate court.[1]

§ 315

1) After the trial has been closed, the judgment shall be rendered, shall be announced by the judge together with the essential grounds for the decision, and shall on penalty of voidness be enclosed with or made part of the record.

2) If, however, the accused is acquitted, or if he is convicted after a comprehensive confession supported by the other results of the trial, or if an indictment consisting of several points is concluded partly in the former manner and partly in the latter, and if in all these cases the parties waive their right to appeal or fail to lodge any applications for resort to a higher court within the time-limits available for this, the written issue of the judgment may be replaced by a judgment note, which shall be signed by the judge and by the keeper of the minutes and shall contain:

1. the information listed in § 215(2) except for the grounds for the decision;
2. if the defendant is convicted, the circumstances relevant for assessing the sentence (in keywords);
3. if the defendant is sentenced to a fine assessed in daily rates, the circumstances (in keywords) relevant for assessing the daily rate (§ 19(2) StGB).

3) If the defendant is convicted and a civil claimant is referred to civil litigation with his claims for compensation (§ 258(2)), the facts considered by the court to be proven shall also be briefly stated.

4) The form of the judgment note in terms of the above two paragraphs shall be laid down by the Government by way of an ordinance.

5) The judge shall have the power to suspend the rendering of the judgment until the next day after the trial has been closed.

§ 316

The judgments and decisions of the single judge shall be subject to the same resorts to higher courts and legal remedies as the judgments and

1 § 314(6) amended by LGBl. 2011 No. 593.

decisions of the criminal tribunal. The same shall apply to the execution of the judgments, the decisions and directions of the criminal court concerning civil law claims, the reopening of the criminal proceedings, the reinstatement to the previous state (*restitutio in integrum*), the proceedings against unknown, absent, and fugitive persons, and the costs of the criminal proceedings. However, the presiding judge shall be replaced by the single judge in the *mutatis mutandis* application of Titles XV to XX.

Title XXII

Simplified proceedings before a single judge in the case of infractions and certain misdemeanours

§ 317

The provisions of this title shall be applied as a modification and supplement to the proceedings before the single judge regulated in Title XXI as soon as it is definitive that only infractions and misdemeanours will have to be judged upon, provided that the latter are merely subject to a fine or to imprisonment not exceeding six months.

§ 318

If it is the judge's opinion that he does not have jurisdiction, he may, instead of rendering a judgment stating his lack of jurisdiction pursuant to § 314(6), send the files to the public prosecutor for the latter to submit the applications necessary for the proper proceedings.

§ 319

1) An application by the public prosecutor for punishment in accordance with the law submitted orally or in writing shall suffice to initiate the proceedings. Such application must state the time, place, and type of the punishable act, stating with sufficient clarity the provisions of the law to be applied.

2) A formal investigation shall not take place.

3) The public prosecutor need not be present during the trial in the first instance, unless it takes place as a result of a protest filed by him against a summary order of punishment (§ 329(1)).

4) If the judge is convinced that the act which the application is about is not subject to punishment by the law or that there are circumstances which cancel the punishability of the act or which preclude prosecution for the act, he shall discontinue the proceedings by way of a ruling.[1]

§ 320[2]

Anyone whose rights have been violated by a punishable act subject to *ex officio* prosecution shall be free to join the criminal proceedings. If the public prosecutor refuses prosecution, the civil claimant may submit the application for punishment in accordance with the law (§§ 319(1) and 326(2)), unless prosecution has been discontinued pursuant to Title IIIa.

§ 321

1) If the accused is brought before the judge and confesses the offence he is charged with, or if the accused appears before the judge and the prosecutor is present in addition to that and all evidence for prosecution and defence are available, the judge may with the accused's consent carry out the trial and render the judgment immediately.

2) Except for this case, however, a date shall be appointed for the trial after any investigative measures considered necessary have been carried out.

§ 322

During all preliminary inquiries, the judge shall in general observe the rules laid down for the investigation of crimes, but subject to the following limitations:

1. Except for the cases mentioned in § 127(1) Items (2) and (3), the accused may be arrested only if he has failed to appear in person although he has expressly been ordered to do so. Travellers shall be

1 § 319(4) amended by LGBl. 2006 No. 99.
2 § 320 amended by LGBl. 2006 No. 99.

permitted to continue their voyage unless it is to be feared that this will thwart the investigation or the execution of the judgment.[1]

2. If the summons cannot be served upon the accused, the further proceedings shall be suspended until he has been apprehended. It shall be inadmissible to issue warrants for apprehension; in important cases, however, the authorities may be provided with a personal description of the accused.

3. Pre-trial detention may be imposed only in the cases of § 127(1) Items (2) and (3).[2]

4. Repealed[3]

5. No court witnesses shall be required at any investigative act.

6. During an inspection or when obtaining an expert's opinion, it shall suffice to consult one expert witness only.

7. Keeping a record shall be required only in inquiries that are needed as evidence for the trial and should not be repeated there; in other cases, a brief note by the keeper of the minutes or by the judge of decision himself of the essential content of the testimony given by the persons examined shall suffice.

8. No defence counsel shall be provided, except where pre-trial detention is imposed.[4]

§ 322a

1) In the case of infractions of the *Strassenverkehrsgesetz* (Road Traffic Act), the judge may order that the suspect deposit a security in the amount of the probable fine and procedural costs, unless the suspect has a permanent residence in Liechtenstein.[5]

2) If the suspect does not deposit the security immediately, the judge may order that the suspect's driving licence be taken away for a period not exceeding five days.[6]

1 § 322(1) amended by LGBl. 2007 No. 292.
2 § 322(3) amended by LGBl. 2007 No. 292.
3 § 322(4) repealed by LGBl. 2016 No. 162.
4 § 322(8) amended by LGBl. 2007 No. 292.
5 § 322a(1) inserted by LGBl. 1999 No. 9.
6 § 322a(2) inserted by LGBl. 1999 No. 9.

3) Where the requirements of Para. (1) and (2) apply, the National Police may preliminarily collect a security payment up to the amount of 5,000 Swiss francs or take away the driving licence preliminarily.[1]

4) The National Police shall immediately issue to the suspect a receipt for the security deposit collected or for preliminarily taking away the driving licence and inform the suspect that a judicial order will be issued within 48 hours and that this order will be served only on express request of the suspect. The security deposit or the driving licence shall be handed over to the judge with the criminal complaint within no more than 24 hours.[2]

5) As soon as the judicial proceedings are discontinued, the accused is acquitted, or there is a final convicting judgment, the security deposit shall be released subject to Para. (6) and shall be handed over to the person entitled to it.[3]

6) The security deposit shall be set off against the imposition of any fine that has become final and on the costs of the proceedings.[4]

§ 323

As a rule, witnesses shall not be sworn. If, however, the matter at hand is about the conviction of a gainsaying accused person through the testimony of witnesses, the latter shall be properly sworn if the accused specifically demands that they be sworn and if the subject is a misdemeanour subject to a penalty exceeding one month of imprisonment or sixty daily rates, and provided that there is no legal obstacle to swearing them.

§ 324

If the proceedings cannot take place immediately after stating the indictment pursuant to § 321, the accused shall - if he has not been arrested - be summoned to the trial by a written summons which must contain the essential facts of the punishable act he is charged with as well as the instruction to appear at the appointed hour and bring the evidence serving his defence or inform the judge in time of such evidence that it can be provided for the trial. Also, a warning shall be added that if the

1 § 322a(3) amended by LGBl. 2012 No. 26.
2 § 322a(4) amended by LGBl. 2012 No. 266.
3 § 322a(5) inserted by LGBl. 1999 No. 9.
4 § 322a(6) inserted by LGBl. 1999 No. 9.

accused fails to appear, the trial will take place and the judgment will be rendered nonetheless.

§ 325

1) The summons shall normally be arranged in such a manner that the accused will have a period of at last three days available between the service of the summons and the trial, deducting the time he will require to travel to the location of the court. In urgent cases, however, with insignificant violations of the law, and if the accused is at the location of the court, the time-limit may also be shorter. Only if substantial obstacles are demonstrated may the accused's application to adjourn the trial be allowed.

2) Subject to the limitations mentioned in Titles IV and XIII, which shall be subject to the judge's assessment, the accused shall be free to use a defence counsel.

3) If the accused has not been arrested, he may, if he does not want to appear in person, have himself represented at the trial by a proxy, who shall identify himself by special power of attorney; however, the court may effect the accused's personal appearance in all cases where it is considered to be in the best interest of finding the truth. Persons who are attorneys in terms of § 27 and make a business of such representations without a permit may be rejected by the court.

§ 326

1) If a private prosecutor intervenes, the public must be excluded from the trial also for the reason that both parties have submitted applications to such effect.

2) The trial shall begin with the reading of the indictment. The accused or his proxy shall then be examined on this, and the evidence shall be shown. Then, the prosecutor and the civil claimant shall be heard with their applications as well as the accused and his defence counsel with their reply. The prosecutor may limit himself to submitting a general request that the law be applied.

§ 327

If the accused fails to appear at the appointed hour despite having been duly summoned, the judge many, if he considers the examination of

the accused to be necessary, direct him to appear in person, and if this has already happened, have him brought before the court. In addition, the trial shall begin immediately, the evidence shall be taken, and then the judgment shall be rendered and announced after hearing the prosecutor. A written issue of the judgement shall be served upon the accused who has failed to appear.

§ 328[1]

If an authority or an officer of the National Police files a criminal complaint based on their own perceptions or on a confession in an official capacity against an accused who is at liberty, or if the inquiries made are sufficient to assess all circumstances relevant for the decision, the judge may in the case of infractions - with the exception of those listed in § 22a(2)(1) - impose the penalty by summary order of punishment without a preceding trial.

§ 329

1) The summary order of punishment shall be sent to the public prosecutor for inspection before serving it upon the accused. The public prosecutor may challenge it within fourteen days by way of an objection. If he does, the summary order of punishment shall not be issued and not be served upon the accused, and the ordinary proceedings shall be initiated.

2) The summary order of punishment need not be sent to the public prosecutor, and the latter shall have no right to object, if the public prosecutor himself applied for the summary order of punishment pursuant to § 328(2) and the judge has complied with that application in full.

§ 330

1) In the case of § 329(2), the court shall serve the summary order of punishment upon the accused immediately, and in the case of § 329(1), if the public prosecutor has not submitted an objection or has waived it.

2) The accused shall be free to challenge the summary order of punishment by oral or written protest to the Court of Justice within a

1 § 328 amended by LGBl. 2012 No. 26.

term of fourteen days from service, stating the evidence for his defence at the same time. If the accused submits a protest, the ordinary proceedings shall be initiated, but with the proviso that the summary order of punishment shall remain in force if he withdraws his protest no later than at the commencement of the trial. In this case, the ordinary proceedings shall be stopped, and any additional costs in terms of § 301(1)(3) shall be decided upon by separate ruling.

3) No resort to a higher court shall be admissible against the summary order of punishment except for the protest; however, if the requirements of § 282(1) Items (1) and (2) apply, the Court of Justice may grant reinstatement to the previous state to the accused.[1]

4) If the accused fails to appear at the appointed trial without an excuse despite having been properly summoned, the summary order of punishment shall enter in force once again. The protesting party shall bear the additional costs incurred since the issuing of the summary order of punishment. These additional costs in terms of § 301(1) shall be decided on by a separate ruling. The consequences of not appearing shall be expressly pointed out in the summons for the trial.[2]

§ 331

The reopening of the criminal proceedings shall be subject to the principles stated in Title XVIII. The single judge shall decide on whether a reopening of the proceedings will be granted. Refusal to reopen shall be subject to objection to the Court of Appeal, which shall take the final decision. The objection shall be submitted within fourteen days.

§ 332

1) Decisions of the single judge that are not subject to appeal may be challenged by objection to the Court of Appeal within fourteen days.

2) There shall be no further resort to a higher court against the decisions of the Court of Appeal rendered on such objections.

1 § 330(3) amended by LGBl. 1999 No. 9.
2 § 330(4) inserted by LGBl. 1999 No. 9.

Title XXIII

Proceedings for the conditional suspension of a sentence, the conditional suspension of preventive measures, the issuing of instructions, and the ordering of supervised probation[1]

I. Conditional suspension of a sentence, committal to an institution for offenders in need of withdrawal, and legal consequences[2]

§ 333

1) The conditional suspension of a sentence, the committal to an institution for offenders in need of withdrawal, and any legal consequences shall be included in the judgment.

2) The court shall instruct the convicted offender on the meaning of conditional suspension and as soon as the decision on this has become final serve upon him a document stating briefly and in simple terms the essential content of the decision, the obligations imposed on him, and the reasons for which suspension may be revoked.

§ 334

1) Conditional suspension or the lack thereof shall form part of the imposition of the sentence and may be challenged by way of appeal to the advantage and to the disadvantage of the convicted offender. The appeal shall have suspensive effect only as far as the subject is the execution of the penalty or the committal to an institution for offenders in need of withdrawal or the occurrence of a legal consequence.

2) If the court has exceeded its powers by the decision on conditional suspension, the judgment may be challenged for the reason for voidness pursuant to § 221(3).

1 Heading before § 333 inserted by LGBl. 2006 No. 99.
2 Heading before § 333 inserted by LGBl. 2006 No. 99.

II. Issuing of instructions and ordering of supervised probation[1]

§ 335[2]

1) The court shall decide by way of a ruling on the issuing of instructions and on the ordering of supervised probation. During the trial, the decision shall up to the court of decision, and otherwise up to the presiding judge.

2) If an instruction is issued to the offender that directly touches the interests of the injured party, the latter shall be informed of it.

III. Revocation of conditional suspension[3]

§ 335a[4]

1) If someone is convicted for a punishable act that he committed before the probation period expired after a conviction subject to a reservation of punishment, to conditional suspension, or to conditional release, the court of decision shall proceed pursuant to the following provisions:[5]

1. If the requirements for refraining from the subsequent awarding of punishment (§§ 8b, 8c of Juvenile Court Act) apply, it shall be declared that the new conviction shall not form a reason for such awarding.
2. If the requirements for refraining from the revocation of conditional suspension or of conditional release apply, it shall be decided that there will be no revocation for the reason of the new conviction.
3. If the requirements for the subsequent awarding of punishment (§§ 8b, 8c of the Juvenile Court Act) apply, the sentence shall be assessed in one single decision as if the conviction had happened for both punishable acts together; furthermore, it shall be decided that in

1 Heading before § 335 inserted by LGBl. 2006 No. 99.
2 § 335 amended by LGBl. 2006 No. 99.
3 Heading before § 335a inserted by LGBl. 2006 No. 99.
4 § 335a inserted by LGBl. 2006 No. 99.
5 § 335a(1) introductory sentence amended by LGBl. 2016 No. 162.

the proceedings in which the conviction subject to subsequent punishment occurred, any subsequent conviction shall now be out of the question.

4. If the requirements for the revocation of conditional suspension or of conditional release apply, such revocation shall be rendered.

2) The single judge may only decide in terms of Para. (1)(4) with regard to penalties and residual penalties not exceeding three years each. The revocation of conditional suspension of committal to an institution for mentally disturbed offenders pursuant to § 21(1) StGB or of the conditional release from such committal or of a life sentence shall be reserved for the criminal tribunal. As far as the court of decision therefore must not render a decision pursuant to Para. (1)(4), it shall declare that the decision on revocation shall be reserved for the court which otherwise would have the right to render it. [1]

3) Before the decision, the court shall hear the prosecutor, the accused, and the probation officer, and shall investigate the files on the prior conviction. Hearing the defendant may be refrained from if the judgment is rendered in his absence and a decision in terms of Para. (1) Items (1) or (2) is rendered. Hearing the probation officer may be refrained from if the court does not consider a revocation. Instead of inspecting the files, the court may also content itself with inspecting a copy of the prior judgment if this can serve as a sufficient basis for the decision in terms of Para. (1).

4) The decisions in terms of Para. (1) with the exception of the awarding of the sentence pursuant to Item (3) sentence 2 and the reservation pursuant to Para. (2) shall be rendered by ruling. The ruling shall be announced and issued in writing together with the judgment. The ruling as well as the lack of it may be challenged by objection.

5) In a resolution by which the revocation of conditional suspension or conditional release is refrained from, the court of decision may also extend the probation period; together with a decision in terms of Para. (1) Items (1) or (2), instructions may be issued, supervised probation may be ordered, and educational measures may be taken (§§ 53(3), 54(2) StGB, § 8b(2) Juvenile Court Act).[2]

6) The court of decision shall forthwith notify all courts whose prior decisions are affected by a decision under the above provisions.

1 § 335a(2) amended by LGBl. 2016 No. 162.
2 § 335a(5) amended by LGBl. 2016 No. 162.

§ 335b[1]

If in rendering a judgment, the court of decision has incorrectly failed to make a decision pursuant to § 335a(1) Items (3) or (4) or in the case of a decision pursuant to § 335a(1)(2) has not extended the probation period, and if the accused has not challenged the lack of such decision, there must be no more revocation of conditional suspension or conditional release or extension of the probation period as a result of a new conviction if the prior conviction or conditional release was documented in the files.

§ 336

1) Except for the cases of § 335a, the decision on the revocation of the conditional suspension of a sentence or part thereof, of committal to an institution for mentally disturbed offenders or for offenders in need of withdrawal, or of legal consequences shall be taken by the court - in chambers and by way of a ruling - which took the decision in the first instance in the proceedings in which conditional suspension was declared.[2]

2) The ruling on revocation in the case of subsequent conviction (§ 55 StGB) shall be issued by that court (§ 15) whose judgment included conditional suspension in the first or in a higher instance and became final last; among courts of different levels, that court whose judgment included conditional suspension and became final last shall decide.

3) Before the decision, the court shall hear the prosecutor, the convicted offender, and the probation officer, and obtain an extract from the criminal record. Hearing the convicted offender may be refrained from if it turns out that he cannot be heard without disproportionate effort.[3]

§ 337[4]

The court and the National Police (§ 129(1)) may take the convicted offender into provisional custody if there is a strong suspicion that there is a reason to revoke the conditional suspension of a sentence or part

1 § 335b inserted by LGBl. 2006 No. 99.
2 § 336(1) amended by LGBl. 2016 No. 162.
3 § 336(3) amended by LGBl. 2006 No. 99.
4 § 337 amended by LGBl. 2012 No. 26.

thereof, and that it is to be feared that the convicted offender will flee (§§ 130, 131(2) Items (1) and(3)).

IV. Final remittal[1]

§ 338

1) The decision that the conditional suspension of a sentence, of committal to an institution for mentally disturbed offenders or offenders in need of withdrawal, or of a legal consequence has become final shall be taken by way of a ruling of the presiding judge.[2]

2) Before the decision, the prosecutor shall be heard and an extract from the criminal records shall be obtained.

V. Joint provisions[3]

§ 339

1) All rulings that refer to the issuing of instructions, to the ordering of supervised probation, to the extension of the probation period, to the judicial ordering of preliminary custody, to the revocation of conditional suspension, or to final remittal may be challenged by objection.[4]

2) Objections to the advantage of the convicted offender may be lodged by the convicted offender himself and by all other persons who may lodge an appeal to the convicted offender's advantage; however, objections to the disadvantage of the convicted offender may only be lodged by the prosecutor. The objection shall be submitted within fourteen days from notification of the ruling to the appellant, and if was not to be served upon the appellant, within fourteen days from notification to the convicted offender. The objection shall have suspensive effect, except where it is directed against the ordering of provisional custody.

1 Heading before § 338 inserted by LGBl. 2006 No. 99.
2 § 338(1) amended by LGBl. 2016 No. 162.
3 Heading before § 339 inserted by LGBl. 2006 No. 99.
4 § 339(1) amended by LGBl. 2006 No. 99.

3) The objection may also be connected with an appeal against the judgment that was rendered together with the challenged ruling (§§ 335 and 335a). In this case, the objection shall be deemed to have been submitted in time if the appeal was lodged in time. Furthermore, an appeal submitted to the defendant's advantage against the sentence shall also be deemed to be an objection against the ruling.[1]

Title XXIV
Proceedings for preventive measures, disfranchisement, and forfeiture[2]

I. Proceedings for the committal of mentally disturbed offenders pursuant to § 21(1) StGB[3]

§ 340

1) If there are sufficient reasons for the requirements of § 21(1) StGB to apply, the prosecutor shall submit an application for commitment to an institution for mentally disturbed offenders. Such application shall be subject to the provisions on the bill of indictment *mutatis mutandis*. Unless laid down otherwise below, the proceedings following such application shall be subject to the provisions on criminal proceedings *mutatis mutandis*.

2) An application for committal to an institution for mentally disturbed offenders must be preceded by an investigation against the person concerned, subject to the following specifics:

1. The person concerned must be represented by a defence counsel. Such counsel shall have the power to submit applications even against the wishes of the person concerned.
2. The person concerned must be examined by at least one expert in the field of psychiatry.

1 § 339(3) amended by LGBl. 2006 No. 99.
2 Heading before § 340 amended by LGBl. 2012 No. 358.
3 Heading before § 340 amended by LGBl. 2012 No. 358.

3. The investigating judge may consult one or two expert witnesses for any examination of the person concerned.

4. If it is to be assumed that the trial will have to be carried out in the absence of the person concerned (§ 341(5)), the prosecutor, the civil claimant, the defence counsel, and the legal representative of the person concerned shall be given the opportunity to participate in a concluding examination of the person concerned.

5. Examinations of the person concerned shall be refrained from as far as they are not possible at all or only with substantial danger to his health as a result of his condition.

3) The guardianship court shall be informed of the proceedings forthwith.

4) If any of the reasons for detention listed in § 131(2) or (7) applies, if the person concerned cannot remain at liberty without danger to himself or others, or if his observation by doctors is necessary, his provisional detention in an institution for mentally disturbed offenders or his committal to a mental hospital shall be ordered.

5) The admissibility of provisional detention shall be decided on application or *ex officio* in *mutatis mutandis* application of §§ 131 to 132a, 141, 142, 239, and 241.[1]

6) In the event of a criminal judgment (§ 344), provisional detention shall be set off against fines and imprisonment (§ 38 StGB).

§ 341

1) The criminal tribunal shall decide on applications for the committal to an institution for mentally disturbed offenders pursuant to § 21(1) StGB.

2) The court shall decide on the application by way of a judgment after a public trial to be conducted in *mutatis mutandis* application of the provisions of Titles XIV and XV.

3) On penalty of voidness, a defence counsel of the person concerned must be present for the whole duration of the trial; such defence counsel shall have the power to submit applications even against the wishes of the person concerned.

1 § 340(5) amended by LGBl. 2007 No. 292.

4) An expert witness (§ 340(2)(2)) shall be brought in for the trial on penalty of voidness.

5) If the condition of the person concerned does not permit his participation in the trial within a reasonable time or if such participation would carry the risk of a substantial impairment of his health, the trial shall be carried out in the absence of the person concerned. The court shall decide on this by way of a ruling after examining the expert witnesses and carrying out any inquiries that may be necessary in addition. The ruling may also be issued by the presiding judge before the trial already and shall in this case be subject to separate challenging by way of objection to be submitted within fourteen days. A ruling to carry out the entire trial in the absence of the person concerned may only be issued after the presiding judge has satisfied himself of the condition of the person concerned and has talked with him. If the examination of the person concerned is refrained from as a whole or in part, but if he has been examined during the investigation, the record taken of this shall be read.

6) Joining the proceedings with civil claims shall be inadmissible.

§ 342

1) If the person concerned has a legal representative, such representative shall be notified of the application and of all court decisions in the same manner as the person concerned himself. The legal representative shall also be notified of the appointment of the trial.

2) The legal representative shall have the right to use - even against the wishes of the person concerned - all resorts to a higher court to which the person concerned is entitled by law. The time-limit for submitting a resort to a higher court shall start running for the legal representative on the day on which he is notified of the decision.

3) If the person concerned does not have a legal representative, if such representative is suspect of having or proven to have participated in the punishable act committed by the person concerned, if such representative is unable to assist the person concerned for other reasons, or if such representative has failed to appear at the trial despite having been duly summoned, the defence counsel of the person concerned shall be entitled to the rights of the legal representative.

4) The guardianship court shall be informed of any order for committal to an institution for mentally disturbed offenders pursuant to § 21(1) StGB.

§ 343

1) The judgment may be challenged by appeal to the advantage and to the disadvantage of the person concerned in *mutatis mutandis* application of §§ 219 to 221. In the case of committal, the person concerned and his relatives (§ 218) shall also be entitled to appeal. Lodging the appeal shall have suspensive effect.

2) The reopening of proceedings and reinstatement to the previous state shall be subject to the provisions of Title XVIII *mutatis mutandis*.

§ 344

1) If in proceedings that are directed at the committal of a person to an institution for mentally disturbed offenders the court decides that the person concerned could be punished for the offence, it shall hear the parties on this. In the trial, a possible application to adjourn shall be heard. The same shall apply if the court has arrived at the opinion in criminal proceedings that committal pursuant to § 21(1) StGB is possible. If the proceedings are not conducted before the criminal tribunal, any other court shall on penalty of voidness declare its own lack of jurisdiction.

2) The application for committal to an institution for mentally disturbed offenders shall be equivalent to a bill of indictment. However, the public prosecutor shall have the right to exchange such application against a bill of indictment until the commencement of the trial.

3) Committal pursuant to § 21(1) StGB may be ordered on the basis of a bill of indictment only where the rules of § 341(3) and (4) and of § 342(1) last sentence have been observed during the trial. If necessary, the trial shall be adjourned (§ 201).

II. Proceedings for the committal of mentally disturbed offenders, offenders in need of withdrawal, or dangerous repeat offenders pursuant to §§ 21(2), 22, and 23 StGB to the appropriate institutions and prohibition of certain activities pursuant to § 220 StGB[1]

§ 345

1) The application of the preventive measures provided for in §§ 21(2), 22, 23, and 220 StGB shall as a rule (§ 351) be decided on in the criminal judgment.[2]

2) The order to commit a person to any of the institutions listed - or the lack of such order - as well as the prohibition or lack of prohibition of certain activities shall form part of the imposition of the sentence and may be challenged by appeal to the advantage and to the disadvantage of the convicted offender.[3]

3) If the court has exceeded its powers by the decision on preventive measures, this shall be a reason for voidness in terms of § 221(3).

§ 346

1) Committal to any of the institutions provided for in §§ 21(2) and 23 StGB may happen only if investigation proceedings have taken place.

2) In the case of § 21(2) StGB, such investigation proceedings shall be subject to the specifics mentioned in § 340(2) Items (1) to (3).

§ 347[4]

If the prosecutor intends to submit an application for committal to any of the institutions provided for in §§ 21(2), 22, or 23 StGB or an application for an order prohibiting certain activities, he shall so declare in the bill of indictment (application for punishment). However, the

1 Heading before § 345 amended by LGBl. 2011 No. 185.
2 § 345(1) amended by LGBl. 2011 No. 185.
3 § 345(2) amended by LGBl. 2011 No. 185.
4 § 347 amended by LGBl. 2011 No. 185.

court may order such committal or prohibition even without such application.

§ 348[1]

Where there are sufficient reasons to assume that the requirements of §§ 21(2) or 22 StGB are met, and reasons for detention (§ 131(2) and (7)) apply, but the accused cannot be detained in the judicial Liechtenstein Prison without difficulties, it shall be ordered by ruling that pre-trial detention be executed by provisional detention in an institution for mentally disturbed offenders or in an institution for offenders in need of withdrawal. In this case, the execution of pre-trial detention shall be *mutatis mutandis* subject to the provisions on the execution of these preventive measures.

§ 349

1) The ordering of the preventive measures provided for in §§ 21(2), 22, and 23 StGB shall be void unless a defence counsel of the accused was present for the whole duration of the trial. The ordering of a prohibition of certain activities (§ 220 StGB) shall be void if the requirements for this have not been discussed in the trial.[2]

2) In addition, the ordering of committal to an institution for mentally disturbed offenders pursuant to § 21(2) StGB, to an institution for offenders in need of withdrawal, or to an institution for dangerous repeat offenders shall - on penalty of voidness - require the consultation of at least one expert witness (§ 340(2)(2)).

3) If the court refrains from committal to an institution for offenders in need of withdrawal because of the amount of the penalty awarded (§ 22(2) StGB), it shall put forward grounds for this in its decision.

§ 350

If the accused has a legal representative, § 342 shall be applied *mutatis mutandis* in proceedings in which there are sufficient reasons to assume that the requirements of §§ 21(2) or 22 StGB apply.

1 § 348 amended by LGBl. 2007 No. 292.
2 § 349(1) amended by LGBl. 2011 No. 185.

§ 351

1) If there are sufficient reasons to assume that the requirements for the ordering on own initiative of the preventive measures provided for in §§ 21(2), 22, 23, and 220 StGB apply (§ 65(5) StGB), the prosecutor shall submit an application to order one of the preventive measures listed in these provisions. Such application shall be subject to the provisions on the bill of indictment *mutatis mutandis*.[1]

2) In this case, §§ 341(1) and (2), 343, 346, 349(1) and (2), and 350 shall apply *mutatis mutandis*.

§ 352

If any of the reasons for arrest listed in § 131(2) applies, the detention of the person concerned in one of the institutions listed in § 351(1) shall be ordered. § 340(5) and (6) shall apply *mutatis mutandis*.

IIa. Proceedings for disfranchisement[2]

§ 352a[3]

1) Any decision of disfranchisement (Art. 2(1)(c) VRG [*Volksrechtegesetz*, Act on the Rights of the People]) shall be included in the criminal judgment. The decision shall be equivalent to the imposition of the sentence and may be challenged by appeal to the advantage and to the disadvantage of the convicted offender.

2) The court shall inform the Judicial Records Authority on the decision concerning disfranchisement.

3) If circumstances occur or become known subsequently that would have prevented a decision in terms of Para. (1) if they had existed at the time of the judgment, procedure shall be pursuant to § 251.

1 § 351(1) amended by LGBl. 2011 No. 185.
2 Heading before § 352a inserted by LGBl. 2012 No. 358.
3 § 352a inserted by LGBl. 2012 No. 358.

III. Proceedings for forfeiture, extended forfeiture, and deprivation[1]

§ 353[2]

1) Forfeiture, extended forfeiture, deprivation, and other pecuniary orders laid down in supplementary criminal laws shall be decided on in the criminal judgment unless provided otherwise in this Chapter or in other laws.[3]

2) If the results of the criminal proceedings do not suffice in themselves nor after the conduct of simple additional inquiries to make a reliable judgment on the pecuniary orders listed in Para. (1), the court may issue a ruling to the effect that the decision on such orders be reserved for separate decision (§§ 356, 356a), except where such orders are no longer admissible regarding the assets or items concerned.

3) Except for the case of § 356a, the decision on pecuniary orders shall be equivalent to the imposition of the sentence and may be challenged by appeal to the advantage and to the disadvantage of the convicted offender or of other persons concerned by the order (§ 354).

§ 354[4]

1) Persons who have or assert a right to the assets or items threatened by forfeiture or deprivation, who are liable for fines or for the costs of the criminal proceedings, or who are threatened by forfeiture, extended forfeiture, or deprivation without being themselves accused or indicted shall be summoned to the trial. They shall have the rights of the accused in the trial and in the subsequent proceedings, as far as these are about the decision on such pecuniary orders. If a summons has been served on the persons concerned, the proceedings may be conducted and the decision be rendered even in their absence.

2) If the persons mentioned in Para. (1) assert their right only after the decision on forfeiture, extended forfeiture, or deprivation has become final, they shall be free to assert their claims against the State to the item

1 Heading before § 353 amended by LGBl. 2016 No. 162.
2 § 353 amended by LGBl. 2000 No. 257.
3 § 353(1) amended by LGBl. 2016 No. 162.
4 § 354 amended by LGBl. 2016 No. 162.

or to the proceeds from its sale (§ 253) by way of civil litigation within thirty years after the decision.

§ 355[1]

Repealed

§ 356

1) If there are sufficient reasons to assume that the preconditions for forfeiture (§ 20 StGB), extended forfeiture (§ 20b StGB), or deprivation (§ 26 StGB) are met, and if it is not possible to decide on this in criminal proceedings or in proceedings directed at committal to any of the institutions mentioned in §§ 21 to 23 StGB, the prosecutor shall submit a separate application for the issuing of such pecuniary order.[2]

2) An application for forfeiture or extended forfeiture shall be decided on by that court which had or would have jurisdiction for the trial and judgment for the offence that supposedly gives rise to the order; it shall decide by judgment in separate proceedings after a public oral hearing. If the criminal tribunal has judged on the offence that supposedly gives rise to the order or if it has reserved the decision (§ 353(2)), its presiding judge shall have jurisdiction as a single judge.[3]

3) An application for deprivation shall be decided on by the single judge in separate proceedings after a public oral hearing; the decision shall as a rule (§ 356a) be rendered by judgment. The provisions on trials concerning punishable acts subject to a penalty of no more than six months of imprisonment as well as § 354 shall be applied *mutatis mutandis*.[4]

4) In *mutatis mutandis* application of the Title on resorts to a higher court, the judgment may be challenged by appeal to the advantage and to the disadvantage of the person concerned; § 354(1) sentence 3 shall apply *mutatis mutandis*.[5]

1 § 355 repealed by LGBl. 1998 No. 174.
2 § 356(1) amended by LGBl. 2016 No. 162.
3 § 356(2) amended by LGBl. 2016 No. 162.
4 § 356(3) amended by LGBl. 2000 No. 257.
5 § 356(4) amended by LGBl. 2000 No. 257.

§ 356a[1]

1) The single judge may decide on an application for deprivation in separate proceedings by way of a ruling after hearing the prosecutor and the persons concerned (§ 354) if the value of the item threatened by deprivation does not exceed 2,000 Swiss francs or if the possession of such object is prohibited in general. If the abode of the person concerned is located abroad or cannot be determined without substantial procedural efforts, the person concerned need not be heard.

2) A ruling pursuant to Para. (1) shall be subject to objection to the Court of Appeal by the person concerned and by the prosecutor. The objection shall be forwarded to the opponent with the notice that he may submit a response within fourteen days.

§ 357

If the requirements for separate proceedings appear as late as during the trial, the decision may also be rendered as part of a judgment in which the accused is acquitted or in which the application for committal to an institution is dismissed.

Title XXV

Proceedings on the criminal liability of legal entities[2]

§ 357a[3]

1) This Act shall apply *mutatis mutandis* to proceedings on the criminal liability of legal entities (§ 74a StGB), as far as its provisions are applicable to individuals only and nothing else is evident from the provisions below.

2) The jurisdiction of the court for the predicate offence shall also determine jurisdiction against the suspect legal entity. The proceedings shall be conducted jointly as a rule.

1 § 356a inserted by LGBl. 2000 No. 257.
2 Heading before § 357a inserted by LGBl. 2010 No. 379.
3 § 357a inserted by LGBl. 2010 No. 379.

3) The application for the punishment of the legal entity shall be connected with the bill of indictment, the application for sentencing, or the application for punishment against the individual if the proceedings can be conducted jointly. At any rate, an application for the punishment of a legal entity shall contain a summary and assessment of the facts on which the criminal liability of the legal entity is based.

4) Under the requirements of § 67(3), the criminal proceedings against the legal entity may also be conducted separately.

§ 357b[1]

1) The legal entity against which there is the suspicion of criminal liability shall have the rights of the accused in the proceedings.

2) The legal entity shall be represented in the proceedings by a member of the governing body with power of representation towards the outside or by another person nominated by the governing body with power of representation towards the outside.

3) If the members of the governing body with power of representation towards the outside fail to nominate a suitable person within a reasonable term despite having been directed by the court to do so, the court shall appoint a suitable representative *ex officio*. Such appointment shall end upon intercession by a representative nominated by the legal entity's governing bodies or by an appointed defence counsel.

4) If all members of the governing body with power of representation towards the outside are themselves suspect of having committed the predicate offence, and if they fail to nominate a suitable person despite being directed by the court to do so, the court shall proceed pursuant to Para. (3).

5) If service to the legal entity has been performed with legal effect, notification to the successor (§ 74d StGB) shall be deemed to have been performed, too.

1 § 357b inserted by LGBl. 2010 No. 379.

§ 357c[1]

The persons directing the legal entity and those employees who are suspect of having committed the predicate offence or have already been convicted for the predicate offence shall be summoned and examined as accused persons.

§ 357d[2]

1) The Prosecution Service may refrain or withdraw from prosecuting a legal entity if prosecuting and sanctioning the legal entity seems dispensable in view of the seriousness of the predicate offence, the consequences of the offence, the weight of the lack of organization, the conduct of the legal entity after the offence (in particular the restitution for the damage), the expected amount of the corporate fine to be imposed on the legal entity, and any legal disadvantages already suffered by or imminent for the legal entity or its owners as a result of the offence.

2) The Prosecution Service may also refrain or withdraw from prosecuting a legal entity if inquiries or applications for prosecution would be connected with substantial efforts that would obviously be disproportionate to the significance of the matter or to the sanctions to be expected in the event of conviction.

3) However, prosecution must not be refrained or withdrawn from if it seems appropriate

1. because of a risk emanating from the legal entity of the commission of an offence which will have serious consequences and for which the legal entity might be responsible,
2. in order to counteract the committing of offences during the activities of other legal entities, or
3. because of any other particular public interest.

§ 357e[3]

If a legal entity is strongly suspect of being responsible for a predicate offence, and if it is to be assumed that a corporate fine will be imposed on it, the court shall on application of the Prosecution Service issue an

1 § 357c inserted by LGBl. 2010 No. 379.
2 § 357d inserted by LGBl. 2010 No. 379.
3 § 357e inserted by LGBl. 2010 No. 379.

order pursuant to §97a to secure the corporate fine if and as far as it is to be feared that collection would otherwise be in danger or become substantially more difficult.

§ 357f[1]

1) If it is certain as a result of sufficiently clarified facts that setting aside the criminal complaint pursuant to § 22 or procedure pursuant to § 357d is out of the question, and if the requirements stated in § 22a apply, the Prosecution Service shall withdraw from the prosecution of a legal entity on the grounds of its criminal liability for a predicate offence if in view of

1. the payment of an amount of money to be assessed at up to 100 daily rates plus the costs of the proceedings that would have to be reimbursed in the case of a conviction,
2. a probation period to be assessed in the amount of no more than three years, if possible and expedient in connection with the expressly declared willingness of the legal entity to take organisational or staffing measures in order to prevent further offences for which the legal entity is responsible, or
3. the express declaration of the legal entity that it will render certain common-benefit performances free of charge and within a term to be assessed of no more than six months,

imposing a corporate fine does not seem advisable as a means to counteract the commission of predicate offences for which the legal entity can be held responsible and the commission of predicate offences during the activities of other legal entities. § 22e shall not be applied.

2) As far as this cannot be refrained from for special reasons, the withdrawal from prosecution shall also be made contingent on the legal entity making good the damage caused by the offence within a term to be assessed of no more than six months and proving this forthwith.

3) After an investigation has been initiated against the legal entity or an application for the punishment of the legal entity has been submitted for a predicate offence that is subject to *ex officio* prosecution, the court shall apply Para. (1) and (2) *mutatis mutandis* and shall discontinue the proceedings by way of a ruling, doing so until the closing of the trial and subject to the prerequisites applicable to the Prosecution Service.

1 § 357f inserted by LGBl. 2010 No. 379.

§ 357g[1]

If the legal entity is not represented in the trial, the court may carry out the trial, take the evidence, and render the judgment, but only where - on penalty of voidness - the summons for the trial has been validly served and these legal consequences have been threatened in the summons. In this case, a written issue of the judgment shall be served upon the legal entity.

Title XXVI
Final and transitional provisions[2]

§ 358

Entering into force

1) This Act shall enter into force concurrently with the Criminal Code on 1 January 1989.

2) On the day this Act enters into force, all provisions of other laws contradicting it shall cease to be in force, unless anything else is evident from this Act.

3) In particular, the following laws are repealed: the Code of Criminal Procedure of 31 December 1913, LGBl. 1914 No. 3, in the wording of the laws of 12 September 1916, LGBl. 1916 No. 9, of 7 April 1922, LGBl. 1922 No. 16 and 17, of 1 June 1922, LGBl. 1922 No. 21, of 22 September 1966, LGBl. 1966 No. 24, of 27 September 1972, LGBl. 1972 No. 54, of 19 September 1979, LGBl. 1980 No. 11, of 23 June 1981, LGBl. 1981 No. 39, and of 5 October 1983, LGBl. 1983 No. 53.

§ 359

Transitional provisions

1) The changes to the objective jurisdiction of courts as a result of the new provisions of criminal law shall not affect criminal proceedings that are already pending. If, however, a higher-level court has jurisdiction

1 § 357g inserted by LGBl. 2010 No. 379.
2 Heading before § 358 amended by LGBl. 2010 No. 379.

under the new law and no trial has taken place yet, the proceedings shall be forwarded to the court that has jurisdiction now.

2) Time-limits that have already expired before this Act enters into force shall be subject to the old law. Any time-limits that have not yet expired, however, shall be calculated pursuant to the new law.

3) The provisions on the admissibility and content of resorts to a higher court and of legal remedies as well as the proceedings applicable thereto shall be applied to resorts to a higher court against court decision rendered before this Act entered into force only where the time-limit for challenging such decision calculated pursuant to Para. (2) had not yet expired at the time this Act entered into force.

4) The same shall apply *mutatis mutandis* to other legal remedies, in particular to any protest against a bill of indictment submitted before this Act entered into force.

5) If in proceedings the substantive law that was in force before the new substantive provisions entered into force has to be applied, the new provisions of criminal procedural law shall nevertheless be applied as far as these are more favourable for the defendant than the provisions of criminal procedural law that applied previously. If the judgment rendered in the first instance is set aside by an appellate court and the case is remitted to a lower instance to conduct new proceedings and render a new judgment, the provisions of this Act shall apply to such renewed proceedings without limitation.

6) The requirements for the reopening of criminal proceedings as to convictions made under the previous law shall be subject to those provisions of procedural law that are more favourable for the convicted offender.

§ 360[1]

Repealed

Acting on the Prince's behalf:
by: *Hans-Adam*
Hereditary Prince

by: *Hans Brunhart*
Princely Prime Minister

1 § 360 repealed by LGBl. 1993 No. 68.

Transitional provisions

312.0 Code of Criminal Procedure (*Strafprozessordnung*, StPO)

Liechtenstein Law Gazette
Year 1998 No. 174 published on 2. November 1998

Act
of 22 October 1998
Concerning the Amendment of the Code of Criminal Procedure

. . .

II.

Transitional provisions

1) This Act shall also apply to pending proceedings.

2) With pending proceedings, the term of two years pursuant to § 97a(4) shall be calculated from the time this Act entered into force[1].

3) As far as no time-limits have been set in pending proceedings, the orders issued under the previous law shall on application of the participants of the proceedings be made subject to time-limits in terms of § 97a(4).

. . .

1 Entry into force: 2 Nov 1998

Liechtenstein Law Gazette
Year 2000 No. 257 published on 19 December 2000

Act
of 25 October 2000
Concerning the Amendment of the Code of Criminal Procedure

. . .

II.

Transitional provision

If in proceedings the substantive law that was in force before the Act of 25 October 2000[1] Concerning the Amendment of the Criminal Code entered into force has to be applied, the provisions of this Act shall nevertheless be applied as far as these are more favourable for the defendant than the previous provisions of criminal procedural law. If the judgment rendered in the first instance is set aside by an appellate court and the case is remitted to a lower instance to conduct new proceedings and render a new judgment, the provisions of this Act shall apply to such renewed proceedings without limitation

. . .

1 Entry into force: 19 Dec 2000

Liechtenstein Law Gazette
Year 2006 No. 99 published on 7 June 2006

Act
of 17 March 2006
Concerning the Amendment of the Code of Criminal Procedure

. . .

II.

Transitional provision

The provisions of this Act shall not be applicable to criminal cases in which the indictment has become final or in which an application of punishment has been submitted before this Act entered into force[1].

. . .

1 Entry into force: 1 Jan 2007

Liechtenstein Law Gazette
Year 2007 No. 292 published on 21 November 2007

Act
dated 20 September 2007
Concerning the Amendment of the Code of Criminal Procedure

. . .

III.

Transitional provisions

1) Changes to the requirements for resorts to a higher court and for legal remedies and to the jurisdiction for these and the procedure for deciding these shall have no influence if the concerned decision of the court was rendered before this Act entered into force[1]. Decisions of the Court of Appeal that are rendered pursuant to the previous law but after this Act has entered into force shall trigger a detention time-limit of two months.

2) The new wording of § 132 (detention time-limits) shall apply to rulings by which pre-trial detention was imposed or continued before this Act entered into force[1], provided that the accused is still in detention at such time, and subject to the proviso that

1. the entry into force of this Act triggers a detention time-limit of two months;
2. it shall be admissible for the accused at any rate to waive an imminent detention hearing, in which case the ruling on the discontinuation or continuation of pre-trial detention may be rendered in writing.

[1] Entry into force: 1 Jan 2008

3) With persons who at the time this Act entered into force[1] were in pre-trial detention, the procedure as to the providing and appointment of a defence counsel shall be the one pursuant to the new wording of § 26(3).

4) The new wording of § 142 (maximum duration of pre-trial detention) shall also be applied to cases in which pre-trial detention was imposed before this Act entered into force[1].

. . .

1 Entry into force: 1 Jan 2008

Liechtenstein Law Gazette
Year 2011 No. 593 published on 30 December 2011

Act
of 25 November 2011
Concerning the Amendment of the Code of Criminal Procedure

. . .

II.

Transitional provision

Pending proceedings in which an indictment has already been submitted to the investigating judge at the time this Act enters into force[1] shall be subject to the previous law.

. . .

1 Entry into force: 1 January 2012

Liechtenstein Law Gazette
Year 2012 No. 26 published on 31 January 2012

Act
of 14 December 2011
Concerning the Amendment of the Code of Criminal Procedure

. . .

II.

Transitional provisions

The procedural provisions amended by this Act shall not be applicable to criminal proceedings in which the judgment of the first instance was rendered before such procedural provisions entered into force[1]. After such judgment has been set aside, however, the new procedural provisions shall apply. Data processed before the provisions of § 39d(1) to (4) entered into force shall be reviewed in terms of its lawful processing pursuant to this Act at the time these provisions enter into force.

. . .

1 Entry into force: 1 October 2012. § 127(1)(2) and § 131 Para. (2)(1) and Para. (3) StPO shall enter into force on 1 February 2012.

Liechtenstein Law Gazette
Year 2012 No. 358 published on 15 November 2012

Act
of 19 September 2012
Concerning the Amendment of the Code of Criminal Procedure

. . .

II.

Transitional provision

Concerning criminal judgments that are final at the time this Act enters into force[1] for punishable acts pursuant to Art. 2(1)(c) of the Act on the Rights of the People, the court of decision shall decide on disfranchising by way of a ruling. The procedure shall be subject to § 352a StPO. § 217a StPO shall not apply.

. . .

1 Entry into force: 1 December 2012.

Liechtenstein Law Gazette
Year 2013 No. 40 published on 31 January 2013

Act
of 20 December 2012
Concerning the Amendment of the Code of Criminal Procedure

. . .

II.

Transitional provision

The procedural provision amended by this Act shall not be applicable to criminal proceedings in which the judgment in the first instance was rendered before such provision entered into force[1]. After such judgment has been set aside, however, one shall proceed pursuant to the new procedural provision.

. . .

1 Entry into force: 1 February 2013.

Liechtenstein Law Gazette
Year 2016 Nr. 406 published on 1 December 2016

Act
of 28 September 2016
Concerning the Amendment of the Code of Criminal Procedure

. . .

II.
Transitional provision

Proceedings that are already pending when this Act enters into force[1] shall be subject to the new law.

. . .

1 Entry into force: 1 January 2017.