**Republika e Kosovës**
**Republika Kosovo - Republic of Kosovo**
**Kuvendi - Skupština - Assembly**

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**Criminal No. 04/L-123**

# PROCEDURE CODE

**Assembly of Republic of Kosovo,**

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

# CRIMINAL PROCEDURE CODE

## PART ONE
## GENERAL PROVISIONS

## CHAPTER I
### FUNDAMENTAL PRINCIPLES AND DEFINITIONS

#### Article 1
#### Scope of Present Code

1. This Code determines the rules of criminal procedure mandatory for the proceedings of the courts, the state prosecutor and other participants in criminal proceedings as provided for in the present Code.

2. This Code sets forth the rules which are to guarantee that no innocent person shall be convicted, and that a punishment or any other criminal sanction shall only be imposed on a person who commits a criminal offence under the conditions provided for by the Criminal Code and other laws of Kosovo which provide for criminal offences and on the basis of a procedure conducted lawfully and fairly before the competent court.

3. The freedoms and rights of the defendant may be restricted before a final judgment has been rendered only under the conditions defined by the present Code.

**Article 2**
**Criminal Sanctions are Imposed by Independent and Impartial Court**

A criminal sanction may be imposed on a person who has committed a criminal offence only by a competent, independent and impartial court in proceedings initiated and conducted in accordance with the present Code.

**Article 3**
**Presumption of Innocence of Defendant and *In Dubio Pro Reo***

1. Any person suspected or charged with a criminal offence shall be deemed innocent until his or her guilt has been established by a final judgment of the court.

2. Doubts regarding the existence of facts relevant to the case or doubts regarding the implementation of a certain criminal law provision shall be interpreted in favor of the defendant and his or her rights under the present Code and the Constitution of the Republic of Kosovo.

**Article 4**
**Ne Bis in Idem**

1. No one can be prosecuted and punished for a criminal offence, if he or she has been acquitted or convicted of it by a final decision of a court, if criminal proceedings against him or her were terminated by a final decision of a court or if the indictment against him or her was dismissed by a final decision of a court.

2. A final decision of a court may be reversed through extraordinary legal remedies only in favor of the convicted person, except when otherwise provided by the present Code

3. Articles 1 and 2 of the Criminal Code shall be applied *mutatis mutandis.*

**Article 5**
**Right to Fair and Impartial Trial within a Reasonable Time**

1. Any person charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time.

2. The court shall be bound to carry out proceedings without delay and to prevent any abuse of the rights of the participants in proceedings.

3. Any deprivation of liberty and in particular detention on remand in criminal proceedings shall be reduced to the shortest time possible.

4. Anyone who is deprived of liberty by arrest shall be promptly informed, in a language he or she understands, of the reasons for the deprivation of liberty. Everyone who is deprived of liberty without a court order shall be brought before a judge of the Basic Court in the jurisdiction of arrest within forty-eight (48) hours. That judge shall decide on his or her detention in accordance with Chapter X of the present code.

**Article 6**
**Initiation of Criminal Proceedings**

1. Police investigations may be initiated by a police officer pursuant to Articles 69-83 of this Code.

2. Criminal proceedings shall only be initiated upon the decision of a state prosecutor that reasonable suspicion exists that a criminal offence has been committed.

3 A state prosecutor may initiate a criminal proceeding in accordance with Paragraph 2 of this Article upon receiving information from the police, from another public institution, private institution, member of the public, media, from information obtained from another criminal proceeding, upon the filing of complaint or motion of an injured party.

**Article 7**
**General Duty to Establish a Full and Accurate Record**

1. The court, the state prosecutor and the police participating in criminal proceedings must truthfully and completely establish the facts which are important to rendering a lawful decision.

2. Subject to the provisions contained in the present Code, the court, the state prosecutor and the police participating in the criminal proceedings have a duty to examine carefully and with maximum professional devotion and to establish with equal attention the facts against the defendant as well as those in his or her favor, and to make available to the defense all the facts and pieces of evidence, which are in favor of the defendant, before the beginning of and during the proceedings.

**Article 8**
**Principle of Judicial Independence**

1. The court shall be independent in its work and shall render decisions in conformity with the law.

2. The court renders its decision on the basis of the evidence examined and verified in the main trial.

## Article 9
## Equality of Parties

1. The defendant and the state prosecutor shall have the status of equal parties in criminal proceedings, unless otherwise provided for by the present Code.

2. The defendant has the right and shall be allowed to make a statement on all the facts and evidence which incriminate him or her and to state all facts and evidence favorable to him or her. He or she has the right to request the state prosecutor to summon witnesses on his or her behalf. He or she has the right to examine or to have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

3. The injured party has the right and shall be allowed to make a statement on all the facts and evidence that affects his or her rights, and to make a statement on all the facts and evidence. He or she has the right to examine witnesses, cross-examine witness and to request the state prosecutor to summon witnesses.

4. If the state prosecutor determines that during the investigation were collected sufficient evidence to proceed to the main trial, the state prosecutor shall draft the indictment and shall present the facts on which he or she bases the indictment and shall provide evidence of these facts.

## Article 10
## Notification on the Reasons for the Charges, Prohibition against Self-incrimination and Prohibition against Forced Confession

1. At his or her arrest and during the first examination the defendant shall be promptly informed, in a language that he or she understands and in detail, of the nature of and reasons for the charge against him or her.

2. The defendant shall not be obliged to plead his or her case or to answer any questions and, if he or she pleads his or her case, he or she shall not be obliged to incriminate himself or herself or his or her next of kin nor to confess guilt. This right is not implicated when a defendant has voluntarily entered into an agreement to cooperate with the state prosecutor.

3. Forcing a confession or any other statement by the use of torture, force, threat or under the influence of drugs, or in any other similar way from the defendant or from any other participant in the proceedings shall be prohibited and punishable.

## Article 11
## Adequacy of Defence

1. The defendant shall have the right to have adequate time and facilities for the preparation of his or her defence.

2. The defendant shall have the right to defend himself or herself in person or through legal assistance by a member of the Kosovo Chamber of Advocates of his or her own choice.

3. Subject to the provisions of the present Code, if the defendant does not engage a defence counsel in order to provide for his or her defence and if defence is mandatory, an independent defence counsel having the experience and competence commensurate with the nature of the offence shall be appointed for the defendant.

4. Under the conditions provided by the present Code, if the defendant has insufficient means to pay for legal assistance and for this reason cannot engage a defence counsel, an independent defence counsel having the experience and competence commensurate with the nature of the offence shall be appointed for the defendant on his or her request and paid from budgetary resources if required by the interests of justice.

5. At the first examination the court or other competent authority conducting criminal proceedings shall inform the defendant of his or her right to a defence counsel, as provided for by the present Code.

6. In accordance with the provisions of the present Code, any person deprived of liberty shall have the right to the services of a defense counsel from the moment of arrest onwards.

## Article 12
## Legality of Deprivation of Liberty and Speedily Decision

1. No one shall be deprived of his or her liberty, save in such cases and in accordance with such proceedings as are prescribed by the law.

2. Any person deprived of his or her liberty by arrest or detention shall be entitled under the procedures provided by the present Code to take proceedings by which the lawfulness of his or her arrest or detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

## Article 13
## Rights of Persons Deprived of Liberty

1. Any person deprived of liberty shall be informed promptly, in a language which he or she understands, of:

1.1. the reasons for his or her arrest;

1.2. the right to legal assistance of his or her own choice; and

1.3. the right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest.

2. A person deprived of liberty under the suspicion of having committed a criminal offence shall be brought before a judge promptly and at the latest within forty eight (48) hours of the arrest and shall be entitled to a trial within a reasonable time or to release pending trial.

3. A person deprived of liberty enjoys the rights provided for in the present Article throughout the time of the deprivation of liberty. These rights can only be waived if waiver is made in writing after having been informed about his or her rights and voluntary manner. The exercise of these rights depends neither on the possible previous decision of the person to waive certain rights, nor on the time when he or she was notified about these rights.

**Article 14**
**Languages and Writing**

1. The languages and scripts which may be used in criminal proceedings shall be Albanian and Serbian, unless otherwise provided by law.

2. Any person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language and the right to be informed through interpretation, free of charge, of the evidence, the facts and the proceedings. Interpretation shall be provided by an independent interpreter.

3. A person referred to in paragraph 2 of the present Article shall be informed of his or her right to interpretation. He or she may waive this right if he or she knows the language in which the proceedings are conducted. The notification on this right and the statement of the participant shall be entered in the record.

4. Pleadings, appeals and other submissions may be served on the court in Albanian or Serbian, unless otherwise provided by law.

5. An arrested person, a defendant who is in detention on remand and a person serving a sentence shall be provided a translation of the summonses, decisions and submissions in the language which he or she uses in the proceedings.

6. A foreign national in detention on remand may serve on the court submissions in his or her language before, during and after the main trial only under the conditions of reciprocity.

## Article 15
## Right of Rehabilitation and Compensation

Any person who is unlawfully convicted, arrested, detained or held in detention on remand shall be entitled to full rehabilitation, just compensation from budgetary resources and other rights provided for by law.

## Article 16
## Duty of Court to Inform Parties

The court shall have a duty to inform the defendant or any other participant in the proceedings of the rights to which that person is entitled according to the present Code as well as of the consequences of a failure to act, if that person might omit an action in the proceedings owing to ignorance or does not exercise his or her rights for the same reason.

## Article 17
## Timing of Consequences that Limit Rights

When it is provided that the initiation of criminal proceedings has the consequence of limiting certain rights, and the criminal proceedings are for a criminal offence punishable by more than three (3) years, such consequence shall take effect, if it is not determined otherwise by law, upon the entry into force of the indictment. If the criminal proceeding is for a criminal offence punishable by a fine or imprisonment of no more than three (3) years, the consequence shall take effect from the day when the rendered judgment of conviction becomes final, unless otherwise provided by law.

## Article 18
## Court that Conducts Criminal Proceeding may Decide Collateral Issues

1. If the application of criminal law depends on a prior ruling by a court or another public entity in another ongoing proceeding, the court which is adjudicating on the criminal case may render a ruling on such question by itself in accordance with the provisions applicable to evidence in criminal proceedings. Such ruling shall only apply to the criminal case which is being tried by this court.

2. If a court in some other type of proceeding or another public entity has already rendered a decision on a prior question of this nature, such decision shall not be binding on the court adjudicating on the criminal case in deciding whether a criminal offence has been committed.

## Article 19
## Definitions

1. Terms used in this Criminal Procedure Code shall have the following meanings:

1.1. **Authorized Police Officer** - a police officer or any member of the Kosovo Police or other service authorized to conduct a criminal investigation who is authorized to execute an order of the state prosecutor or the court.

1.2. **Complex Crime** - any criminal offence that includes but is not limited to those involving more than ten defendants, organized criminal activity, corruption, or the investigation of which would require extensive forensic evidence, accounting analysis, or international cooperation. A complex case would be a criminal proceeding that is investigating or adjudicating a complex case.

1.3. **Suspect** - a person whom the police or state prosecutor suspects committed a criminal offence, but against whom an investigation has not been initiated.

1.4. **Defendant** - a person against whom criminal proceedings are conducted. The term "defendant" is also used in the present code as a general term for a "defendant," "accused" and "convicted person."

1.5. **Accused** -a person against whom an indictment has been submitted and the main trial scheduled.

1.6. **Convicted Person** - A person who is found guilty of the commission of a criminal offence by a final judgment of a court.

1.7. **Injured party or victim** – a person whose personal or property rights are violated or endangered by a criminal offence.

1.8. **Reasonable Suspicion** - knowledge of information which would satisfy an objective observer that a criminal offence has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned may or may have committed the offence. What may be regarded as 'reasonable' will depend on all the circumstances.

1.9. **Grounded Suspicion** - knowledge of information which would satisfy an objective observer that a criminal offence has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is more likely than not to have committed the offence. Grounded suspicion must be based upon articulable evidence.

1.10. **Grounded Cause** - knowledge of information which would satisfy an objective observer that a criminal offence has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is

substantially likely to have committed the offence. Grounded cause must be based upon articulable evidence.

1.11. **Sound Probability** – the basis for an order to search or otherwise justify a government intrusion into a person's privacy. Possession of admissible evidence which would satisfy an objective observer that a criminal offence has occurred is occurring or there is a substantial likelihood that one will occur and the person concerned is substantially likely to have committed the offence.

1.12. **Well Grounded Suspicion** – means filing an indictment. Possession of admissible evidence that would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence.

1.13. **Restitution** – the repayment of damages by a convicted person. At the end of a criminal proceeding, the Court shall order a defendant found guilty of a criminal offence to repay the injured party or parties for any damages that directly or indirectly result from a criminal offence.

1.14. **Damages** - harm that directly or indirectly result from a criminal action, including loss of property, loss of profits, loss of liberty, physical harm, psychological harm, or the loss of life of a spouse or member of an immediate family member. The amount of damages shall be proven by the representative of the injured party, the victim advocate or the state prosecutor. A court may order the payment of damages based on a reasonable estimate of the monetary value of the harm directly or indirectly caused by a criminal offence.

1.15. **Party to the Proceedings** - the state prosecutor, the defendant and injured party. The defendant is not considered a party according to Article 392 of the Criminal Code of Kosovo.

116. **Child** - in accordance with the Juvenile Justice Code, a person who is under the age of eighteen (18) years.

1.17. **Minor** - in accordance with the Juvenile Justice Code, a person who is between the ages of fourteen (14) and eighteen (18) years.

1.18. **Public Entity** - an entity of the government of the Republic of Kosovo or an entity equally authorized to act under the Law on Police or Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, or any subsequent laws.

1.19. **Intimate Search** - a search which consists of the physical examination of a person’s bodily orifices other than the mouth.

1.20. **Competent Judge** - the judge who, under this code, has responsibility for the matter in question. In most circumstances, this will be the judge overseeing the stage of the criminal proceedings.

1.21. **Review Panel** – a panel of three-judges drawn from the same department or basic court to review and adjudicate an objection from an order of the pre-trial judge.

1.22. **Trial Panel** – a panel of a presiding trial judge and two (2) professional judges who hear the evidence and adjudicate during the main trial.

1.23. **Pre-Trial Judge** – a judge assigned to the investigative stage.

1.24. **Presiding Trial Judge** – a judge in the serious crimes department of the basic court who receives the indictment, rules on all preliminary and evidentiary motions at the initial and second hearings, and presides over the trial panel that adjudicates the main trial.

1.25. **Single Trial Judge** - a judge in the general department of the basic court who receives the indictment, rules on all preliminary and evidentiary motions at the initial and second hearings, and presides over and adjudicates the main trial.

1.26. **Victim Compensation Fund** - a fund to which forfeited bail and other authorized assets under the law is deposited. Payments from the victim compensation fund shall be used to compensate crime victims as authorized under the law.

1.27. **Summary, transcript, recording** – three (3) types of record. A summary is an accurate description of what a person said. A transcript is a verbatim record of what a person said. A recording is either an audio- or video-recording through electronic means which is capable of repeating the exact words that a person said.

1.28. **Lead Counsel** – when a party is represented by more than one attorney, one and only one attorney shall represent the party before the court or during criminal proceedings. Service upon the lead counsel of documents, including indictments, requests, replies, appeals and the documents required to be disclosed to defendants shall constitute service upon all attorneys representing the party.

1.29. **Intrinsically Unreliable** – evidence or information is intrinsically unreliable if the origin of the evidence or information is unknown, it is based upon a rumor, or on its face the evidence or information is impossible or inconceivable.

1.30. **Articulable -** when information or evidence must be articulable, the party offering the information or evidence must specify in detail the information or evidence being relied upon.

1.31. **Notice of Corroboration** – a document filed by a party in support of testimony or evidence that is not directly obtainable at the main trial. The notice of corroboration would list other admissible evidence that corroborates the testimony or evidence in question. A notice of corroboration is intended to show

that the evidence in question would not be the sole or decisive evidence supporting a judgment that the defendant is guilty.

1.32. **Police or Police Officer** - any member of the Kosovo Police or other service authorized to conduct criminal investigations.

# CHAPTER II
## JURISDICTION OF COURTS

### 1. SUBJECT MATTER JURISDICTION AND THE COMPOSITION OF THE COURT

#### Article 20
#### Jurisdiction of Courts

1. The subject matter and geographic jurisdiction of the Basic Court for criminal proceedings is determined in Article 11 of the Law on Courts, Law No. 03/L-199, or subsequent law.

2. The subject matter of the Court of Appeals for criminal proceedings is determined in Article 18 of the Law on Courts, Law No. 03/L-199.

3. The subject matter of the Supreme Court for criminal proceedings is determined in Article 22 of the Law on Courts, Law No. 03/L-199, or subsequent law.

4. The subject matter and procedure of the Constitutional Court for criminal proceedings under Article 113, Paragraph 7 of the Constitution is determined in Articles 46-50 of the Law on the Constitutional Court of the Republic of Kosovo, Law No. 03/L-121, or subsequent law.

#### Article 21
#### Allocation of Cases within Courts

1. Criminal proceedings shall conduct and adjudicate the case in the first instance in the General Department, Serious Crimes Department or any Division or Department established under Article 8 of the Law on Courts which has jurisdiction over criminal offences.

2. When a child is a defendant in a criminal case, that case shall be severed from any other case and heard exclusively by the Department for Minors within the Basic Court, governed by the Juvenile Justice Code, No. 03/L-193 or successor law.

3. The General Department of the Basic Court shall conduct and adjudicate the case to all criminal proceedings that are not within the jurisdiction of the Serious Crimes Department, the Department for Minors, or any Division or Department established under Article 8 of the Law on Courts which has jurisdiction over criminal offences.

4. The Serious Crimes Department shall conduct and adjudicate the case any criminal proceeding where one or more of the potential criminal offences under Article 15 of the Law on Courts in general, and specifically those criminal offences listed in Article 22, have been alleged or charged by the State Prosecutor.

5. The judgment of the Basic Court may not be appealed on procedural grounds if the appellant has not challenged in basic court the legal or factual decision upon which the appeal is based, unless the appellant can demonstrate extraordinary circumstances that justify such an appeal.

## Article 22
## Offences Considered as Serious Crimes for the Purpose of this Code

1. For the purpose of this code, the following Articles of the criminal code shall be considered Serious Crimes in accordance with Article 15 of the Law on Courts, Law No. 03/L-199:

1.1. Assault on Constitutional Order of the Republic of Kosovo, in accordance with Article 121 of the Criminal Code,

1.2. Armed Rebellion, in accordance with Article 122 of the Criminal Code,

1.3. Acceptance of Capitulation and Occupation, in accordance with Article 123 of the Criminal Code,

1.4. Treason Against State, in accordance with Article 124 of the Criminal Code,

1.5. Endangering the Territorial Integrity of the Republic of Kosovo, in accordance with Article 125 of the Criminal Code,

1.6. Murder of High Representatives of the Republic of Kosovo, in accordance with Article 126 of the Criminal Code,

1.7. Abduction of the High Representatives of the Republic of Kosovo, in accordance with Article 127 of the Criminal Code,

1.8. Violence Against the High Representatives of the Republic of Kosovo, in accordance with Article 128 of the Criminal Code,

1.9. Endangering the Constitutional Order by Destroying or Damaging Public Installations And Facilities, in accordance with Article 129 of the Criminal Code,

1.10. Sabotage, in accordance with Article 130 of the Criminal Code,

1.11. Espionage, in accordance with Article 131 of the Criminal Code,

1.12. Disclosure of Classified Information and Failure to Protect Classified Information, in accordance with Article 132 of the Criminal Code,

1.13. Aggravated Offenses against the Constitutional Order or Security of The Republic of Kosovo, in accordance with Article 133 of the Criminal Code,

1.14. Alliance for Anti-Constitutional Actions, in accordance with Article 134 of the Criminal Code,

1.15. Commission of the Offense of Terrorism, in accordance with Article 136 of the Criminal Code,

1.16. Assistance in the Commission of Terrorism, in accordance with Article 137 of the Criminal Code,

1.17. Facilitation of The Commission of Terrorism, in accordance with Article 138 of the Criminal Code,

1.18. Recruitment for Terrorism, in accordance with Article 139 of the Criminal Code,

1.19. Training for Terrorism, in accordance with Article 140 of the Criminal Code,

1.20. Incitement to Commit a Terrorist Offense, in accordance with Article 141 of the Criminal Code,

1.21. Concealment or Failure to Report Terrorists and Terrorist Groups, in accordance with Article 142 of the Criminal Code,

1.22. Organization and Participation in a Terrorist Group, in accordance with Article 143 of the Criminal Code,

1.23. Preparation of Terrorist Offenses or Criminal Offenses against the Constitutional Order and Security of the Republic of Kosovo, in accordance with Article 144 of the Criminal Code,

1.24. Genocide, in accordance with Article 148 of the Criminal Code,

1.25. Crimes against Humanity, in accordance with Article 149 of the Criminal Code,

1.26. War Crimes in Grave Violation of the Geneva Conventions, in accordance with Article 150 of the Criminal Code,

1.27. War Crimes in Serious Violation of Laws and Customs Applicable in International Armed Conflict, in accordance with Article 151 of the Criminal Code,

1.28. War Crimes in Serious Violation of Article 3 Common to the Geneva Conventions, in accordance with Article 152 of the Criminal Code,

1.29. War Crimes in Serious Violation of Laws and Customs Applicable in Armed Conflict not of an International Character, in accordance with Article 153 of the Criminal Code,

1.30. Attacks in Armed Conflicts not of an International Character against Installations Containing Dangerous Forces, in accordance with Article 154 of the Criminal Code,

1.31. Conscription or Enlisting of Persons Between the Age of Fifteen (15) and Eighteen (18) Years in Armed Conflict, in accordance with Article 155 of the Criminal Code,

1.32. Employment of Prohibited Means or Methods of Warfare, in accordance with Article 156 of the Criminal Code,

1.33. Unjustified Delay in Repatriating Prisoners of War or Civilians, in accordance with Article 157 of the Criminal Code,

1.34. Unlawful Appropriation of Objects from the Killed or Wounded on the Battlefield, in accordance with Article 158 of the Criminal Code,

1.35. Endangering Negotiators, in accordance with Article 159 of the Criminal Code,

1.36. Organization of Groups to Commit Genocide, Crimes Against Humanity and War Crimes, in accordance with Article 160 of the Criminal Code,

1.37. Instigating War of Aggression or Armed Conflict, in accordance with Article 162 of the Criminal Code,

1.38. Misuse of International Emblems, in accordance with Article 163 of the Criminal Code,

1.39. Hijacking Aircraft, in accordance with Article 164 of the Criminal Code,

1.40. Endangering Civil Aviation Safety, in accordance with Article 165 of the Criminal Code,

1.41. Endangering Maritime Navigation Safety, in accordance with Article 166 of the Criminal Code,

1.42. Endangering the Safety of Fixed Platforms Located on the Continental Shelf, in accordance with Article 167 of the Criminal Code,

1.43. Piracy, in accordance with Article 168 of the Criminal Code,

1.44. Slavery, Slavery-Like Conditions and Forced Labor, in accordance with Article 169 of the Criminal Code,

1.45. Smuggling of Migrants, in accordance with Article 170 of the Criminal Code,

1.46. Trafficking in Persons, in accordance with Article 171 of the Criminal Code,

1.47. Sexual Services of a Victim of Trafficking, in accordance with Article 231 of the Criminal Code,

1.48. Endangering Internationally Protected Persons, in accordance with Article 173 of the Criminal Code,

1.49. Endangering United Nations and Associated Personnel, in accordance with Article 174 of the Criminal Code,

1.50. Hostage-Taking, in accordance with Article 175 of the Criminal Code,

1.51. Unlawful Appropriation, Use, Transfer and Disposal of Nuclear Material, in accordance with Article 176 of the Criminal Code,

1.52. Threats to Use or Commit Theft or Robbery of Nuclear Material, in accordance with Article 177 of the Criminal Code,

1.53. Aggravated Murder, in accordance with Article 179 of the Criminal Code,

1.54. Kidnapping, in accordance with Article 194 of the Criminal Code,

1.55. Torture, in accordance with Article 199 of the Criminal Code,

1.56. Violation of the Right to be a Candidate, in accordance with Article 210 of the Criminal Code,

1.57. Threat to the Candidate, in accordance with Article 211 of the Criminal Code,

1.58. Preventing Exercise of the Right to Vote, in accordance with Article 212 of the Criminal Code,

1.59. Violating the Free Decision of Voters, in accordance with Article 213 of the Criminal Code,

1.60. Abuse of Official Duty During Elections, in accordance with Article 214 of the Criminal Code,

1.61. Giving or Receiving a Bribe in Relation to Voting, in accordance with Article 215 of the Criminal Code,

1.62. Abusing the Right to Vote, in accordance with Article 216 of the Criminal Code,

1.63. Obstructing the Voting Process, in accordance with Article 217 of the Criminal Code,

1.64. Violating Confidentiality in Voting, in accordance with Article 218 of the Criminal Code,

1.65. Falsification of Voting Results, in accordance with Article 219 of the Criminal Code,

1.66. Destroying Voting Documents, in accordance with Article 220 of the Criminal Code,

1.67. Rape, in accordance with Article 230 of the Criminal Code,

1.68. Unauthorized Purchase, Possession, Distribution and Sale of Narcotic Drugs, Psychotropic Substances and Analogues, in accordance with Article 273 of the Criminal Code,

1.69. Unauthorized Production and Processing of Narcotic Drugs, Psychotropic Substances and Analogues, in accordance with Article 274 of the Criminal Code,

1.70. Cultivation of Opium Poppy, Coca Bush or Cannabis Plants, in accordance with Article 278 of the Criminal Code,

1.71.Organizing, Managing or Financing Trafficking in Narcotic Drugs or Psychotropic Substances, in accordance with Article 279 of the Criminal Code,

1.72. Counterfeit Money, in accordance with Article 302 of the Criminal Code,

1.73. Counterfeit Securities and Payment Instruments, in accordance with Article 293 of the Criminal Code,

1.74. Participation in or Organization of an Organized Criminal Group, in accordance with Article 283 of the Criminal Code,

1.75. Illegal possession of firearms in accordance with Article 374 of the Criminal Code,

1.76. Intimidation during Criminal Proceedings for Organized Crime, in accordance with Article 395 of the Criminal Code,

1.77. Abusing Official Position or Authority, in accordance with Article 422 of the Criminal Code,

1.78. Misusing Official Information, in accordance with Article 423 of the Criminal Code,

1.79. Conflict of Interest, in accordance with Article 424 of the Criminal Code,

1.80. Misappropriation in Office, in accordance with Article 425 of the Criminal Code,

1.81. Fraud in Office, in accordance with Article 426 of the Criminal Code,

1.82. Unauthorized use of Property, in accordance with Article 427 of the Criminal Code,

1.83. Accepting Bribes, in accordance with Article 428 of the Criminal Code,

1.84. Giving Bribes, in accordance with Article 429 of the Criminal Code,

1.85. Giving Bribes to Foreign Public Official, in accordance with Article 430 of the Criminal Code,

1.86. Trading in Influence, in accordance with Article 431 of the Criminal Code,

1.87. Issuing Unlawful Judicial Decisions, in accordance with Article 432 of the Criminal Code,

1.88. Disclosing Official Secrets, in accordance with Article 433 of the Criminal Code,

1.89. Falsifying Official Document, in accordance with Article 434 of the Criminal Code,

1.90. Unlawful Collection and Disbursement, in accordance with Article 435 of the Criminal Code, and

1.91. Unlawful Appropriation of Property During a Search or Execution of a Court Decision, in accordance with Article 436 of the Criminal Code.

## Article 23
## The Pre-Trial Judge

1. The Basic Court shall oversee criminal investigations by assigning based on an objective and transparent case allocation system a professional judge from the appropriate department to serve as a pre-trial judge.

2. The pre-trial judge shall oversee a criminal proceeding during the investigation stage. At the filing of an indictment, the pre-trial judge no longer has authority over the defendants named in the indictment.

3. The pre-trial judge shall be competent to receive requests from the state prosecutor, defendant, victim advocate and injured party and to render decisions and orders based upon those requests, in accordance with the present Code.

4. The pre-trial judge shall be competent to independently determine the imposition or continuation of the deprivation of a defendant's liberty is procedurally or constitutionally valid. The pre-trial judge has the duty to order the release of a defendant whose deprivation of liberty is not procedurally or constitutionally valid.

## Article 24
## Orders and Decisions by the Pre-Trial Judge

1. A pre-trial judge in the General Department or Serious Crimes Department shall be competent to issue decisions or orders as foreseen by this present code.

2. Orders of a pre-trial judge in the General Department or Serious Crimes Department may be reviewed upon a party's objection by a review panel from the same Department of that court. If there are insufficient judges, the President of the Court may assign judges from another Department to serve on the review panel.

3. A decision by a pre-trial judge may be reviewed upon an appeal by the Court of Appeals.

4. Any order by the pre-trial judge that affects the rights of the injured party may be reviewed by the review panel of the Basic Court under paragraph 2 within forty eight (48) hours from the objection being filed. The state prosecutor, victim advocate may request the review of the pre-trial judge's order on behalf of the injured party or by the injured party himself or herself.

5. The deadline for objections to orders by a pre-trial judge or review panel is forty eight (48) hours from the receipt of the order by the party, in accordance with Article 378 of this Code.

6. The deadline for appeals to decisions by a pre-trial judge or review panel is five (5) days from the receipt of the decision by the party, in accordance with Article 378 of this Code.

**Article 25**
**The Single Trial Judge, Presiding Trial Judge and Trial Panel**

1. Upon the filing of an indictment by the state prosecutor in the Basic Court, a single trial judge or a panel of judges with a presiding trial judge from the appropriate department shall be assigned to try the case based on an objective and transparent case allocation system.

2. For criminal proceedings within the General Department in the Basic Court, the case is decided by a professional judge serving as the single trial judge.

3. For criminal proceedings within the Serious Crimes Department in the Basic Court, the judgment is made by three (3) professional judges, one of whom shall serve as the presiding trial judge.

**Article 26**
**Decisions prior to the Main Trial**

1. Upon the filing of an indictment by the state prosecutor in the Basic Court, the single trial judge or presiding trial judge shall hold initial hearings and second hearings, rule on requests to dismiss the indictment, rule on requests to exclude evidence, and shall rule on requests for detention on remand or other measures to ensure the presence of the defendant.

2. The main trial shall be tried by a single trial judge or by the trial panel, as appropriate under this code.

**Article 27**
**The Court for Minors**

The procedure when the perpetrators are minors, or when minors are victims or witnesses shall be governed by the Juvenile Justice Code or the relevant law.

**Article 28**
**Judicial Panels during Appeals**

1. The Court of Appeals shall adjudicate criminal appeals in a panel of three (3) judges.

2. The Supreme Court shall adjudicate criminal appeals in a panel of three (3) judges.

## 2. TERRITORIAL JURISDICTION

### Article 29
### Territorial Jurisdiction

1. Territorial jurisdiction shall as a rule be vested in the basic court within whose territory any action of a criminal offence has been committed or attempted or where its consequence occurred.

2. If a criminal offence was committed or attempted or its consequence occurred in the territory of more than one court or on the border of those territories, the court which first announced proceedings in response to the petition of an authorized state prosecutor shall be competent, but if proceedings have not been initiated, the court at which the petition for initiation of proceedings is first filed shall have jurisdiction.

3. If a department of a basic court has been established by law and has national jurisdiction for the investigation and trial of specific criminal offences, the jurisdiction for all criminal proceedings for such criminal offences shall be vested in that department.

### Article 30
### Jurisdiction if Criminal Offence Committed on an Aircraft

If a criminal offence has been committed on an aircraft, the Basic Court in Pristina shall have jurisdiction.

### Article 31
### Jurisdiction if Criminal Offence Committed through the Media

1. If a criminal offence has been committed through a newspaper, the court within whose territory the newspaper is printed shall have jurisdiction. If this location is unknown or if the newspaper has been printed abroad, the court within whose territory the printed newspaper is distributed shall have jurisdiction.

2. If according to the law the author of the published material is responsible, the court within whose territory the author has a permanent residence or the court within whose territory the event to which the published material refers took place shall have jurisdiction.

3. Paragraphs 1 and 2 of the present Article shall apply *mutatis mutandis* to cases where the material was published by radio, television or any other type of publication.

**Article 32**
**Secondary Criteria of Jurisdiction**

1. If the territory described in Article 29 paragraph 1 of the present Code is unknown or if this place is not within the territory of Kosovo, the court within whose territory the defendant has a permanent or current residence shall have jurisdiction.

2. If the court within whose territory the defendant has a permanent or current residence has initiated proceedings, the court shall retain jurisdiction even after the place of the commission of the criminal offence has become known.

3. If neither the place of commission of a criminal offence nor the place of permanent or current residence of the defendant is known or if both are outside the territory of Kosovo, the court within whose territory the defendant was apprehended or has surrendered himself or herself to the authorities shall have jurisdiction.

**Article 33**
**Jurisdiction of Transborder Criminal Offences**

If a person commits criminal offences both in Kosovo and outside Kosovo, the court which has jurisdiction over the act committed in Kosovo shall have jurisdiction.

**Article 34**
**Territorial Jurisdiction as Designated by the Supreme Court**

If, according to the provisions of the present Code, it cannot be established which court has territorial jurisdiction, the Supreme Court of Kosovo shall designate one of the courts with subject matter jurisdiction to conduct proceedings.

## 3. JOINDER OF PROCEEDINGS

**Article 35**
**Territorial Jurisdiction on Joint Proceedings**

1. If the same person has been charged with the commission of several criminal offences of the same severity, the court at which the indictment has first been filed shall have jurisdiction, and, if no indictment has been filed, the court to which a stamped copy of the ruling on the investigation has been sent first shall have jurisdiction.

2. Joint proceedings shall also be conducted in a case in which the injured party has at the same time committed a criminal offence against the defendant.

3. As a rule, co-defendants shall be subject to the jurisdiction of the court which has jurisdiction for one of them and at which an indictment has first been filed.

4. The court which has competence over the perpetrator of the criminal offence shall, as a rule, also have competence over the accomplices and accessories after the fact and persons who failed to report the preparation of the act, the commission of the act or the perpetrator.

5. All cases referred to in paragraphs 1 through 4 of the present Article shall as a rule be considered in joint proceedings and a single judgment shall be rendered.

6. The court may decide to conduct joint proceedings and to render a single judgment when several individuals have been charged with several criminal offences, provided that the acts are interconnected and the evidence is common.

7. The court may decide to conduct joint proceedings and to render a single judgment if separate proceedings are conducted before the same court against the same person for several acts or against several persons for the same act.

8. A joinder of proceedings shall be decided by the court which is competent to conduct the joint proceedings upon the motion of the public prosecutor or *ex officio*. No appeal shall be permitted against a ruling joining the proceedings or rejecting a motion for a joinder.

**Article 36**
**Severance of Proceedings**

1. Until the conclusion of the main trial, the court which has jurisdiction under the present Code may, for important reasons or for reasons of efficiency, order the severance of proceedings conducted for several criminal offences or conducted against several defendants and thereupon proceed separately or refer separate cases to another competent court.

2. A ruling on the severance of proceedings shall be rendered by the competent court after hearing the parties and the defense counsel.

3. No appeal shall be permitted against a ruling severing proceedings or rejecting a motion for severance.

## 4. TRANSFER OF TERRITORIAL JURISDICTION

### Article 37
### Delegated Competence and Conflict of Competence

1. A Basic Court is bound to examine its jurisdiction and, as soon as it determines a lack thereof, it shall declare itself without jurisdiction and, after the decision becomes final, it shall refer the case to the court which has jurisdiction.

2. If a competent Basic Court is prevented from conducting proceedings for legal or factual reasons after hearing the parties, the President of the Basic Court may transfer the proceedings to another Branch within the competent Basic Court.

3. If the transfer within Paragraph 2 of this Article is not feasible the President of the competent Basic Court must consult with another Basic Court with subject matter jurisdiction and agree to transfer the proceedings.

4. If the two (2) Basic Courts cannot satisfy Paragraph 3 of this Article within ten (10) days, either Basic Court shall notify the Court of Appeals thereof, which shall designate one of the courts to conduct the proceedings.

5. Before rendering a ruling in a jurisdictional conflict, the court shall ask the opinion of the state prosecutor who is competent to act before that court, the injured party or victim advocate, and of either the defendant or the defense counsel.

6. No appeal shall be permitted against an order under the present Article.

## 5. CONSEQUENCES OF LACK OF JURISDICTION

### Article 38
### Implicit Jurisdiction of Courts

1. A court which lacks jurisdiction shall conduct such procedural actions with respect to which there is danger in delay.

2. After the indictment becomes final, the court may not declare that it does not have territorial jurisdiction, nor may the parties raise the objection of lack of territorial jurisdiction.

# CHAPTER III
## DISQUALIFICATION

### 1. DISQUALIFICATION OF JUDGES

#### Article 39
#### Bases for Disqualification of Judges

1. A judge shall be excluded from the exercise of the judicial functions in a particular case:

1.1. if he or she has been injured by the criminal offence;

1.2. if he or she is the spouse, the extramarital partner, a relation by blood in a direct line to any degree or in a collateral line to the fourth degree or a relation by marriage to the second degree to the defendant, the defense counsel, the state prosecutor, the injured party, or his or her legal representative or authorized representative;

1.3. if he or she is a legal guardian, ward, adopted child, adoptive parent, foster parent or foster child of the defendant, the defense counsel, the state prosecutor or the injured party;

1.4. if, in the same criminal case, he or she has taken part in the proceedings as a prosecutor, a defense counsel, a legal representative or authorized representative of the injured party or prosecutor or if he or she has been examined as a witness or as an expert witness;

1.5. there exists a conflict of interest as defined by Article 6 of the Law on Prevention of Conflict of Interests in Discharge of Public Functions.

2. A judge shall be excluded as the single trial judge, presiding trial judge, a member of the trial panel, a member of the appellate panel or Supreme Court panel if he or she has participated in previous proceedings in the same criminal case, except for a judge serving on a special investigative opportunity panel. However, a judge shall not be excluded where he or she has only been involved in previous proceedings in the same criminal case as a member of a review panel.

3. A judge may also be excluded from the exercise of judicial functions in a particular case if, apart from the cases referred to in paragraphs 1 and 2 of the present Article, circumstances that render his or her impartiality doubtful or created the appearance of impropriety are presented and established.

**Article 40**
**Procedure for Disqualification**

1. As soon as he or she discovers a ground for disqualification under Article 39 paragraph 1 or 2 of the present Code, a judge shall discontinue all the activity on the case and report such ground to the president of the court who, in accordance with the procedures governing the internal court rules, shall appoint a substitute. In the case of disqualification of a President of a court, he or she shall ask the President of the Court of Appeals to appoint a substitute.

2. If a judge considers that there are other circumstances which would justify his or her disqualification under Article 39, paragraph 3, of the present Code, he or she shall inform the president of the court about such circumstances. Until a decision on disqualification is rendered, the judge may only conduct actions that are absolutely necessary to prevent postponement or impermissible delay of the case.

**Article 41**
**Requests for Disqualification**

1. The disqualification of a judge may also be requested by the parties.

2. A party may be bound to request disqualification of a judge as soon as he or she learns of the existence of grounds for disqualification and no later than before the conclusion of the main trial and, in the case of disqualification on the grounds set forth in Article 39 paragraph 3 of the present Code, before the commencement of the main trial.

3. A party may address a petition for the disqualification of a judge of the Court of Appeal or Supreme Court in an appeal or in response to an appeal.

4. A party may seek disqualification only of a judge who acts in a case.

5. The party shall be bound to state in the petition the circumstances supporting his or her allegation that there are legal grounds for disqualification. Reasons presented in a previous petition for disqualification which have been rejected may not be cited again in a petition.

**Article 42**
**Decisions on Requests for Disqualification**

1. Requests for disqualifications under Article 41 of this Code shall be decided by the following judges:

1.1. The President Judge of the Basic Court shall decide on a petition for disqualification of judges in the Basic Court.

1.2. The President Judge of the Court of Appeals shall decide on a petition for disqualification of the President Judge of the Basic Court alone or a petition for disqualification of the President Judge of the Basic Court and another judge of the same court.

1.3. The President Judge of the Court of Appeals shall decide on a petition for disqualification of a judge on the Court of Appeals.

1.4. The President of the Supreme Court of Kosovo shall decide on a petition for the disqualification of the President Judge of the Court of Appeals, a petition for disqualification of the President Judge of the Court of Appeals and another judge of the same court, or a petition for the disqualification of a judge of the Supreme Court of Kosovo. A Panel chaired by the deputy president of the Supreme Court of Kosovo shall decide on any petition for the disqualification of the president of the Supreme Court of Kosovo or a petition for the disqualification of the president of the Supreme Court of Kosovo and other judges of the same court.

2. Before rendering a ruling on disqualification, the judge or the president of the court shall be heard and further inquiries shall be carried out if necessary.

3. No appeal shall be permitted against a ruling which accepts a petition for disqualification. A ruling rejecting a petition for disqualification may be contested by a separate appeal, but if this ruling was rendered after the indictment was brought, then only by an appeal against the judgment.

4. If a petition for disqualification is in breach of the provisions of Article 41 paragraphs 4 and 5 of the present Code, or if the petition for disqualification under Article 39 paragraph 3 of the present Code is filed after the commencement of the main trial, the petition shall be dismissed entirely or partially. No appeal shall be permitted against a ruling, by which the petition is dismissed. The ruling to dismiss the petition shall be rendered by the president of the court or by the trial panel in the main trial. The judge whose disqualification is being sought may participate in rendering such ruling by a trial panel.

## Article 43
## Ceasing all Actions following the Request for the Disqualification of a Judge

When a judge learns that a petition has been filed for his or her disqualification, he or she must immediately cease all work on the case, but if it concerns disqualification under Article 39 paragraph 3 of the present Code, he or she may, until the ruling is rendered on the petition, conduct only those actions with respect to which there is danger in delay.

## 2. DISQUALIFICATION OF STATE PROSECUTORS

### Article 44
### Bases for Disqualification of State Prosecutors

1. A state prosecutor shall be disqualified:

1.1. if he or she has been injured by the criminal offence;

1.2. if he or she is the spouse, the extramarital partner, a relation by blood in a direct line to any degree or in a collateral line to the fourth degree or a relation by marriage to the second degree to the defendant, the defense counsel, the injured party, or his or her legal representative or authorized representative;

1.3. if he or she is a legal guardian, ward, adopted child, adoptive parent, foster parent or foster child of the defendant, the defense counsel or the injured party;

1.4. if, in the same criminal case, he or she has taken part in the proceedings as a judge, a defense counsel, a legal representative or authorized representative of the injured party or if he or she has been examined as a witness or as an expert witness; or

1.5. a conflict of interest exists as defined in Article 6 of the Law on Preventing Conflict of Interest in Exercising Public Functions.

2. The state prosecutor has the continuing duty to disqualify himself or herself upon his or her discovery of grounds for disqualification.

3. If the state prosecutor objects to his or her disqualification, he or she shall seek the decision of a superior state prosecutor. The chief prosecutor of an office shall decide upon the disqualification of a state prosecutor under this paragraph. The Chief State Prosecutor shall decide on the disqualification of the chief prosecutor of an office under this paragraph. Any decision under this Paragraph shall be in writing and provided to the state prosecutor in question and the Kosovo Prosecutorial Council. The Kosovo Prosecutorial Council shall decide on the disqualification of the Chief State Prosecutor in a plenary session.

## 3. DISQUALIFICATION OF OTHER PARTICIPANTS

### Article 45
### Bases for Disqualification of Other Participants in Criminal Proceedings

1. A presiding trial judge, single trial judge, pre-trial judge or presiding judge of a review panel or appeal panel shall decide on the disqualification of a recording clerk, interpreter, specialist, expert witness and victim advocate.

2. When an authorized police officer conducts investigative actions on the basis of the present Code, the state prosecutor shall decide on his or her disqualification. If a recording clerk participates in conducting such actions, the official who conducts the action shall decide on his or her disqualification.

3. A victim advocate shall be disqualified:

3.1. if he or she has been injured by the criminal offence;

3.2. if he or she is the spouse, the extramarital partner, a relation by blood in a direct line to any degree or in a collateral line to the fourth degree or a relation by marriage to the second degree to the defendant, the defense counsel, the state prosecutor, the injured party, or his or her legal representative or authorized representative;

3.3. if he or she is a legal guardian, ward, adopted child, adoptive parent, foster parent or foster child of the defendant, the defense counsel, the prosecutor or the injured party;

3.4. if, in the same criminal case, he or she has taken part in the proceedings as a judge, a prosecutor, a defense counsel, or if he or she has been examined as a witness or as an expert witness; or

3.5. there exist circumstances that create the appearance of a conflict of interest.

# CHAPTER IV
## THE STATE PROSECUTOR

### Article 46
### Jurisdiction and Structure of State Prosecutors

The jurisdiction and structure of the Basic Prosecution Offices, Special Prosecution Office, Appellate Prosecution Office and the Office of the Chief State Prosecutor to investigate and prosecute criminal cases is determined in Chapter IV of the Law on State Prosecutor, or any successor law.

**Article 47**
**Independence of State Prosecutors**

Public entities shall not formally or informally influence or direct the actions of the state prosecutor when dealing with individual criminal cases or investigations.

**Article 48**
**Duty of State Prosecutors towards Defendant**

The state prosecutor has a duty to consider inculpatory as well as exculpatory evidence and facts during the investigation of criminal offences and to ensure that the investigation is carried out with full respect for the rights of the defendant and that evidence is not collected in breach of Chapter XVI of the present Code.

**Article 49**
**Duties and Competencies of State Prosecutors**

1. The basic duties and competencies of the state prosecutor are described in Article 7 of the Law on State Prosecutor. In addition to those basic duties and competencies the state prosecutor shall have the following duties and competencies:

1.1. the state prosecutors are empowered to represent the public interest before the Courts of the Republic of Kosovo and to request the Courts to order measures in accordance with the present Code of Criminal Procedure.

1.2. with respect to criminal offences which are prosecuted *ex officio* or on the motion of an injured party, the state prosecutor shall have the power to negotiate and accept a voluntary agreement with the defendant to cooperate or plead guilty.

**Article 50**
**Jurisdiction of State Prosecutors**

The state prosecutor shall have jurisdiction to act before the appropriate court in accordance with the Law on the State Prosecutor.

**Article 51**
**Jurisdiction of State Prosecutors in Urgent Matters**

Where there is danger in delay, procedural actions may also be undertaken by a state prosecutor who does not have jurisdiction, subject to his or her immediate notification of the competent state prosecutor.

### Article 52
### Withdrawal from Prosecution

The state prosecutor may withdraw from prosecution up until the conclusion of the main trial before a Basic Court and, in proceedings before a court of higher instance, he or she may withdraw from prosecution only in cases provided for by the present Code.

## CHAPTER V
## DEFENSE COUNSEL

### Article 53
### Defendant's Right to Defense Counsel

1. The suspect and the defendant have the right to be assisted by a defense counsel during all stages of the criminal proceedings.

2. Before every examination of the suspect or the defendant, the police or other competent authority, the state prosecutor, the pre-trial judge, the single trial judge or the presiding trial judge shall instruct the suspect or the defendant that he or she has the right to engage a defense counsel and that a defense counsel can be present during the examination.

3. The right to the assistance of a defense counsel may be waived, except in cases of mandatory defense, if such waiver is made following clear and complete information on his right to defense being provided. A waiver must be in writing and signed by the suspect or the defendant and the witnessing competent authority conducting the proceedings, or made orally on video- or audio-tape, which is determined to be authentic by the court.

4. The right to the assistance of a defence counsel may be waived in cases of mandatory defense, in accordance with Paragraph 3 of this Article, if a defence counsel is retained to act as a "standby attorney" with the responsibility to advise the defendant during the proceeding and, if the defendant withdraws his or her waiver, the standby attorney shall become the defence counsel.

5. Persons under the age of eighteen (18) may waive the right to the assistance of defense counsel with the consent of a parent, guardian or a representative of the Center for Social Work, except that in cases of domestic violence involving the parent or guardian, such parent or guardian may not consent to the waiver of such right.

6. Persons who display signs of mental disorder or disability may not waive their right to the assistance of defense counsel.

7. If a suspect or defendant who has made a waiver subsequently reasserts the right to the assistance of defense counsel, he or she may immediately exercise the right.

8. If the suspect or the defendant does not engage a defense counsel on his or her own, his or her legal representative, spouse, extramarital partner, blood relation in a direct line, adoptive parent, adopted child, brother, sister or foster parent may engage defense counsel for him or her, but not against his or her will.

**Article 54**
**Qualification as Defense Counsel**

1. Only a member of the Chamber of Advocates of Kosovo may be engaged as defense counsel, but an attorney in training may replace the member of the Chamber of Advocates. If proceedings are being conducted for a criminal offence punishable by imprisonment of at least five years, an attorney in training may replace a member of the bar only if he or she has passed the judicial examination. Only a member of the bar can represent a defendant before the Court of Appeals or Supreme Court of Kosovo.

2. The defense counsel shall submit his or her power of attorney to the police, state prosecutor or the court before which proceedings are being conducted. The suspect and the defendant may give the defense counsel a verbal power of attorney, which shall be entered in the record of the police, state prosecutor or the court before which proceedings are being conducted.

**Article 55**
**Limits of Representation by Defense Counsel**

1. In criminal proceedings a defense counsel is not allowed to represent two or more defendants in the same case. A defence counsel may not represent a legal person and a natural person in the same case, unless the natural person is the only person who owns, manages and is employed by the legal person.

2. A defendant may have up to three (3) defense counsel, and it shall be considered that the right to defense shall be considered satisfied if one of the defense counsel is participating in the proceedings.

3. If a defendant has more than one defense counsel, one defense counsel shall be nominated the lead counsel by the defendant or, if the defendant fails to do so, the competent judge shall appoint the lead counsel.

**Article 56**
**Disqualification of Defense Counsel**

1. The defense counsel may not be the injured party, the spouse or extramarital partner of the injured party or their relation by blood in a direct line to any degree or in a lateral line to the fourth degree or by marriage to the second degree.

2. Any person who has been summoned to the main trial as a witness may not be a defense counsel unless under the present Code he or she has been relieved of the duty to testify as a witness and has declared that he or she will not testify as a witness or unless defense counsel has been examined as a witness in a case under Article 126 paragraph 1 subparagraph 1.2 of the present Code.

3. Any person who has acted as a judge or as a state prosecutor in the same case may not be a defense counsel.

**Article 57**
**Defense Counsel in Cases of Mandatory Defense**

1. The defendant must have a defense counsel in the following cases of mandatory defense:

1.1. from the first examination, when the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending himself or herself;

1.2. at hearings on detention on remand and throughout the time when he or she is in detention on remand;

1.3. from the filing of an indictment, if the indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least ten (10) years; and

1.4. for proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of life long imprisonment has been imposed.

1.5. in all cases when a defendant seeks to enter an agreement to plead guilty to a crime that carries a punishment of one (1) year or more of long period imprisonment or life long imprisonment, the defendant must be represented by counsel.

2. In a case of mandatory defense, if the defendant does not engage a defense counsel and no one engages a defense counsel on his or her behalf under Article 53 paragraph 8 of this Code, the pretrial judge or other competent judge shall appoint *ex officio* a defense counsel at public expense. If a defense counsel is appointed *ex officio* after the indictment

has been brought, the defendant shall be informed of this at the same time as the indictment is served.

3. In a case of mandatory defense, if the defendant remains without a defense counsel in the course of the proceedings and if he or she fails to obtain another defense counsel, the single trial judge or presiding trial judge or the competent authority conducting the proceedings in the pre-trial phase shall appoint *ex officio* a new defense counsel at public expense.

4. A legal person is not entitled to a defence counsel appointed at public expense.

**Article 58**
**Defense Counsel at Public Expense When There is Not Mandatory Defense**

1. If the conditions are not met for mandatory defense, a defense counsel shall be appointed at public expense for the defendant at his or her request, if:

1.1. there exists no conditions for mandatory defense and the criminal proceedings are being conducted for a criminal offence punishable by imprisonment of eight (8) or more years; or

1.2. when in the interest of justice, independently from the punishment foreseen, a defense counsel is appointed to the suspect or defendant upon his or her request, if he or she is financially unable to pay the cost of his or her defense.

2. The defendant shall be instructed on the right to defense counsel at public expense under the previous paragraph before the first examination.

3. The request for the appointment of a defense counsel at public expense under paragraph 1 of the present Article may be filed throughout the course of the criminal proceedings. The president of the court or the competent authority conducting the proceedings in the pre-trial phase shall decide on the request and appoint a defense counsel. If the police or the state prosecutor refuses the request of the defendant for the appointment of a defense counsel at public expense, the defendant may appeal to the pre-trial judge.

4. Prior to the appointment of a defence counsel at public expense under the present Article, the defendant shall complete an affidavit listing his or her assets and declaring that he or she cannot afford legal counsel.

**Article 59**
**Dismissal of Defense Counsel**

1. The defendant may engage another defense counsel on his or her own instead of the appointed defense counsel. In this case, the appointed defense counsel shall be dismissed.

2. An appointed defense counsel may seek to be dismissed only for good cause.

3. A ruling on the dismissal of a defense counsel in a case under paragraphs 1 and 2 of the present Article shall be rendered before the main trial by the pre-trial judge, during the main trial by the single trial judge or presiding trial judge and in the appellate proceedings by the presiding appeals judge of the Court of Appeal or Supreme Court. No appeal shall be permitted against such ruling.

4. The president of the court may dismiss an appointed defense counsel who is not performing his or her duties properly at the request of the defendant or with his or her consent. The president of the court shall appoint an independent defense counsel of experience and competence commensurate with the nature of the criminal offence in place of the dismissed defense counsel. The Kosovo Bar shall be informed of the dismissal of any defense counsel.

**Article 60**
**Withdrawal by Defense Counsel**

1. A defense counsel who does not accept the task that has been entrusted to him or her or withdraws from it shall immediately notify the authority conducting the proceedings and whoever has appointed him or her of such refusal to accept or withdrawal.

2. Refusal to accept is effective from the moment when it is communicated to the authority conducting the proceedings.

3. Withdrawal is not effective until the defendant is provided with a new defense counsel of his or her own choice or under an *ex officio* appointment and until the expiry of the period which may be given to the substitute defense counsel to become familiar with the documents and the evidence.

4. Paragraph 3 of the present Article shall also apply to the cases under Article 59 paragraph 2 of the present Code.

**Article 61**
**Rights of Defense Counsel as Representative of Defendant**

1. The defense counsel has the same rights that the defendant has under the law, except those explicitly reserved to the defendant personally.

2. The defense counsel has the right to freely communicate with the defendant orally and in writing under conditions which guarantee confidentiality.

3. The defense counsel has the right to be notified in advance of the venue and time for undertaking any investigative actions and to participate in them and to inspect the records and evidence of the case in accordance with the provisions of the present Code.

# CHAPTER VI
## THE INJURED PARTY

### Article 62
### Rights of the Injured Party

1. The injured party shall have the following rights:

1.1. the injured party of a crime shall be treated with respect by the police, state prosecutors, judges or other body conducting the criminal proceedings.

1.2. if an injured party of a crime can be identified, the police and state prosecutor or other body conducting the criminal proceedings shall contact the injured party in a reasonable manner and inform him or her that he or she is an injured party.

1.3. the injured party has the status of a party to the criminal proceeding.

1.4. the injured party has the right to a reasonable, court-ordered restitution from a defendant or defendants who have admitted to or been adjudged to be guilty for the financial, physical and emotional harm caused by the commission of a criminal offence for which the defendant or defendants have been adjudged guilty.

1.5. if a court cannot order restitution from the defendants or defendants due to their inability to pay, absence from the jurisdiction of the court, or death, the injured party has the right for the court to refer the order of restitution to the coordinator of the victim compensation fund.

### Article 63
### Representatives of the Injured Party

1. The injured party may be represented by a representative who shall be a member of the bar of Kosovo.

2. The injured party may be represented by a victim advocate.

3. The injured party may represent himself or herself.

# CHAPTER VII
## OVERSIGHT OF THE CRIMINAL PROCEEDINGS

### Article 64
### Court is Empowered to Fine Parties for Prolonging Criminal Proceedings

1. In the course of proceedings the court may impose a fine of up to two hundred fifty (250) EUR upon a defense counsel, an authorized representative or legal representative, an injured party, or a victim advocate if his or her actions are obviously aimed at prolonging criminal proceedings. The fine may be assessed for each occurrence of the actions aimed at prolonging the criminal proceedings under this paragraph.

2. The Kosovo Chamber of Advocates of shall be informed of the fining of a member of the Kosovo Chamber of Advocates or an attorney in training.

3. If the state prosecutor does not file a motion with the court on time or undertakes other actions in proceedings with major delays and thereby causes proceedings to be prolonged, the Chief Prosecutor of that office shall be informed about it.

### Article 65
### Referring False Statements to State Prosecutor

1. If a judge becomes aware that a violation of Articles 391-401 of the Criminal Code has occurred during a criminal proceeding over which he or she presides, he or she may refer the person to the appropriate state prosecutor for investigation.

2. A judge who presides during a violation of Articles 391-401 of the Criminal Code according to paragraph 1 of this Article is excluded from any criminal proceedings resulting from the violation, but may continue to preside over the original criminal proceeding.

# CHAPTER VIII
## DUTIES OF NON-PARTIES

### Article 66
### Obligation of Public Entities to Assist State Prosecutor

All public entities shall be bound to provide the necessary assistance to the state prosecutor, the Court and other competent authorities participating in criminal proceedings, especially in matters concerning the investigation of criminal offences or the location of perpetrators.

### Article 67
### Release of Confidential Data

1. At the request of the court, institutions and persons responsible for maintaining databases shall, even without the consent of the person concerned, provide the court with data from the data-base they are keeping, if such data are indispensable for conducting criminal proceedings.

2. The court shall have a duty to protect the confidentiality of data so obtained.

# PART TWO
# CRIMINAL PROCEEDINGS

# CHAPTER IX
## INITIATION OF INVESTIGATIONS AND CRIMINAL PROCEEDINGS

### 1. STAGES OF THE CRIMINAL PROCEEDING

### Article 68
### Stages of a Criminal Proceeding

A criminal proceeding under this Criminal Procedure Code shall have four distinct stages: the investigation stage, the indictment and plea stage, the main trial stage and the legal remedy stage. A criminal proceeding may be preceded by initial steps by the police or information gathering under Article 84 of this Code.

## 2. INITIAL STEPS BY THE POLICE

### Article 69
### Investigation by Police

1. The police shall investigate possible criminal offences in compliance with Article 70 of this code to determine whether a criminal proceeding is warranted.

2. The state prosecutor and the police shall work together during the initial steps in Article 70 of this Code.

3. Once a measure is authorized under Article 84 or a criminal proceeding is initiated under Article 102 of this Code, the state prosecutor directs and supervises the work of police and other or other body conducting the criminal investigation.

4. The state prosecutor shall have access to all relevant investigative information in the possession of the police during the initial steps.

### Article 70
### Police Investigation Steps

1. After receiving information of a suspected criminal offence, the police shall investigate whether a reasonable suspicion exists that a criminal offence prosecuted *ex officio* has been committed.

2. The police shall investigate criminal offences and shall take all steps necessary to locate the perpetrator, to prevent the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings.

3. In order to perform the tasks under the present Article the police shall have the power:

3.1. to gather information from persons;

3.2. to perform provisional inspection of vehicles, passengers and their luggage;

3.3. to restrict movement in a specific area for the time this action is urgently necessary;

3.4. to take the necessary steps to establish the identity of persons and objects;

3.5. to organize a search to locate an individual or an object being sought by sending out a search circular;

3.6. to search specific buildings and premises of public entities in the presence of a responsible person and to examine specific documentation belonging to them;

3.7. to confiscate contraband or objects which may serve as evidence in criminal proceedings, unless doing so would require an order under Article 105 of this Code;

3.8. to provide for a physical examination of the injured party, in accordance with Article 144 of the present Code;

3.9. to detect, collect and preserve traces and evidence from the scene of the incident a suspected criminal offence and to order forensic testing of that evidence by the forensic laboratory in accordance with Article 71 of this Code;

3.10. to interview witnesses or possible suspects in accordance with Article 73 of this Code;

3.11. to take steps necessary to prevent an emergent danger to the public;

3.12. to take all steps necessary to locate the perpetrator and to prevent the perpetrator or his or her accomplice from hiding or fleeing; and

3.13. to undertake other necessary steps and actions provided for by the law.

3. The police shall make a record, photograph or official note of the actions they take and of the facts and circumstances which are established by their investigation.

4. As soon as the police obtain a reasonable suspicion that a criminal offence prosecuted *ex officio* has been committed, the police have a duty to provide a police report within twenty four (24) hours to the competent state prosecutor, who shall decide whether to initiate a criminal proceeding.

**Article 71**
**Collection of Evidence from Crime Scene**

1. For evidence existing at the scene of an incident a suspected criminal act, the police shall carefully collect the evidence and preserve it in the appropriate manner that permits the evidence to be tested by the competent laboratory.

2. For potential evidence subject to forensic testing which would be taken from an individual's body, excluding fingerprints, the police must either have the written consent of the individual for the evidence to be taken or a court order under Article 143, 144 or 145 of this Code that authorizes the evidence to be taken.

**Article 72**
**Police Right to Briefly Detain**

The police have the right to detain and gather information from persons found at the scene of the criminal offence who may provide information important for the criminal proceedings if it is likely that the gathering of information from these persons at a later time and date would be impossible or would significantly delay the proceedings or cause other difficulties. The detention of such persons shall last no longer than necessary for names, addresses and other relevant information to be gathered, and in any case it shall not exceed six (6) hours. Such detention should only be used when no other means are available to gather the information. The police shall treat the person being briefly detained with dignity and shall not briefly detain the person in a detention center or with handcuffs.

**Article 73**
**Interviews by Police**

1. Only during a duly authorized covert investigation, the police have the right to participate in conversations with persons who may be witnesses to or possible suspects of criminal offences. During these conversations the police may ask questions relating to the criminal offence. These conversations shall be recorded, if possible. If these conversations cannot be recorded, the police officer shall accurately summarize the conversations and explain why the conversations were not recorded as soon as practicable in a police report.

2. The police have the right to interview persons who may be witnesses to a criminal offence and to create a Police Report of the interview. The Report shall contain the exact questions and answers during the interview, shall identify the police officer interviewing the witness, the time, date and location of the interview, and shall identify the witness.

3. The police have the right to interview persons who may be may be suspects of committing a criminal offence but shall first inform the suspect on the offenses that he or she is suspected of having committed and of their rights under Article 125, paragraph 3. The police shall prepare a Police Report of the interview. The Report shall accurately summarize the questions and answers during the interview, shall identify the police officer interviewing the suspect, the time, date and location of the interview.

4. During an interview under paragraph 3 of this Article, the suspect has the right to interpretation or translation of relevant documents without payment**.**

**Article 74**
**Prohibitions in Police Questioning**

Article 257 of the present Code shall apply to gathering information from persons under Articles 72-73 of the present Code.

## Article 75
## Provisional Security Searches

1. If there is a danger that a person is carrying a weapon or a dangerous object that can be used for attack or self-injury, the police can perform a provisional security search of such person to search for weapons or other dangerous objects.

2. A provisional security search shall not constitute a search of a person and will be limited to frisking the outside of the person's clothing and, exceptionally, provisionally checking the luggage or vehicle of a person under direct control of such person.

3. A provisional security search of a person shall be conducted by a police officer of the same sex as the person being searched unless this is absolutely not possible due to special circumstances.

4. If in conducting a provisional security search the police finds objects that may be used as evidence in criminal proceedings, the police shall proceed in accordance with the provisions governing the search of persons under the present Code.

## Article 76
## Measures to Identify a Suspect

1. The police may photograph a person and take his or her fingerprints, if there is a reasonable suspicion that he or she has committed a criminal offence.

2. The state prosecutor may authorize the police to release the photograph for general publication, when this is necessary to establish the identity of a suspect or in other cases of importance for the effective conduct of proceedings.

3. If it is necessary to identify whose fingerprints have been found on certain objects, police may take the fingerprints of persons likely to have come into contact with such objects.

4. Police may with the assistance of a qualified physician or nurse or in exigent circumstances on their own collect the samples referred to in Article 143, 144 or 145 of the present Code from a suspect if it is urgent. The state prosecutor shall be informed immediately of the collection of such samples.

5. Police may request a suspect to take an alcohol test by providing urine or breath samples, and the refusal of the suspect to provide such samples constitutes admissible evidence. The suspect shall be notified of this in advance. Neither sample shall be taken by compulsion without a court order.

**Article 77**
**Collection of Information from Injured Party by Police**

1. When gathering information from an injured party, the police shall inform the injured party of his or her rights under Article 62 of the present Code and upon the request of the injured party and, where the injured party belongs to one of the categories referred to in Article 62, paragraph 1 of the present Code, shall notify the Victim Advocacy Unit.

2. A person against whom any of the measures provided for in Articles 69 - 83 of the present Code has been taken is entitled to file an appeal with the competent state prosecutor within three days from the taking of the measures.

3. The state prosecutor shall, without delay, verify the grounds for the appeal referred to in paragraph 2 of the present Article and if it is established that the actions or measures undertaken violate the criminal law or the code of conduct applicable to the police or employment obligations, he or she shall act in accordance with the law and shall inform the person who filed the appeal.

**Article 78**
**Criminal Report by Public Entities**

1. All public entities have a duty to report criminal offences prosecuted *ex officio* of which they have been informed or which they have learned of in some other manner.

2. In submitting a criminal report, the public entities referred to in paragraph 1 of the present Article shall present evidence known to them and shall undertake steps to preserve traces of the criminal offence, objects upon which or with which the criminal offence was committed and other evidence.

**Article 79**
**Criminal Report by Persons**

1. Any person is entitled to report a criminal offence which is prosecuted *ex officio* and shall have a duty to do so when the failure to report a criminal offence constitutes a criminal offence.

2. A social worker, a health care worker, a teacher, a tutor or another person working in a similar capacity who learns of or discovers that there is a reasonable suspicion that a child has been a victim of a criminal offence, and in particular of a criminal offence against sexual integrity, shall immediately report this.

3. When prosecution for a certain criminal offence depends on a motion for prosecution by the injured party or on the prior approval of the competent authority, the state prosecutor may not conduct an investigation or file an indictment without submitting proof that the motion or the approval has been granted. In cases of urgency, the state

prosecutor can proceed with an oral motion for prosecution which has to be confirmed in forty-eight (48) hours in writing. A criminal report signed by the injured party shall be sufficient under this Paragraph.

**Article 80**
**Criminal Report Submitted to State Prosecutor**

1. A criminal report shall be submitted to the competent state prosecutor in writing, by technical means of communication or orally.

2. If a criminal offence has been reported orally, the person reporting it shall be warned of the consequences of making a false criminal report. A record shall be compiled of oral reports and an official note shall be made of reports received over the telephone or other technical means of communication.

3. A criminal report submitted to a court, to the police or to a state prosecutor who is not competent shall be accepted and forwarded without delay to the competent state prosecutor.

**Article 81**
**Police Criminal Report**

1. On the basis of information and evidence gathered the police shall draw up a police criminal report setting out evidence discovered in the process of gathering information.

2. The police criminal report shall be submitted to the state prosecutor along with objects, sketches, photographs, reports obtained, records of the measures and actions undertaken, official notes, statements taken and other materials which might contribute to the effective conduct of proceedings.

3. If, after submitting the police criminal report, the police learn of new facts, evidence or traces of the criminal offence, they have a continuing duty to gather the necessary information and to submit immediately to the state prosecutor a report to that effect, as a supplement to the police criminal report.

4. If the measures and actions undertaken by the police, the evidence, and the information gathered provide no basis for a police criminal report and there is no reasonable suspicion that a criminal offence has been committed, the police will nevertheless send a separate report to that effect to the state prosecutor.

## Article 82
## Dismissal of Police Criminal Report

1. The state prosecutor shall issue a decision dismissing a criminal report received from the police or another source within thirty (30) days if it is evident from the report that:

1.1. there is no reasonable suspicion that a criminal offence has been committed;

1.2. the period of statutory limitation for criminal prosecution has expired;

1.3. the criminal offence is covered by an amnesty or pardon;

1.4. the suspect is protected by immunity and a waiver is not possible or not granted by the appropriate authority; or

1.5. there are other circumstances that preclude prosecution.

2. The state prosecutor shall immediately deliver to the police a copy of the decision pursuant to paragraph 1 of this Article.

3. The state prosecutor shall notify the injured party of the dismissal of the report and the reasons for this within eight (8) days of the dismissal of the report.

## Article 83
## Supplemental Information to Police Criminal Report

1. If from the criminal report itself the state prosecutor is unable to conclude whether the allegations contained in it are probable, or if information in the report does not provide a sufficient basis for an investigation to be initiated or if the state prosecutor has only heard a rumor that a criminal offence was committed, the state prosecutor, if he or she is unable to do so on his own, shall request that the police gather the necessary information. The police are bound to follow the state prosecutor’s lawful requests.

2. The state prosecutor may also gather such information on his or her own, or from other public entities, including by speaking to witnesses and injured parties, and their legal counsel. The state prosecutor may participate with the police in any examination of the defendant while he or she must respect the rights of suspects under the provisions of this Code.

3. The police shall have a duty to report immediately to the state prosecutor on the measures they have undertaken under his or her instruction or, if they are unable to undertake them, they shall immediately report to the state prosecutor the reasons for their inability to undertake such measures.

4. The state prosecutor may request necessary data from public entities and may for this purpose summon the person who has submitted the criminal report.

5. The state prosecutor shall dismiss the criminal report within thirty (30) days as provided for in Article 79 of the present Code, if the circumstances under paragraph 1 of the present Article obtain, even after actions under paragraphs 2, 3 and 4 of the present Article have been undertaken.

6. The police, state prosecutor and other public entities have a duty to proceed cautiously in gathering or supplying information, taking care not to harm the dignity and reputation of the person to whom such information refers.

## 3. GATHERING OF INFORMATION

### Article 84
### Measures Taken Prior to Criminal Proceedings

1. If the state prosecutor has grounded suspicion that a criminal offence listed in Article 90 of this Code has been committed, is being committed or will soon be committed, the state prosecutor may authorize or request the pretrial judge to authorize covert or technical investigative measures in accordance with Articles 86-100 of this Code.

2. The state prosecutor or pretrial judge does not need to have a reasonable suspicion of the identity of the suspect or suspects who committed, are committing or will soon commit the criminal offence in order to authorize covert or technical investigative measures in accordance with paragraph 1 of this Article.

3. If the authorization for covert or technical investigative measures is based, in whole or in part, on grounded suspicion provided by information from an informant, witness or cooperative witness, the state prosecutor may interview the informant, witness or cooperative witness.

4. A criminal proceeding does not need to have been initiated for the state prosecutor or pretrial judge to authorize covert or technical investigative measures in accordance with paragraph 1 of this Article; however, a criminal proceeding shall be initiated as soon as the state prosecutor has a reasonable suspicion of the identity of the suspect or suspects who committed the criminal offence.

5. If covert or technical investigative measures are authorized in accordance with paragraph 1 of this Article, the state prosecutor shall take reasonable precautions to preserve the privacy of people who are not involved with the criminal offence.

6. If a criminal proceeding is authorized after covert or technical investigative measures were taken under paragraph 1 of this Article, the state prosecutor shall include the orders for the covert or technical investigative measures and the resulting evidence in the file for the criminal proceeding.

7. If a state prosecutor does not authorize a criminal proceeding after covert or technical investigative measures were taken under paragraph 1 of this Article, the state prosecutor shall report the measures taken to the pre-trial judge.

**Article 85**
**Secrecy of Information Gathering**

1. If the state prosecutor authorizes covert or technical investigative measures in accordance with Article 84, paragraph 1 of this Code, the file shall be sealed and kept secret if the state prosecutor requests that it be sealed and shows a substantial likelihood that public knowledge of the preliminary investigation would interfere with the investigation or pose a danger to witnesses or investigators.

2. If the state prosecutor requests the pretrial judge to order covert or technical investigative measures, the court shall seal and keep secret the file if the state prosecutor requests that it be sealed and shows a substantial likelihood that public knowledge of the preliminary investigation would interfere with the investigation or pose a danger to witnesses or investigators.

3. The file shall be sealed no more than twelve (12) months or until the initiation of the investigative stage, at which time the Court Registrar shall unseal the file.

4. The pre-trial judge may order the file to remain sealed for an additional six (6) months only if the state prosecutor demonstrates a substantial likelihood that public knowledge of the preliminary investigation would interfere with the investigation or pose a danger to witnesses or investigators.

5. Covert and Technical Investigative Measures.

**Article 86**
**Conditions for the Application of Covert and Technical Investigative and Surveillance Measures**

1. Covert and technical investigative measures may be authorized in accordance with Article 84 of this Code, and

2. After an Investigative Stage has been initiated, or concurrent with the state prosecutor's decision to initiate the preliminary investigation, the state prosecutor may request the pretrial judge to authorize covert or technical investigative measures in accordance with Articles 86-100 of this Code.

**Article 87**
**Definition of Covert and Technical Measures of Surveillance and Investigation During Preliminary Investigation**

For the purposes of the present Chapter:

1. A covert or technical measure of surveillance or investigation ("a measure under the present Chapter") means any of the following measures:

1.1. covert photographic or video surveillance;

1.2. covert monitoring of conversations;

1.3. search of postal items;

1.4. interception of telecommunications and use of an International Mobile Service Identification "IMSI" Catcher;

1.5. interception of communications by a computer network;

1.6.controlled delivery of postal items;

1.7. use of tracking or positioning devices;

1.8. a simulated purchase of an item;

1.9. a simulation of a corruption offence;

1.10. an undercover investigation;

1.11. metering of telephone-calls; and

1.12. disclosure of financial data.

2. The term **"covert photographic or video surveillance"** means the monitoring, observing, or recording of persons, their movements or their other activities by a duly authorized police officer by means of photographic or video devices, without the knowledge or consent of at least one of the persons subject to the measure;

3. The term **"covert monitoring of conversations"** means the monitoring, recording, or transcribing of conversations by a duly authorized police officer by technical means without the knowledge or consent of at least one of the persons subject to the measure;

4. The term **"search of postal items"** means the search by a duly authorized police officer of letters and other postal items which may include the use of X-ray equipment;

5. The term **"Interception of telecommunications"** means the interception of voice communications, text communications or other communications through the fixed or mobile telephone networks. This shall include any similar technological device or system that carries information that is normally intended to be private;

6. The term **"controlled delivery of postal items"** means the delivery by a duly authorized police officer of letters and other postal materials;

7. The term **"use of tracking or positioning devices"** means the use by a duly authorized police officer of devices, which identify the location of the person or object to whom it is attached;

8. The term **"a simulated purchase of an item"** means an act of buying from a person suspected of having committed a criminal offence an item which may serve as evidence in criminal proceedings or a person suspected to be a victim of the criminal offence of Trafficking in Persons, as defined in Article 170 of the Criminal Code;

9. The term **"a simulation of a corruption offence"** means an act, which is the same as a criminal offence related to corruption, except that it has been performed for the purpose of collecting information and evidence in a criminal investigation;

10. The term **"an undercover investigation"** means the planned interaction of a duly authorized police officer or cooperative agent of the prosecution who is not identifiable as a duly authorized police officer or of a person acting under the supervision of a duly authorized police officer with persons suspected of having committed a criminal offence;

11. The term "**metering of telephone calls**" means obtaining a record of telephone calls made from a given telephone number;

12. The term "**disclosure of financial data"** means obtaining information from a bank or another financial institution on deposits, accounts or transactions;

13. The term "**authorizing judicial officer**" means the pre-trial judge or state prosecutor under whose authority an order under the present Chapter has been issued; and

14. The term "**subject of an order"** means the person against whom a measure under the present Chapter has been ordered.

## Article 88
## Intrusive Covert and Technical Measures of Surveillance and Investigation

1. Covert photographic or video surveillance, covert monitoring of conversations in public places, metering of telephone calls or disclosure of financial data may be ordered against a particular person or place if:

1.1. there is a grounded suspicion that a place is being used for, or such person has committed a criminal offence which is prosecuted *ex officio* or, in cases in which attempt is punishable, has attempted to commit a criminal offence which is prosecuted *ex officio*; and

1.2. the information that could be obtained by the measure to be ordered would be likely to assist in the investigation of the criminal offence and would be unlikely to be obtained by any other investigative action without unreasonable difficulty or potential danger to others.

2. Metering of telephone calls or disclosure of financial data may also be ordered against a person other than the suspect, where the criteria in paragraph 1 subparagraph 1.1 of the present Article apply to a suspect and the precondition in paragraph 1 subparagraph 1.2 of the present Article is met and if there is a grounded suspicion that:

2.1. such person receives or transmits communications originating from or intended for the suspect or participates in financial transactions of the suspect; or

2.2. the suspect uses such person's telephone.

3. Covert monitoring of conversations in private places, search of postal items, interception of telecommunications, interception of communications by a computer network, controlled delivery of postal items, the use of tracking or positioning devices, a simulated purchase of an item, a simulation of a corruption offence or an undercover investigation may be ordered against a particular person, place or item if:

3.1 there is a grounded suspicion that a place or item is being used for, or such person has committed or, in cases in which attempt is punishable, has attempted to commit a criminal offence listed in Article 90 of this Code.

3.2. the information that could be obtained by the measure to be ordered would be likely to assist in the investigation of the criminal offence and would be unlikely to be obtained by any other investigative action without unreasonable difficulty or potential danger to others.

4. The search of postal items, the interception of telecommunications or the interception of communications by a computer network may also be ordered against a person other than the suspect, where the criteria in paragraph 3 subparagraph 3.1 of the present Article apply to a suspect and the precondition in paragraph 3 subparagraph 3.2 of the present Article is met and if there is a grounded suspicion that:

4.1. such person receives or transmits communications originating from or intended for the suspect; or

4.2. the suspect is using such person's telephone or point of access to a computer system.

**Article 89**
**Standards for Orders under Article 88**

1. The measures in Article 88, paragraph 2 or paragraph 4 of this Code can be ordered if:

1.1. there is a grounded suspicion that a telephone number or email address, or financial account has been used in the commission of or, in cases in which attempt is punishable, has been used in the attempt to commit a criminal offence listed in Article 90 of this Code; and,

1.2. the owner or user of the telephone number or email address or financial account is not known, is a legal person, or there is a grounded suspicion that telephone number, email address or financial account is being used by someone other than the owner.

**Article 90**
**Offences Justifying Orders under Article 88**

1. An order under Article 88 of this Code shall only be used to investigate at least one of the following suspected criminal offences:

1.1. a criminal offence punishable by a minimum of five (5) or more years imprisonment; or

1.2. one or more of the following criminal offences,

1.2.1. violence against High Representatives of the Republic of Kosovo, as defined by Article 127 of the Criminal Code;

1.2.2. endangering the Constitutional Order by Destroying or Damaging Public Installations and Facilities, as defined by Article 128 of the Criminal Code;

1.2.3. sabotage, as defined by Article 129 of the Criminal Code;

1.2.4. espionage, as defined by Article 130 of the Criminal Code;

1.2.5. concealment or Failure to Report Terrorists and Terrorist Groups, as defined by Article 141 of the Criminal Code;

1.2.6. preparation of Terrorist Offences or Criminal Offenses against the Constitutional Order and Security of the Republic of Kosovo, as defined by Article 143 of the Criminal Code;

1.2.7. endangering Negotiators, as defined by Article 158 of the Criminal Code;

1.2.8. organization of Groups to Commit Genocide, Crimes against Humanity and War Crimes, as defined by Article 159 of the Criminal Code;

1.2.9. hijacking Aircraft, as defined by Article 163 of the Criminal Code;

1.2.10. endangering Civil Aviation Safety, as defined by Article 164 of the Criminal Code;

1.2.11. slavery, Slavery-like Conditions and Forced Labour, as defined by Article 168 of the Criminal Code;

1.2.12. smuggling of Migrants, as defined by Article 169 of the Criminal Code;

1.2.13. trafficking in Persons, as defined by Article 170 of the Criminal Code;

1.2.14. withholding Identity Papers of Victims of Slavery or Trafficking in Persons, as defined by Article 171 of the Criminal Code;

1.2.15. endangering Internationally Protected Persons, as defined by Article 172 of the Criminal Code;

1.2.16. endangering United Nations and Associated Personnel, as defined by Article 173 of the Criminal Code;

1.2.17. hostage-Taking, as defined by Article 174 of the Criminal Code;

1.2.18. threats to Use of Commit Theft or Robbery of Nuclear Material, as defined by Article 176 of the Criminal Code;

1.2.19. kidnapping, as defined in Article 193 of the Criminal Code;

1.2.20. torture, as defined in Article 198 of the Criminal Code;

1.2.21. violation of the Right to Be a Candidate, as defined in Article 209 of the Criminal Code;

1.2.22. threat to the Candidate, as defined in Article 210 of the Criminal Code;

1.2.23. abuse of Official Duty During Elections, as defined in Article 213 of the Criminal Code;

1.2.24. giving or Receiving a Bribe in Relation to Voting, as defined in Article 214 of the Criminal Code;

1.2.25. falsification of Voting Results, as defined in Article 218 of the Criminal Code;

1.2.26. destroying Voting Documents, as defined in Article 219 of the Criminal Code;

1.2.27. rape, as defined in Article 229 of the Criminal Code;

1.2.28. sexual Services of a Victim of Trafficking, as defined in Article 230 of the Criminal Code;

1.2.29. facilitating or Compelling Prostitution, as defined in Article 240 of the Criminal Code;

1.2.30. unlawful Transplantation and Trafficking of Human Organs and Tissues, as defined in Article 264 of the Criminal Code;

1.2.31. pollution of Drinking Water, as defined in Article 269 of the Criminal Code;

1.2.32. pollution of Food Products used by People or Animals, as defined in Article 270 of the Criminal Code;

1.2.33. unauthorized Purchase, Possession, Distribution and Sale of Narcotic Drugs, Psychotropic Substances, Analogues , as defined in Article 272 of the Criminal Code;

1.2.34. unauthorized production and processing of Narcotic Drugs, Psychotropic Substances, Analogues or Narcotic Drug Paraphernalia, Equipment or Materials, as defined in Article 273 of the Criminal Code;

1.2.35. organizing, Managing or Financing Trafficking in Narcotic Drugs or Psychotropic Substances, as defined in Article 278 of the Criminal Code;

1.2.36. violating Right of Equality in Exercising Economic Activity, as defined in Article 283 of the Criminal Code;

1.2.37. misuse of Economic Authorizations, as defined in Article 289 of the Criminal Code;

1.2.38. counterfeiting Securities and Payment Instruments, as defined in Article 292 of the Criminal Code;

1.2.39. organizing Pyramid Schemes and Unlawful Gambling, as defined in Article 299 of the Criminal Code;

1.2.40. counterfeiting Money, as defined in Article 301 of the Criminal Code;

1.2.41. production, Supply, Selling, Possession or Provision for Use the Means of Counterfeiting, as defined in Article 303 of the Criminal Code;

1.2.42. money Laundering, as defined in Article 307 of the Criminal Code;

1.2.43. agreements in Restriction of Competition Upon Invitation to Tender, as defined in Article 308 of the Criminal Code;

1.2.44. fraud in Trading with Securities, as defined in Article 309 of the Criminal Code;

1.2.45. government Securities Collusion and Fraud, as defined in Article 311 of the Criminal Code;

1.2.46. tax Evasion, as defined in Article 312 of the Criminal Code;

1.2.47. unjustified Acceptance of Gifts, as defined in Article 314 of the Criminal Code;

1.2.48. unjustified Giving of Gifts, as defined in Article 315 of the Criminal Code;

1.2.49. smuggling of Goods, as defined in Article 316 of the Criminal Code;

1.2.50. avoiding Payment of Mandatory Customs Fees, as defined in Article 317 of the Criminal Code;

1.2.51. arson, as defined in Article 333 of the Criminal Code;

1.2.52. fraud, as defined in Article 334 of the Criminal Code;

1.2.53. subsidy Fraud, as defined in Article 335 of the Criminal Code;

1.2.54. fraud Related to Receiving Funds from European Community, as defined in Article 336 of the Criminal Code;

1.2.55. misuse of Insurance, as defined in Article 337 of the Criminal Code;

1.2.56. intrusion into Computer Systems, as defined in Article 338 of the Criminal Code;

1.2.57. unlawful Handling Hazardous Substances and Waste, as defined in Article 347 of the Criminal Code; or

1.2.58. unauthorized Import, Export, Supply, Transport, Production, Exchange, Brokering or Sale of Weapons or Explosive Materials, as defined in Article 371 of the Criminal Code.

1.3. one or more of the following criminal offences, if committed in the furtherance of terrorism, corruption or organized crime:

1.3.1. threat, as defined in Article 184 of the Criminal Code;

1.3.2. harassment, as defined in Article 185 of the Criminal Code;

1.3.3. assault, as defined in Article 186 of the Criminal Code;

1.3.4. grievous Bodily Injury, as defined in Article 188 of the Criminal Code;

1.3.5. coercion, as defined in Article 194 of the Criminal Code;

1.3.6. extortion, as defined in Article 339 of the Criminal Code;

1.3.7. blackmail, as defined in Article 340 of the Criminal Code;

1.3.8. causing General Danger, as defined in Article 364 of the Criminal Code;

1.3.9. destroying, Damaging or Removing Public Installations, as defined in Article 365 of the Criminal Code;

1.3.10. destroying, Damaging or Removing Safety Equipment and Endangering Work Place Safety, as defined in Article 366 of the Criminal Code;

1.3.11. unlawful Delivery or Transportation of Explosives or Flammable Materials, as defined in Article 368 of the Criminal Code;

1.3.12. use of Weapon or Dangerous Instrument, as defined in Article 374 of the Criminal Code;

1.3.13. obstruction of Evidence or Official Proceeding, as defined in Article 393 of the Criminal Code;

1.3.14. intimidation During Criminal Proceedings for Organized Crime, as defined in Article 394 of the Criminal Code;

1.3.15. abusing Official Position or Authority, as defined in Article 421 of the Criminal Code;

1.3.16. misusing Official Information, as defined in Article 422 of the Criminal Code;

1.3.17. conflict of Interest, as defined in Article 423 of the Criminal Code;

1.3.18. misappropriation in Office, as defined in Article 424 of the Criminal Code;

1.3.19. fraud in Office, as defined in Article 425 of the Criminal Code;

1.3.20. accepting Bribes, as defined in Article 427 of the Criminal Code;

1.3.21. giving Bribes, as defined in Article 428 of the Criminal Code;

1.3.22. giving Bribes to Foreign Official, as defined in Article 429 of the Criminal Code;

1.3.23. trading in Influence, as defined in Article 430 of the Criminal Code; or

1.3.24. disclosing Official Secrets, as defined in Article 431 of the Criminal Code.

2. Evidence obtained pursuant to a lawfully ordered measure under Article 88 of this Code shall be admissible at the Main Trial regardless of whether the indictment charges any of the Criminal Offences listed in this Article.

## Article 91
## Persons Competent to Apply for and Order Covert and Technical Measures of Surveillance and Investigation

1. A state prosecutor may issue a provisional order for one of the measures provided for in paragraph 2 of this Article only in emergency criminal cases, or in criminal proceedings that are investigating criminal offences under Chapter XXIV or Chapter XXXIV of the Criminal Code or money laundering offences in necessary cases, if the delay that would result from a pre-trial judge issuing an order under paragraph 2 of the present Article would jeopardize the security of investigations or the life and safety of an injured party, witness, informant or their family members. Such provisional order ceases to have effect if it is not confirmed in writing by a pre-trial judge within three (3) days of

issuance. When confirming the provisional order of a state prosecutor, the pre-trial judge shall make a written determination as to its lawfulness *ex officio*."

2. A pre-trial judge may issue an order for each of the following measures on the basis of an application by a state prosecutor:

2.1. covert photographic or video surveillance in public places;

2.2. covert monitoring of conversations in public places;

2.3. an undercover investigation;

2.4. metering of telephone calls;

2.5. covert photographic or video surveillance in private places;

2.6. covert monitoring of conversations in private places;

2.7. search of postal items;

2.8. interception of telecommunications; including text messages or other electronic messages;

2.9. interception of communications by a computer network;

2.10. controlled delivery of postal items;

2.11. use of tracking or positioning devices;

2.12. a simulated purchase of an item;

2.13. a simulation of a corruption offense; or

2.14. disclosure of financial data."

3. An application for one of the measures provided for in paragraph 1, 2 or 3 of the present Article shall be made in writing and shall include the following information:

3.1. the identity of the duly authorized police officer, officer of the body authorized to enforce criminal law or the state prosecutor making the application;

3.2. reasons and facts that support the application and fulfill the criteria in Article 88 of this Code; and

3.3. information about any previous application known to the applicant involving the same person and the action undertaken by the authorizing judicial officer on such application.

**Article 92**
**Orders for Covert and Technical Measures of Surveillance and Investigation**

1. An order for a measure under the present Chapter which shall not exceed sixty (60) days from the date of the issuance of the order shall be in writing and shall specify:

1.1. the name and address of the subject or subjects of the order, if known the number of affected data subjects and the scene of the event;

1.2. the official designation of the measure and its exact legal bases;

1.3. the grounds for the order in particular the current findings and the sound probability according to Article 19 subparagraph 1.11 of this Code;

1.4. measure and its exact starting and closing time, if applicable; and

1.5. the person authorized to implement the measure and the officer responsible for supervising such implementation.

2. An order for a measure under the present Chapter shall require that duly authorized police officers provide the authorizing judicial officer a report on the implementation of the order at fifteen (15) day intervals from the date of the issuance of the order.

3. An order for covert photographic or video surveillance in private places, monitoring of conversations in private places, interception of telecommunications, interception of communications by a computer network or the use of tracking or positioning devices may specifically permit duly authorized police officers to enter private premises if a pre-trial judge determines that such entry is necessary to activate or disable the technical means for the implementation of such measures. If duly authorized police officers enter private premises pursuant to an order under this paragraph, their actions in the private premises shall be limited to those necessary to activate or disable the technical means.

4. An order for the metering of telephones or the interception of communications by a computer network shall include all the elements for the identification of each telephone or point of access to a computer network to be intercepted. Except as provided in paragraph 5 of the present Article, an order for the interception of telecommunications shall include all the elements for the identification of each telephone to be intercepted.

5. Upon the application of a state prosecutor, an order for the interception of telecommunications may include only a general description of the telephones which may be intercepted, where a pre-trial judge of the competent Basic Court has determined that there is a grounded suspicion that:

5.1. the suspect is using various telephones so as to avoid surveillance by duly authorized police officers; and

5.2. a telephone or telephones, as described in the order, are being used or are about to be used by the suspect.

6. If an order for the interception of telecommunications is issued by a pre-trial judge of a Basic Court pursuant to paragraph 5 of the present Article,

6.1. the duly authorized police officers after implementing the order in respect of a particular telephone shall promptly inform the pre-trial judge in writing of the relevant facts, including the number of the telephone;

6.2. the order may not be used to intercept the telecommunications of a person who is not the suspect; and

6.3. the duration of the order is limited to fifteen (15) days and may be renewed up to a total period of ninety (90) days from the date of issuance of the order.

7. An order for the search of postal items or for the controlled delivery of postal items shall designate the address on the postal items to be searched or delivered. Such address shall be that of the subject or subjects of the order.

8. An order for interception of telecommunications, interception of communications by a computer network, metering of telephone calls, search of postal items, controlled delivery of postal items or disclosure of financial data shall include as an annex a separate written instruction to persons other than duly authorized police officers whose assistance may be necessary for the implementation of the order. Such written instruction shall be addressed to the director or the official in charge of the telecommunications system, computer network, postal service, bank or other financial institution and shall specify only the information, which is required for assistance in the implementation of the order.

## Article 93
## Implementation of Orders for Covert and Technical Measures of Surveillance and Investigation

1. A duly authorized police officer shall commence the implementation of an order for a measure under the present Chapter no later than fifteen days after it has been issued.

2. The implementation of an order shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under the present Chapter.

3. If any of the conditions for ordering the measure cease to apply, duly authorized authorized police officers shall suspend implementation of the order and shall notify in writing the authorizing judicial officer. If the order was issued by a pre-trial judge, the authorized police officers shall also notify the state prosecutor. On receiving the written notification the state prosecutor or competent judge shall make a written determination as to whether the order shall be terminated.

4. Duly authorized police officers shall make a record of the time and date of the beginning and end of each action undertaken in implementing the order. The record shall state the names of the duly authorized police officers who carried out each operation and the functions they performed. Such records shall be annexed to the report submitted to the state prosecutor or competent judge under Article 92 paragraph 2 of the present Code.

5. With respect to the implementation of an order for interception of telecommunications, interception of communications by a computer network, search of postal items, controlled delivery of postal items and metering of telephone calls, persons responsible for the operation of telecommunications, computer-networks or postal services shall facilitate the implementation of an order under the supervision of the director or official in charge of the telecommunications system, computer network, or postal services.

6. With respect to the implementation of an order for the disclosure of financial data, employees of a financial institution shall facilitate the implementation of such order under the supervision of the director or the official in charge of the financial institution.

7. A duly authorized police officer or a person acting under the supervision of a duly authorized police officer may perform a simulated purchase of an item or a simulation of a corruption offence.
8. With respect to the implementation of an order for an undercover investigation, a simulated purchase of an item or a simulation of a corruption offence:

> 8.1. a person implementing the order may not incite another person to commit a criminal offence which that person would not have committed but for the intervention of the person implementing the order; and
>
> 8.2. a person who, in accordance with the provisions of the present Chapter, implements such order does not commit a criminal offence.

9. Criminal proceedings shall not be initiated in respect of a criminal offence which has been incited in breach of paragraph 8 of the present Article.

10. With respect to the implementation of an order for the interception of telecommunications, interception of communications by a computer network or search of postal items, such an order may not be implemented in relation to communications between a suspect and his or her lawyer, unless there is a grounded suspicion that the suspect and the lawyer are engaged together in criminal activity which constitutes the grounds for the order.

**Article 94**
**Extension of Orders for Covert and Technical Measures of Surveillance and Investigation**

1. The state prosecutor or competent judge may not issue a further written order for the extension of an order under the present Chapter, unless the preconditions for ordering a measure under the present Chapter, as set forth in Article 88 of the present Code, continue to apply and there is a reasonable explanation of the failure to obtain some or all of the information sought under the earlier order.

2. An order for covert photographic or video-surveillance in public places, covert monitoring of conversations, search of postal items, interception of communications by a computer network, controlled delivery of postal items, use of tracking or positioning devices, an undercover investigation, metering of telephone-calls or disclosure of financial data may be extended for a maximum period of sixty (60) days, which may be renewed up to a total period of three hundred sixty (360) days from the date of the issuance of the order.

3. An order for covert photographic or video-surveillance in private places or interception of telecommunications may be extended for a maximum of sixty (60) additional days, which may be renewed for a further maximum period of sixty (60) additional days.

4. An order for a simulated purchase of an item or a simulation of a corruption offence shall only authorize a single purchase of an item or a single simulation of a corruption offence. An authorizing judicial officer may issue a further such order in respect of the same subject, if the preconditions for ordering a measure under the present Chapter, as set forth in Article 88 of the present Code, continue to apply and there is a reasonable explanation of the failure to obtain some or all of the information sought under the earlier order.

5. The authorizing judicial officer may modify an order at any time, if he or she determines that such modification is necessary to ensure that the preconditions for ordering a measure under the present Chapter, as set forth in Article 88 of the present Code, still apply.

6. The authorizing judicial officer may terminate an order at any time if he or she determines that the preconditions for ordering a measure, as set forth in Article 88 of the present Code, cease to apply.

7. The extension of an order for a measure ordered by a pre-trial judge may only be ordered on the motion of a state prosecutor.

## Article 95
## Materials Obtained by Covert and Technical Measures of Surveillance and Investigation

1. On the completion of the implementation of a measure under the present Chapter, the duly authorized police officers shall send all documentary records, tapes and other items relating to the order and its implementation ("collected materials") to the state prosecutor.
2. Materials may be closed and held in secret if the state prosecutor considers that making them public would corrupt subsequent investigations or create a risk to the victim, witnesses, investigators or other persons.

3. Postal items, which do not contain information that will assist in the investigation of a criminal offence, shall immediately be forwarded to the recipient.

## Article 96
## Rights of Subjects of Orders under Article 88

1. Unless otherwise provided, measures pursuant to Articles 86 to 100 of this Code shall be subject to the following conditions.

2. Decisions and other documents concerning measures pursuant to Articles 86 to 100 of this Code shall be deposited at the state prosecution office. They shall be added to the files only if the requirements for a notification pursuant to sub-paragraph 5 of this Article have been met.

3. Personal data which was acquired by means of measures pursuant to Articles 86 to 100 of this Code is to be labeled accordingly. Following a transfer of the data to another agency, the labeling is to be maintained by such agency.

4. The following persons shall be notified of measures pursuant to Articles 86 to 100 of this Code:

> 4.1. in the case of Article 87 subparagraph 1.1 and 1.7 of this Code, the person targeted and other persons significantly affected thereby;
>
> 4.2. in the case of Article 87 subparagraph 1.2 of this Code, if there was covert monitoring of conversations in public places, the person targeted and other persons significantly affected thereby;
>
> 4.3. in the case of Article 87 subparagraph 1.2 of this Code, if there was covert monitoring of conversation in private places:
>
> > 4.3.1. the accused person, against whom the measure was directed;
> >
> > 4.3.2. other persons under surveillance;

4.3.3. persons who owned or lived in the private premises under surveillance at the time the measure was effected;

4.4. in the case of Article 87 subparagraph 1.3 of this Code, the sender and the addressee of the postal item;

4.5. in the case of Article 87 subparagraph 1.4 of this Code, the participants in the telecommunication under surveillance, or, if an IMSI catcher was used, the person targeted;

4.6. in the case of Article 87 subparagraph 1.11 of this Code, the participants in the telecommunication concerned;

4.7. in the case of Article 87 subparagraph 1.10 of this Code:

4.7.1. the person targeted;

4.7.2. persons significantly affected thereby;

4.7.3. persons whose private premises which are not generally accessible to the public were entered by the undercover investigator. In the notification, mention should be made of the option of subsequent court relief pursuant to paragraph 7 of this Article and the applicable time limit. Notification shall be dispensed with where overriding interests of an affected person that merit protection constitute an obstacle thereto. Investigations to determine the identity of a person listed in the first sentence are to be carried out only if this appears necessary taking into account the degree of invasiveness of the measure in respect of the person concerned, the effort associated with establishing their identity, as well as the resulting detriment for such person or other persons.

5. Notification shall take place as soon as it can be effected without endangering the purpose of the investigation, the life, physical integrity and personal liberty of another, or significant assets, in the case of Article 87 subparagraphs 1.1 and 1.10 subparagraph 1.3 of this Code including the possibility of continued use of the undercover investigator. Where notification is deferred pursuant to the first sentence, the reasons shall be documented on the file.

6. Where notification is deferred pursuant to paragraph 5 of this Article and has not taken place within twelve (12) months after completion of the measure, any further deferral of notification shall be subject to the approval of the court. The court shall decide upon the duration of any further deferrals. The court may approve the permanent dispensation with notification where there is a probability bordering on certainty that the requirements for notification will not be fulfilled, even in future. If several measures have been implemented within a short period of time, the time limit mentioned in the first sentence shall begin upon conclusion of the last measure. In the case of Article 87 (1) (2) the time period mentioned in the first sentence shall be six (6) months.

7. Court decisions pursuant to paragraph 6 of this Article shall be taken by the court competent to order the measure. In all other cases the court situated where the competent state prosecution office is located shall be competent. Even after completion of the measure and for up to two weeks following their notification, the persons named in paragraph 4 of this Article, first sentence, may apply to the competent court pursuant to the first sentence for a review of the lawfulness of the measure, as well as of the manner and means of its implementation. An immediate complaint against the decision shall be admissible. Where public charges have been preferred and the accused has been notified, the court seized of the matter shall decide upon the application in its concluding decision.

8. Personal data acquired by means of the measure which is no longer necessary for the purposes of criminal prosecution or a possible court review of the measure shall be deleted without delay. The fact of the deletion is to be documented. Insofar as deletion of the data has been deferred merely for the purposes of a possible court review of the measure, the data shall not be used for any other purpose without the consent of the persons concerned; access to the data is to be restricted accordingly.

9. The state prosecutor shall promptly inform in writing by registered mail each subject of an order pursuant to paragraph 4 of this Article that he or she has been the subject of that order and has a right to file a suit to the competent court within six (6) months of being informed.

## Article 97
## Admissibility of Evidence Obtained through Orders for Covert and Technical Measures of Surveillance and Investigation

1. Evidence obtained by a measure under the present Chapter shall be inadmissible if the order for the measure and its implementation are unlawful.

2. Evidence which has been obtained by covert monitoring of conversations in private places, search of postal items, interception of telecommunications, interception of communications by a computer network, the controlled delivery of postal items, the use of tracking or positioning devices, a simulated purchase of an item, a simulation of a corruption offence or an undercover investigation is only admissible in criminal proceedings in respect of a criminal offence which is specified in Article 88 paragraph 3 of the present Code.

3. After the filing of the indictment, the single trial judge or presiding trial judge shall consider challenges by the defendant to the admissibility of the collected materials, if the challenge is filed prior to the second hearing. The decision on a challenge under this paragraph may be appealed.

4. At any time prior to the final judgment, the single trial judge or presiding trial judge may review the admissibility of materials collected under Article 88 of this Code *ex officio* for violations of the defendant's constitutional rights if there is an indication that the materials were collected unlawfully.

5. When the ruling that an order or its implementation is unlawful is final, the single trial judge or presiding trial judge assigned to the proceedings shall remove all collected materials from the record and submit such materials through the President of the Basic Court to a Surveillance and Investigation Review Panel for a decision on compensation.

**Article 98**
**Surveillance and Investigation Review Panel**

1. A Surveillance and Investigation Review Panel shall:

1.1. adjudicate on a complaint submitted under paragraph 5 of the present Article in respect of a measure or an order for a measure under the present Chapter and decide on compensation where appropriate; or

1.2. decide on compensation for the subject or subjects of an order under the present Chapter if a judge has made a final ruling under Article 97 paragraph 3 of the present Code that the order or its implementation is unlawful.

2. A Surveillance and Investigation Review Panel shall be composed of three judges who shall be assigned by the President of the Basic Court to adjudicate on an individual complaint or to decide on compensation following an individual ruling under Article 97 paragraph 3 of the present Code. None of the three members of the Surveillance and Investigation Review Panel shall be professionally connected with the subject of the complaint or the collected materials, which are the subject of the ruling under Article 97 paragraph 3 of the present Code.

3. Authorized police officers and state prosecutors shall provide the Surveillance and Investigation Review Panel with such documents as the Surveillance and Investigation Review Panel shall require to perform its functions and shall, on request, provide oral testimony to the Surveillance and Investigation Review Panel.

4. When a ruling of a judge that an order for a measure under the present Chapter or its implementation is unlawful is final, it is binding on the Surveillance and Investigation Review Panel.

5. If a person considers that he or she has been the subject of a measure under the present Chapter, which is unlawful, or an order for a measure under the present Chapter, which is unlawful, he or she may submit a complaint to President of the Basic Court who shall, if a violation of the law is alleged, appoint a Surveillance and Investigation Review Panel for adjudication.

6. If on adjudicating on a complaint the Surveillance and Investigation Review Panel finds that a measure under the present Chapter is unlawful or an order for such measure is unlawful, it may decide to:

6.1. terminate the order, if it is still in force;

6.2. order the destruction of the collected materials; and/or

6.3. award compensation to the subject or subjects of the order.

**Article 99**
**Assistance of other Authorities to Implement Measures**

The police may, where appropriate, seek the assistance of other authorities responsible for maintaining law and order and a secure environment in Kosovo in connection with the implementation of measures under the present Chapter.

**Article 100**
**Surveillance and Investigation for Customs and Related Services**

The provisions of the present Chapter are without prejudice to the powers granted to official persons under the applicable law to conduct surveillance and investigation when providing customs and other related services.

## 4. INITIATION OF CRIMINAL PROCEEDINGS

### A. Initiation of Investigative Stage

**Article 101**
**Initiation of Criminal Proceedings by Investigative Stage, or Indictment**

1. If the police or other government agency reports to the state prosecutor a reasonable suspicion of a criminal offence the state prosecutor may initiate the investigatory stage of a criminal proceeding under Article 102 of this Code.

2. If the police or any other person reports to the state prosecutor a reasonable suspicion of a criminal offence or criminal offences, none of which are punishable by fine and/or imprisonment of more than three years, and the state prosecutor determines that a well-grounded suspicion exists to support an indictment, the state prosecutor may file an indictment under Article 241 of this Code.

3. At any time a suspect subject to this Article may plead guilty to an indictment in accordance with Article 233 of this Code.

**Article 102**
**Initiation of Investigation**

1. The state prosecutor may initiate an investigation on the basis of a police report or other sources, if there is a reasonable suspicion that that a criminal offence has been committed, is being committed or is likely to be committed in the near future which is prosecuted *ex officio.*

2. The investigation is initiated by a decision by the state prosecutor under Article 104 of this Code.

**Article 103**
**General Principles of Investigative Stage**

1. During the investigative stage the state prosecutor shall ascertain not only inculpatory but also exculpatory circumstances and evidence, and shall ensure that evidence, which may not be available at the main trial, is taken.

2. The aim of a investigation is to collect evidence and data necessary for deciding whether to file an indictment or to discontinue proceedings and to collect evidence which might be impossible or difficult to reproduce at the main trial.

3. Every person against whom the state prosecutor has a reasonable suspicion that he or she has committed a criminal offence shall be named as a defendant in the decision to initiate a investigation. Every defendant named in the decision shall be entitled to the rights of a defendant under the present Code.

4. If the state prosecutor becomes aware of evidence of the commission of another criminal offence or another suspect during a investigation, the state prosecutor may initiate a new investigation of the new criminal offence or suspects, or may amend the decision of or expand the existing investigation. The state prosecutor shall inform the pre-trial judge about new or amended decisions.

**Article 104**
**Decision to Initiate Investigative Stage**

1. The investigation shall be initiated by a decision of the state prosecutor. The decision shall specify the person or persons against whom an investigation will be conducted, the date and time of the initiation of the investigation, a description of the act which specifies the elements of the criminal offence, the legal name of the criminal offence, the circumstances and facts warranting the reasonable suspicion of a criminal offence, whether any technical or covert measures of investigation or surveillance had been authorized and the evidence and information already collected. A stamped copy of the ruling on the investigation shall be sent without delay to the pre-trial judge.

2. The result of initial steps by police or gathering of information shall be made part of the file on the investigation.

3. Once a decision under this Article is issued, the investigation shall be conducted and supervised by the state prosecutor.

4. The state prosecutor may undertake investigative actions or authorize the police to undertake investigative actions relating to the collection of evidence.

5. The investigation shall be conducted only in relation to the criminal offence and the defendant specified in the decision on the initiation of the investigation or in an amended decision.

6. A ruling under this Article may be accompanied by a request for a court order under Article 105 of this Code.

7. A ruling under this Article may be accompanied by a request for a court order under Chapter XVIII of this Code.

8. A ruling under this Article may be accompanied by an order for temporary freezing of assets in compliance Chapter XVII of this Code.

**B. Search and Confiscation**

**Article 105**
**Search and Temporary Sequestration**

1. A defendant may voluntarily consent in writing to the search of property under this chapter. Items found during a search under this paragraph may be temporarily sequestrated and are admissible at the main trial and other proceedings.

2. Items found during a search to which the defendant did not consent may not be temporarily sequestrated and are inadmissible, unless otherwise ordered under this Article.

3. Upon application by the state prosecutor at any time during the investigative stages, the pretrial judge may order a search of a house and other premises and property of a defendant if there is a grounded suspicion that such person has committed a criminal offence and there is a grounded cause that the search will result in the arrest of such person or in the discovery and sequestration of evidence important for the criminal proceedings.

4. The pretrial judge may order a search of a house and other premises and property of a person not suspected of a criminal offence only in cases in which:

4.1. there is a sound probability that the search will result in the arrest of a defendant; or

4.2. it is necessary to preserve evidence of a criminal offence or to sequestrate specific objects which cannot be preserved or obtained without the search and there is a sound probability that such evidence or objects are in the premises or property to be searched.

5. The pretrial judge may order a personal search of a specific person if there is a sound probability that the search will result in the discovery of traces or sequestration of evidence of a criminal offence.

6. A search order shall be issued in writing upon a written application of the state prosecutor or, in exigent circumstances, the authorized police officer.

7. A search order shall contain: an identification of the person or place against whom the order is directed, a designation of the criminal offence in relation to which the order has been issued, an explanation of the basis for the grounded cause in accordance with the present Article, a description of the objects sought in the search, a separate description of the person, premises or property to be searched and other information relevant for the implementation of the search.

8. If there is grounded cause to search an electronic device, including but not limited to computers, cameras, mobile telephones, mobile electronic devices or mobile electronic storage devices, the search order must authorize the temporary sequestration of such device or devices and shall describe the type of electronic files for which the authorized police officer may search and copy.

9. The provisions of this and other Articles that refer to the search of a house and other premises and property shall also apply mutatis mutandis to searches of concealed spaces in vehicles and other means of transportation.

## Article 106
## Limitations on Execution of Search Order

1. A search order shall be executed by the authorized police officers with the necessary assistance of other police officers within forty-eight (48) hours of the issuance of the order.

2. The authorized police officers shall, as a rule, execute the search order between the hours of 06:00 and 22:00. Exceptionally, a search may be conducted outside these hours if it began within them and is not completed by 22:00 or if there are reasons under Article 110 of the present Code, or if the pretrial judge determines that a delay could lead to the escape of the person being sought or to the destruction of traces or evidence of a criminal offence and specifically permits a search outside the hours provided for by the present paragraph.

## Article 107
## Procedure before the Initiation of Search and Rights of Defendant

1. Before beginning the search, the authorized police officers shall provide the order to the person against whom the order is directed and such person shall be informed that he or she has the right to contact a lawyer who has the right to be present during the search.

2. If the person requests a lawyer to be present during the search, the authorized police officers shall postpone the search until the arrival of the lawyer, but no longer than two (2) hours after the lawyer has been informed about the search. In the meantime the authorized police officers may restrict the movement of the person concerned and other persons in the premises that are about to be searched. In exigent circumstances the authorized police officers may begin the search even before the expiry of the time limit for the lawyer to arrive.

3. Before beginning the search the authorized police officers shall ask the person to surrender voluntarily the person or the objects sought.

4. Exceptionally, a search may start without the prior presentation of the order or the prior request for surrender of the person or objects sought if armed resistance is expected, or if the effectiveness of the search is likely to be undermined if it is not conducted instantly and without warning, or if a search is conducted on public premises.

## Article 108
## Limitations on Searches

1. During a search of a house or other premises the person whose house or other premises and property is being searched or a representative of such person shall have the right to be present.

2. During a search of a person, a house or other premises, two (2) adult persons shall be required to be present as witnesses. Before the search begins the witnesses shall be warned to observe closely how the search is conducted, and shall be informed of their right to make objections, if any, to the contents of the record of the search before it is signed.

3. A search of a female person shall only be carried out by a female police officer and only female persons shall be witnesses.

4. The search of residential premises shall be carried out considerately, to avoid disturbing the peace. Locked premises, furniture or other objects may be opened forcibly only if their owner is not present or refuses to open them voluntarily. In opening these objects care should be taken to avoid unnecessary damage.

5. A search of a person may include an intimate search which shall be conducted by a qualified medical doctor or nurse in accordance with the rules of medical science and with full respect for the person's dignity.

6. If a search is conducted on the premises of a public entity, the head thereof shall be invited to attend the search.

7. A record shall be made of each search of a person, house or premises. Such record shall be signed by the person who has been searched or whose premises or property have been searched, his or her lawyer if present during the search and persons whose presence is obligatory. When conducting a search, only the objects and documents related to the purpose of that particular search may be confiscated. The objects and documents confiscated shall be entered and accurately described in the record, and the same shall be indicated in the receipt, which shall be immediately given to the person whose objects or documents have been confiscated.

8. Objects and documents confiscated in the search shall be maintained in appropriate containers or transparent plastic bags and the authorized police and state prosecutor shall maintain a record of the chain of custody for each object or set of documents.

**Article 109**
**Contraband or Evidence Unrelated to Basis of Search**

If during a search of a person, house or premises objects are found which are not related to the criminal offence which justified the search but which point to another criminal offence prosecuted ex officio, these objects shall also be described in the record and confiscated, and a receipt of confiscation shall immediately be issued. A notification thereof shall immediately be sent to the state prosecutor so that he or she can initiate criminal proceedings or amend the existing criminal proceedings. The objects confiscated shall be returned immediately if the state prosecutor finds that there are no grounds for criminal proceedings, nor any other legal ground for confiscating the objects.

**Article 110**
**Grounds for Searches without Court Order**

1. Police officers may, if necessary and to the extent necessary, enter the house and other premises of a person and conduct a search without an order of the competent judge if:

1.1. the person concerned knowingly and voluntarily consents to the search;

1.2. a person is calling for help;

1.3. a perpetrator caught in the act of committing a criminal offence is to be arrested after a pursuit;

1.4. reasons of safety of people and property so require to avoid direct and serious risk from persons or property; or

1.5. a person against whom an order for arrest has been issued by the court is to be found in the house or other premises.

2. In the instances under paragraph 1 of the present Article a record shall not be made if no search has been conducted, but the person shall be given an official note indicating the reason for the entry of the house or other premises.

3. Exceptionally, in exigent circumstances, if a written order for a search cannot be obtained in time and there is a substantial risk of delay which could result in the loss of evidence or of danger to the lives or health of people, the authorized police officers may begin the search pursuant to the verbal permission of the competent judge.

4. Exceptionally, a search may be conducted without witnesses being present if their presence cannot be secured immediately and it would be dangerous to delay the beginning of the search. The reasons for conducting the search without the presence of witnesses shall be noted in the record.

5. The police may conduct a search of a person without an order or the presence of witnesses when executing a ruling to compel a person to appear or when making an arrest, if there is a grounded suspicion that the person possesses a weapon or a tool for attack or that he or she will dispose of, hide or destroy objects which should be taken from him or her as evidence in criminal proceedings.

6. If the police have conducted a search without a written judicial order they shall send a report to that effect to the state prosecutor and the competent judge, if a judge is assigned to the case, no later than twelve (12) hours after the search in order to obtain retroactive approval of the court for the search, in compliance with Constitutional provisions.

## Article 111
## Admissibility of Evidence from Search

1. Evidence obtained by a search shall be inadmissible if:

1.1. the evidence obtained by a search without a court order shall be inadmissible, if the search is not approved retroactively by the court, in compliance with the provisions of the Constitution**;**

1.2. the search was executed without an order from a competent judge in breach of the provisions of the present Code;

1.3. the order of the competent judge was issued in breach of the procedure provided for by the present Code;

1.4. the substance of the order of the competent judge was in breach of the requirements of the present Code;

1.5. the search was implemented in breach of an order of the competent judge;

1.6. persons whose presence is obligatory were not present during the search; or

1.7. the search was conducted in breach of Article 108 of this Code.

**Article 112**
**Temporary Sequestration**

1. Objects that can temporarily be sequestrated are objects which might be evidence in the criminal proceedings, objects or property that facilitated the criminal offence, or objects or property which constitutes a material benefit obtained from the commission of a criminal offence and under the law may be sequestrated.

2. Objects, property, evidence or money may be subject to temporary restraint upon the order of the state prosecutor that shall last no more than five (5) days if the authorized police officers become aware of such objects, property, evidence or money during a lawful search or arrest. The state prosecutor shall request a court order from the pretrial judge that complies with Paragraph 3 of this Article.

3. A state prosecutor may request an order from the pretrial judge for objects, property, evidence or money to be temporarily sequestrated. Such a request must describe the objects, property, evidence or money with specificity and shall describe how the objects may be evidence of a criminal act, how the object, property or money may facilitate the criminal offence, or how the objects, property or money constitute a material benefit obtained from the commission of a criminal offence. Objects, property, evidence or money may be temporarily sequestrated only upon a court order.

4. Objects that are temporarily sequestrated shall be photographed and maintained in appropriate containers or transparent plastic bags and the authorized police and state prosecutor shall maintain the photographic record and a record of the chain of custody for each object or set of documents.

5. Weapons, automobiles, airplanes or other large objects that are temporarily sequestrated shall be photographed and maintained in appropriate secure areas and the authorized police and state prosecutor shall maintain the photographic record and a record of the chain of custody for each object or set of documents.

6. Buildings or immovable property that are temporarily sequestrated shall have notices placed on the building or immovable property that advise the public that the property is

subject to temporary sequestration, that trespassing is not allowed, and that trespassers may be subject to arrest.

7. Monetary bills or coins that are temporarily sequestrated shall be photographed and maintained in a safe and the authorized police and state prosecutor shall both maintain the photographic record and a record of the chain of custody of the monetary bills or coins.

8. Money held in a bank account that is temporarily sequestrated shall be maintained in a bank account subject to the authority of the court.

9. Objects and property that are temporarily sequestrated are under the supervision and control of the state prosecutor. The state prosecutor may delegate the custody and control to an authorized police officer for objects and property temporarily sequestrated under paragraphs 5, 6 and 8 of this Article.

10. When objects are confiscated, an indication shall be given of where they were found and they shall be described. If necessary, the verification of their identity shall be secured in some other way. A receipt of sequestration shall be issued for the objects sequestrated.

11. If the person or entity who maintains supervision of the object, property, evidence or money that is subject to the order by the pretrial judge under this Article refuses to deliver the object, property, evidence or money to the authorized police officer responsible for executing the order, that person or entity shall be subject to a fine by the pretrial judge of up to fifty percent (50%) of the value of the object, property, evidence or money that is in dispute. The person or entity subject to such a fine may appeal the fine or may negate the fine by complying with the order by the pretrial judge.

## Article 113
## Items not Subject to Temporary Sequestration

1. The following objects shall not be subject to temporary sequestration:

> 1.1. written communications between the defendant and persons who, according to the present Code, may not testify under Article 126 of the present Code, or are exempted from the duty to testify and have refused to do so in accordance with Article 127 of the present Code;
>
> 1.2. notes by persons under Article 126 of the present Code concerning confidential information entrusted to them by the defendant; and
>
> 1.3. other objects covered by the rights of the persons referred to in Articles 126 and 127 of the present Code.

2. These restrictions shall apply only if these objects are in the custody of a person who cannot testify under Article 126 of the present Code or is exempted from the duty to testify and has refused to do so under Article 127 of the present Code. Objects covered by the rights of persons referred to in Article 127 paragraph 1 subparagraph 1.5 of the present Code shall also not be subject to sequestration if they are in the custody of a hospital or other medical institution. The restrictions shall not apply to persons who may not testify under Article 126 of the present Code or are exempted from the duty to testify and have refused to do so under Article 127 of the present Code, if such persons are suspected of incitement or complicity or obstruction of justice or receiving stolen goods or where the objects concerned have been obtained by a criminal offence or have been used or are intended for use in perpetrating a criminal offence or where they emanate from a criminal offence.

**Article 114**
**Limitations on Disclosure of Documents**

1. Public entities may request the pretrial judge to delay or reconsider an order to disclose files or documents if they consider that disclosure of their contents would harm the general interest. A pretrial judge must balance the harm to the general interest with the public interest in prompt adjudication of criminal proceedings, the human rights of the defendant or the rights of the injured party. There shall be a presumption in favor of disclosure of the files or documents of public entities. The public entity may object to a review panel the refusal of the pretrial judge to delay or reconsider his or her order. The review panel shall have the final decision.

2. Business organizations and legal persons may request that information concerning their business be not published if it is sensitive or contains the private information of third-parties.

**Article 115**
**Permanent Confiscation of Temporarily Confiscated Items**

1. Objects, property, evidence or money that are temporarily sequestrated under Article 112 of this Code shall, at the end of the criminal proceedings, be returned to the owner or possessor under Article 116 of this Code, except if actions are taken under Paragraph 2 of this Articleor another action permitted under law would provide a basis not to return the objects, property, evidence or money.

2. The single trial judge or trial panel shall order the items to be permanently sequestrated in accordance with the law if the state prosecutor:

> 2.1. describes in the Indictment those objects, properties, evidence or money that should be subject to permanent sequestration,

2.2. if the objects, property, evidence or money that is temporarily sequestrated is proven during the main trial to be have facilitated the criminal offence or constitute a material benefit obtained from the commission of a criminal offence; and

2.3. under the law they may be confiscated.

3. Objects, property, or evidence that is permanently sequestrated shall be sold and the proceeds used for restitution to the injured parties and any remainder transferred to the budget.

4. Money that is permanently sequestrated shall be used for restitution to the injured parties and any remainder transferred to the budget.

5. Weapons or contraband shall be destroyed with the exception of items that may be used by the society after they no longer have evidentiary value for the main trial or appeal, in accordance with Article 282, paragraph 3 of this Code.

6. Vehicles or airplanes that are permanently sequestrated may be transferred to the use of the Government of Kosovo upon request by the state prosecutor, if the transfer does not diminish the ability of the injured parties to obtain restitution.

**Article 116**
**Return of Temporarily Sequestrated Items**

1. Objects temporarily confiscated during criminal proceedings shall be returned to the owner or possessor if the proceedings are suspended or terminated and there are no grounds for them to be sequestrated.

2. If the suspension of the criminal proceedings is due to the failure of the defendant to appear or the mental incapacity of the defendant, or if there is a reasonable likelihood that a suspended investigation will be likely to resume, the state prosecutor may request and the single trial judge or presiding trial judge may permit an additional deadline in the return of the sequestrated objects upon good cause.

**Article 117**
**Objects whose Ownership is not Claimed**

1. If an object found on the defendant belongs to another person who is not known, the body conducting the criminal proceedings shall describe that object and publish the description on the notice-board of the municipal assembly in the territory where the defendant lives and in the territory where the criminal offence was committed. In the notice the owner shall be summoned to come forward within a period of one (1) year from the day of publication of the notice, because otherwise the object will be sold. The money obtained by the sale shall be transferred to the budget.

2. If the objects are of considerable value, the notice may also be published in the daily newspapers.

3. If the object is perishable or if keeping it involves considerable expense, it shall be sold according to the provisions applicable to enforcement proceedings and the proceeds shall be transferred to a bank account under the control of the Court for safekeeping.

4. Paragraph 3 of the present Article shall also apply to objects belonging to a defendant who has fled or to an unknown criminal offender.

**Article 118**
**Unclaimed Items**

1. If within one (1) year no person claims the object or the proceeds from its sale, the court shall render a ruling that the object shall become the property of the competent public entity or that the proceeds from the sale shall be transferred to the budget.

2. The owner shall have the right to seek the restitution of the object or of the proceeds from its sale in civil litigation. The period of statutory limitation for this right shall run from the day of publication of the notice.

## C. Taking Pre-Indictment Evidence

**Article 119**
**Taking of Evidence Permitted during Investigative Stage**

1. Once an investigation has been initiated, the state prosecutor shall interview and take pretrial testimony from witnesses, authorize the taking of expert testimony and reports, and shall collect other evidence as authorized by law.

2. If, during the investigation, a suspect or defendant cooperates with the state prosecutor, the state prosecutor may initiate a new investigation based upon that cooperation.

3. During the investigation, the state prosecutor may order or request measures under Article 88 of this Code, which shall be applied *mutatis mutandis*.

4. During the investigation, the defendant or defence counsel may request the state prosecutor to take or preserve evidence that may or could be reasonably expected to be exculpatory.

5. During the investigation, the injured party may request the state prosecutor to take or preserve evidence that may or could be reasonably expected to demonstrate the harm

caused by the criminal offence, the pain and suffering by the victim, or other costs associated with the criminal offence.

**Article 120**
**Identification of Persons or Objects**

1. Where there is a need to establish whether a witness can recognize a person or an object, such witness shall first be asked to provide a description of and indicate the distinctive features of such person or object.

2. The witness shall then be shown the person with other persons unknown to the witness, or their photographs, or the object with other objects of the same kind, or their photographs.

3. The witness shall be instructed that he or she is under no obligation to select any person or object or photograph, and that it is just as important to state that he or she does not recognize a person, object or photograph as to state that he or she does.

4. A record shall be kept of the description obtained under Paragraph 1 of this Article, the time and date of that description, and those present when the description was given. A record shall also be kept of the identification made under Paragraph 2 of this Article, including the time and date of that identification and photographs of those other persons or objects.

5. The identification of a person or object under this Article may be overseen by the police or by the state prosecutor. The record made under Paragraph 3 of this Article shall be entered into the case file.

**Article 121**
**Obtaining Evidence Prior to Pretrial Testimony**

1. The state prosecutor shall obtain all relevant documentary evidence in accordance with the law, if possible prior to taking pretrial testimony. Such documentary evidence shall include, but is not limited to:

1.1. passport, identification cards, or records of border entry,

1.2. financial records,

1.3. surveillance records or photographs,

1.4. records of land ownership,

1.5. records of automobile ownership,

1.6. records of corporations or business entities,

1.7. electronic documents, such as email, text messages, or photographs,

1.8. medical Records,

1.9. notes, diaries, or calendars, or

1.10. any other document that is lawfully obtained under this Criminal Procedure Code.

2. The state prosecutor shall lawfully obtain all tangible evidence, if possible prior to taking relevant pretrial testimonial. Such tangible evidence shall include, but is not limited to:

2.1. tangible evidence obtained at the scene of the crime,

2.2. tangible evidence seized from the search of the premises of the Defendant,

2.3. tangible evidence seized from the search of the person of the Defendant prior to or during his or her arrest,

2.4. photographs of or forensic reports about tangible evidence, or

2.5. any other tangible evidence lawfully obtained under this Criminal Procedure Code whose existence and form provide evidence relevant to the investigation.

**Article 122**
**Taking and Preserving Information or Evidence from Witnesses**

1. The state prosecutor may interview a witness under Article 131 of this Code prior to taking pretrial testimony, or he or she may instruct the police to conduct the interview.

2. The state prosecutor may schedule pretrial testimony for a witness or defendant under Articles 132-133 of this Code.

3. If the state prosecutor suspects that a witness may be unavailable in the future, either because of illness, impending death or likelihood of leaving Kosovo, he or she may request the pre-trial judge to conduct a Special Investigative Opportunity under Article 149 of this Code.

4. Evidence of an expert analysis can be presented with a report under Article 138 of this Code or clarified with pre-trial expert testimony.

5. During the formal investigation, the defendant or defence counsel may request the state prosecutor to take or preserve pretrial testimony that may or could be reasonably expected to be exculpatory.

6. During the investigation, the victim, victim's representative or victim advocate may request the state prosecutor to take or preserve pretrial testimony that may or could be reasonably expected to demonstrate the harm caused by the criminal offence, the pain and suffering by the victim, or other costs associated with the criminal offence.

**Article 123**
**Pretrial Interviews, Pretrial Testimony and Special Investigative Opportunities**

1. During the investigation stage, the evidence from witnesses and expert witnesses may be taken in one of three kinds of sessions: pre-trial interviews, pre-trial testimony or special investigative opportunity.

2. The pre-trial interview is conducted by the state prosecutor. A record of the interview will be made and shall be placed in the file. Evidence obtained during the pre-trial interview may be used as a basis to substantiate pre-trial investigative orders, orders for detention on remand, and indictments. Evidence obtained during the pre-trial interview may not be used as direct evidence during the main trial, but may be used during cross-examination to impeach witnesses if the witness has testified materially differently from the evidence given by the witness during the pre-trial interview.

3. The pre-trial testimony shall be conducted by the state prosecutor in accordance with Articles 132-133 of this Code. Evidence from the pre-trial testimony shall be audio-recorded, audio and video-recorded or transcribed verbatim. Evidence obtained during the pre-trial testimony may be used as a basis to substantiate pre-trial investigative orders, orders for detention on remand, and indictments. Pre-trial testimony shall be admissible during the main trial for cross-examination of the same witness, and may be used as direct evidence during the main trial if the witness is unavailable due to death, illness, assertion of privilege or lack of presence within Kosovo, but may not be used as the sole or as a decisive inculpatory evidence for a conviction.

4. The Special Investigative Opportunity shall be conducted before a three-judge panel led by the pretrial judge in accordance with Article 149 of this Code. Evidence from the Special Investigative Opportunity shall be audio-recorded, audio and video-recorded or transcribed verbatim. Evidence obtained during the Special Investigative Opportunity may be used as a basis to substantiate pre-trial investigative orders, orders for detention on remand, and indictments. Evidence from a Special Investigative Opportunity shall be fully admissible during the main trial if at least one of the judges on the judicial panel which heard the testimony is a judge on the main trial pane and if the witness is unavailable due to death, illness, assertion of privilege or lack of presence within Kosovo. If the main trial panel does not include at least one of the judges from the Special Investigative Opportunity Panel, the evidence shall be treated as evidence from pre-trial testimony under Paragraph 3 of this Article.

5. Statements provided by a defendant in any context, if given voluntarily and without coercion, are admissible during the main trial against that defendant, but not co-defendants. Such statements may not serve as the sole or as a decisive inculpatory evidence for a conviction.

6. After issuing an expert report, expert witnesses may be interviewed, provide pretrial testimony or special investigative opportunity.

**Article 124**
**Summoning Witnesses**

1. A person shall be summoned as a witness if there is a likelihood that he or she may give information about the criminal offence, the perpetrator and important circumstances relevant for the criminal proceedings.

2. The victim may be examined as witnesses.

3. Any person summoned as a witness has a duty to respond to the summons and, unless otherwise provided for by the present Code, to testify

**Article 125**
**Warnings Required to be Read to Witnesses, Expert Witnesses, Defendants and Cooperative Witnesses**

1. At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity the state prosecutor shall read the following warning to the witness: "This is a criminal investigation. You are obligated to testify. You are obligated to tell the truth. If you do not tell the truth, you might be prosecuted under Article 390 or 391 of the Criminal Code. If you believe that you may incriminate yourself as a result of answering a question, you may refuse to answer. If you believe that you need the assistance of an attorney as a result of answering a question, you may hire and consult an attorney. This criminal investigation seeks the truth and the most accurate recollection of the facts that you can provide. If you do not understand the question being asked, you should request that the question be asked differently. If you believe that there is a document or other evidence that may help you answer a question more accurately or remember the facts more vividly, you are obligated to tell us. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. Do you understand these rights?"

2. At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity the state prosecutor shall read the following warning to the expert witness: "This is a criminal investigation of acts about which you have specialized knowledge. You are obligated to testify. You are obligated to tell the truth. If you do not tell the truth, you might be prosecuted under Article 390 or 391 of the Criminal Code. You are obligated to explain the steps you took to obtain the specialized

knowledge you have in this case. This criminal investigation seeks the truth and the most accurate recollection of the facts that you can provide. If you do not understand the question being asked, you should request that the question be asked differently. If you believe that there is a document or other evidence that may help you answer a question more accurately or remember the facts more vividly, you are obligated to tell us. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. Do you understand these rights?"

3. At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity the state prosecutor shall read the following warning to the defendant: "This is a criminal investigation of acts you may have committed. You have the right to give a statement but you also have the right to remain silent and not answer any questions, except to give information about your identity. You have the right not to incriminate yourself. If you choose to give a statement or answer questions, you will not be under oath. The information you provide may be used as evidence before the court. If you need an interpreter, one will be provided at no cost to you. If you believe that you may incriminate yourself or a close relative as a result of answering a question, you may refuse to answer. You have a right to a defence attorney and to consult with him or her prior to and during the examination. If you do not understand the question being asked, you should request that the question be asked differently. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. If you do not understand these rights, you should consult with your attorney."

4. At the beginning of the pretrial interview, pretrial testimony session, or Special Investigative Opportunity the state prosecutor shall read the following warning to anyone who has been declared a cooperative witness: "This is a criminal investigation of acts of which you have direct knowledge. You have agreed to cooperate with this investigation. If you invoke your right to remain silent, you will no longer be a cooperating witness. If you do not tell the truth, that may be considered in your sentencing and you might be prosecuted under Article 392 of the Criminal Code. Your defence attorney is present. If you believe that you need to consult your attorney, you may. This criminal investigation seeks the truth and the most accurate recollection of the facts that you can provide. If you do not understand the question being asked, you should request that the question be asked differently. If you believe that there is a document or other evidence that may help you answer a question more accurately or remember the facts more vividly, you should tell us. If you require assistance, translation, or a reasonable and brief break from this session, you should ask. Do you understand these rights?"

5. Warnings given under this Article shall be entered into the record of the pretrial testimony session.

6. Warnings given under this Article shall be submitted in writing to the defendant in a language that he or she understands, together with the summons for testimony.

7. Warnings given under this Article shall be entered into the record of the preliminary testimony session.

**Article 126**
**Privileged Witnesses**

1. The following persons may not be examined as witnesses:

1.1. a person who by giving testimony would violate the obligation to keep an official or military secret, until the competent body releases him or her from that obligation;

1.2. a defense counsel, on matters confided to him or her by the defendant, unless the defendant himself or herself so requests; and

1.3. a co-defendant, while joint proceedings are being conducted.

**Article 127**
**Witnesses Exempted from Duty to Testify**

1. The following persons are exempted from the duty to testify:

1.1. the spouse or extra-marital partner of the defendant, unless proceedings are conducted for a criminal offence punishable by imprisonment of at least five (5) years and he or she is an injured party of that criminal offence;

1.2. a person who is a close blood relative of the defendant spouse or extra-marital partner: antecedents, descendants, sisters, brothers, uncles, aunts, children of sisters and brothers; or close affinity: mother-in-law, father-in-law, son- in-law, daughter-in-law, sister-in-law, brother-in-law, godfather, godmother, stepmother and stepfather; unless proceedings are conducted for a criminal offence punishable by imprisonment of at least ten (10) years or he or she is a witness of a criminal offence against a child who is cohabiting with or is related to him or her or to the defendant;

1.3. the adoptive parent or adopted child of the defendant, unless proceedings are conducted for a criminal offence punishable by at least ten (10) years or he or she is a witness of a criminal offence committed against a child who is cohabiting with or is related to him or her or the defendant;

1.4. a religious confessor on matters confessed to him or her by the defendant or by another person;

1.5. a lawyer, a victim advocate, medical doctor, social worker, psychologist or another person, on what he or she came to know in the exercise of his or her profession, if bound by duty to keep secret what he or she learns of in the exercise of his or her profession; and

1.6. a journalist or an editor who works in the media or one of his or her assistants in accordance with applicable law.

2. A person referred to in paragraph 1 subparagraph 1.4, 1.5 or 1.6 of the present Article cannot refuse to testify when there is a legal basis for releasing him or her from the duty of maintaining confidentiality.

3. The competent authority conducting the proceedings shall be bound to instruct the persons referred to in paragraph 1 of the present Article, before each examination or upon establishing their relation to the defendant, of their right not to testify. The instruction and the reply thereto shall be entered in the record.

4. A child who, in view of his or her age and stage of intellectual development, cannot understand the meaning of the right to refuse to testify may not be examined as a witness, unless the court finds that he or she is capable of understanding that he or she is undergoing the examination in order to tell the truth.

5. A witness entitled to refuse to testify against one of the defendants shall be exempt from the duty to testify against other defendants if his or her testimony cannot, in view of the nature of the matter, be confined solely to the other defendants.

## Article 128
## Circumstances when Statement is Inadmissible

1. A statement of a person who has been examined as a witness shall be inadmissible if:

1.1. the person may not be examined as a witness;

1.2. the person is exempted from the duty to testify, but he or she has not been instructed about that right or has not explicitly waived that right, or the instruction and the waiver were not entered in the record;

1.3. the person is a child who could not understand the meaning of his or her right to refuse to testify: or

1.4. the testimony was extorted by force, threat or a other prohibited manner.

## Article 129
## Witness is not Obliged to Incriminate Self or Close Relative

A witness is not obliged to answer individual questions by which he or she would be likely to expose him or herself or a close relative to serious disgrace, considerable material damage or criminal prosecution. The court or state prosecutor shall notify the witness of this right.

## Article 130
## General Requirements of Pretrial Interviews, Pretrial Testimony or Special Investigative Opportunity

1. A witness shall be examined separately and without the presence of other witnesses. A witness shall answer questions orally.

2. Subsequently, the witness shall be asked to state his or her first name and surname, the name of his or her father and mother, personal identity number, occupation, place of current residence, place of birth, age and relation to the defendant and the injured party. The witness shall be warned of the obligation to report to the court any change in address or place of current residence.

3. The provision in paragraph 2 of the present Article shall not apply when it conflicts with measures for the protection of injured parties and witnesses as provided for by the present Code.

4. Police officers are obligated to give personal information under Paragraph 3 of this Article but shall be informed of their right to give the address of their police station rather than the address of their current residence.

5. A person who has not reached the age of eighteen (18) years, especially if that person has suffered damage from the criminal offence, shall be examined considerately to avoid producing a harmful effect on his or her state of mind. If necessary, a child psychologist or child counselor or some other expert should be called to assist in the examination of such person.

## Article 131
## Pretrial Interview

1. During the investigative stage, the state prosecutor may summon witnesses, victims, cooperative witnesses, protected witnesses and experts to provide information in a pre-trial interview relevant to the criminal proceedings.

2. The state prosecutor may permit the defense attorney, victim or victim advocate to participate in the pre-trial interview.

3. The state prosecutor may ask the person being interviewed about documentary or physical evidence during the interview. The documentary or physical evidence shall be identified clearly in any recording, transcript or report of the interview.

4. The pre-trial interview may be audio-or audio-video recorded, transcribed verbatim or summarized into a report. The recording, transcript or report shall comply with Chapter XI and shall be included in the case file.

5. A person being interviewed under this Article may later testify in pre-trial testimony or in a Special Investigative Opportunity.

**Article 132**
**Pretrial Testimony**

1. During the investigative stage, the state prosecutor shall summon witnesses, victims, experts and the defendant or defendants to provide pre-trial testimony relevant to the criminal proceedings.

2. During the investigative stage, the state prosecutor shall interview protected witnesses and cooperative witnesses while ensuring the appropriate safety and security for the protected or cooperative witnesses.

3. A witness shall be summoned by serving a written summons which shall indicate: the name and surname and occupation of the witness, when and where he or she is to appear, the criminal case in connection with which he or she is summoned, an indication that he or she is summoned as a witness and the consequences of unjustifiable non-compliance with the summons.

4. A person under the age of sixteen (16) years shall be summoned as a witness through his or her parents or legal representative, except where that is not possible for reasons of urgency or other circumstances.

5. A witness who by reason of old age, illness or serious disability is unable to comply with the summons may be examined out of court.

6. The state prosecutor shall give five (5) days written notice to the defendant, defence counsel, injured party and victim advocate of the date, time and location of the pre-trial testimony. A copy of the notice shall be placed into the file.

7. Failure of the defendant, defence counsel, injured party or victim advocate to participate in a session of pretrial testimony after receiving notice under Paragraph 6 of this Article, without justification, shall prevent that same defendant, defence counsel, injured party or victim advocate from objecting to the admissibility of the testimony at a later stage of the criminal proceeding. These consequences shall be given in the notice provided in Paragraph 6 of this Article.

**Article 133**
**Requirements of Pretrial Testimony Session**

1. A record of the pre-trial testimony session shall be kept in accordance with Chapter XI of this Code. If the criminal proceeding is investigating a criminal offence punishable by a maximum imprisonment of three (3) years or more, the pre-trial testimony shall be audio-recorded, video-recorded or transcribed. If the criminal proceeding is investigating

a criminal offence punishable by a maximum imprisonment of less than three (3) years, the pre-trial testimony may be audio-recorded, video-recorded, transcribed or summarized in a record of the pre-trial investigation.

2. The state prosecutor shall first examine witnesses named by the state prosecutor

3. If the defense has requested pre-trial testimony be taken from a witness, the defense shall first examine those defense witnesses.

4. If the victim or victim advocate has requested pre-trial testimony be taken from a witness, the victim advocate shall first examine those witnesses.

5. Each party shall be given an opportunity to examine the witness who has been examined by the other party.

6. Article 154 of the present Code shall apply *mutatis mutandis* to the examination of witnesses.

7. Witnesses shall be questioned about relevant documentary and physical evidence.

8. Witnesses may be confronted in compliance with Article 334 of this Code.

9. The injured party who is examined as a witness shall be asked whether he or she intends to pursue a property claim in criminal proceedings.

**Article 134**
**Witnesses with Special Needs**

If a witness is examined through an interpreter, or if a witness is deaf or mute, he or she shall be examined as provided for in Article 153 of the present Code.

**Article 135**
**Failure of Witness to Appear**

1. If a witness who has been duly summoned fails to appear and does not justify his or her failure to appear or if he or she leaves the place where he or she should be examined without permission or a valid reason, such witness may be compelled to appear and may be fined up to two hundred fifty (250) EUR for each time he or she fails to appear.

2. If a witness appears when summoned but after being warned of the consequences refuses to give testimony without legal justification, he or she may be fined up to two hundred fifty (250) EUR. If even then the witness refuses to testify, he or she may be imprisoned. This imprisonment shall last for as long as the witness refuses to testify or until his or her testimony becomes unnecessary, or until criminal proceedings terminate, but shall not exceed one (1) month.

3. An appeal against a ruling imposing a punishment of a fine or imprisonment shall always be decided by the review panel. An appeal against the ruling on imprisonment shall not stay the execution of the ruling. The punishment under paragraphs 1 and 2 of the present Article shall be imposed by a judge.

4. Members of armed forces and the police may not be imprisoned but their refusal to testify shall be reported to their respective commands.

**Article 136**
**Expert Analysis**

1. For expert analysis to be used by the state prosecutor:

1.1. there must be a question material to either the guilt or innocence of the defendant or the extent of harm caused by the criminal offence,

1.2. the question in subparagraph 1.1 of this paragraph can only be answered by specialized or technical analysis,

1.3. the expert must have specialized training or experience that is relevant and current,

1.4. the expert must have analyzed lawfully obtained evidence,

1.5. the expert's analysis must have used practices generally accepted within his or her field or has a scientific or technical basis, and

1.6. the expert must write a report that summarizes his or her method of analysis and conclusions.

2. An expert may not express an opinion on the guilt or innocence of a defendant.

3. The defendant or defence counsel may request the state prosecutor to take expert testimony.

4. The victim or victim advocate may request the state prosecutor to take expert testimony.

**Article 137**
**Decision to Engage Expert**

1. Prior to engaging an expert, the state prosecutor shall issue a decision which:

1.1. provides a specific written question or series of questions to the expert that is material to either the guilt or innocence of the defendant or the extent of harm caused by the criminal offence,

1.2. specifies the expert and provide the basis for that expert's specialized expertise, including his or her education, experience and previous service as an expert to the court, and

1.3. provides the expert with access to the evidence needed for the specialized or technical analysis.

2. The defendant, defence counsel, victim or victim advocate may challenge the selection of an Expert based on his or her qualifications or potential conflict of interest by filing a challenge with the pre-trial judge. The pre-trial judge shall rule on the selection of an Expert within ten (10) days from the moment of engaging the expert.

3. If a particular kind of expert analysis falls within the domain of a professional institution or the expert analysis can be performed in the framework of a particular public entity, the task, especially if it is a complex one, shall as a rule be entrusted to such professional institution or public entity. The professional institution or public entity shall designate one or several experts to provide the expert analysis.

4. If possible and without creating a conflict of interest, experts shall be drawn from professional institutions or public entities which shall provide their expertise when called upon.

5. If the expert in question is employed with the Government of Kosovo in the capacity of a forensic expert or forensic examiner, he or she shall conduct the specialized analysis as authorized by law, court order or the order of a state prosecutor.

6. If no relevant expertise exists within professional institutions or public entities, an expert with the relevant expertise shall be hired and shall be compensated from public funds. The costs of the experts shall be added to the costs of the proceedings.

7. Without delay the expert shall conduct his or her analysis and shall submit to the state prosecutor a written expert report in compliance with Article 138 of this Code.

**Article 138**
**Report of the Expert**

1. An expert's report shall contain:

1.1. the identity of the expert and the identity of the investigation.

1.2. the question material to either the guilt or innocence of the defendant or the extent of harm caused by the criminal offence,

1.3. the expert's specialized training or experience, why it is relevant, and how current the training or experience is,

1.4. a description of the evidence that was analyzed,

1.5. a description of the analysis, including relevant photographs, drawings, summary charts, x-rays, images, laboratory results or other relevant scientific or technical information,

1.6. an explanation that the analytical practices are generally accepted within the expert's field or has a scientific or technical basis, and

1.7. a conclusion with the expert's opinion answering the question in paragraph 2 of this Article, or explaining why the question could not be answered.

2. An expert may not express an opinion in his or her report on the guilt or innocence of a defendant.

3. An expert's report that does not comply with this Article shall not be admissible.

4. The expert's report shall be entered into the case file.

5. The expert's report shall be disclosed to the defendant or defence counsel, and to the injured party no less than five (5) days prior to a session of pre-trial testimony by that expert, but no later than ten (10) days after the report was received from the expert by the state prosecutor.

**Article 139**
**Orders Necessary for Evidence to be Examined by Expert**

1. A post-mortem examination shall be done by a qualified medical examiner upon the order of the state prosecutor. An autopsy may not be entrusted to the physician who treated the deceased. The Ministry of Justice shall issue guidelines and standards for post-mortem examinations.

2. Toxicological laboratory analysis of samples taken from a victim may be ordered by a state prosecutor.

3. If a defendant is unwilling to consent in writing to give a sample of blood, body tissue, DNA or other similar material or is unwilling to consent in writing to undergo a physical examination of injuries as required by an investigation, the state prosecutor shall request an order from the pretrial judge requiring the necessary sample or examination in accordance with Article 144 of this Code.

4. Samples taken pursuant to an order under Paragraph 3 of this Article may be subjected to molecular and genetic examination, insofar as such measures are necessary to establish

ancestry or to ascertain whether traces found originate from the defendant or the injured party. Such molecular or genetic examination may be conducted only upon an order of the pretrial judge.

5. If existing medical records are likely to contain information relevant to the criminal proceedings, the state prosecutor shall request an order from the pretrial judge for the records to be released to the state prosecutor.

## Article 140
## Pretrial Expert Testimony

1. The expert may be summoned to testify in a pre-trial testimony session if:

1.1. the opinion provided in the expert report supports a conclusion of guilt of the defendant,

1.2. the opinion provided in the expert report supports a conclusion of innocence of the defendant,

1.3. the opinion provided in the expert report supports a conclusion which identifies the defendant, victim, or other person important to the investigation, or

1.4. the opinion provided in the expert report supports a conclusion otherwise important to the investigation.

2. The defendant or victim may accept the conclusions of the expert's report. If all parties accept the conclusions of the expert's report, it shall be noted on the record and no testimony shall be taken.

3. The pretrial testimony of the expert shall be taken under the rules of any pretrial testimony by a witness.

4. The expert shall be questioned by the state prosecutor, the defence counsel and the victim or victim advocate.

5. A summary record, transcript or recording of the testimony shall be entered into the file.

## Article 141
## Experts Engaged by the Defendant

1. The Defendant may request the state prosecutor to request expert analysis that is relevant to his or her defence. If the state prosecutor refuses, the defendant may object to that decision to the pretrial judge.

2. The Defendant may obtain and pay for expert analysis on his own. The expert must comply with Article 138 of this Code and the state prosecutor shall receive a copy of the defence expert's report within fourteen (14) days of its completion.

**Article 142**
**Contradiction between Experts**

If the findings of two or more expert witnesses differ on essential points or if their findings are ambiguous, incomplete, contradictory in themselves or with respect to the circumstances examined and if such deficiencies cannot be removed by a new examination of the expert witnesses, the opinion of other expert witnesses may be sought.

**Article 143**
**Toxicological Analysis**

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 136-142 of the present Code.

2. If poisoning is suspected, the state prosecutor shall order that suspicious substances found in the body or elsewhere be sent to an institute for toxicological research for expert analysis.

3. In analyzing suspicious substances, the expert witness shall focus in particular on establishing the kind, quantity and effect of the poison discovered. If suspicious substances were found in the body, the quantity of the poison used should also be established wherever possible.

**Article 144**
**Examination of Bodily Injuries and Physical Examination**

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 136-142 of the present Code.

2. If bodily injuries relevant to the criminal proceedings have already been treated by a physician, that physician may be summoned to give pretrial testimony based on the records taken in the normal course of medical treatment, which shall be obtained by court order or consent. If the police have taken photographs of the injuries, the treating physician may be asked questions based upon those photographs and provide opinions based upon his or her education and experience. In lieu of testimony, the physician or physicians may issue an expert report with their findings in compliance with Article 138 of this Code, but are not required to do so.

3. If bodily injuries or the physical condition of a person have not been treated, or the medical records are incomplete, the state prosecutor may request the pretrial judge to

order a physical examination to be done. The pretrial judge may order the physical examination if there is grounded cause to believe that the physical examination will result in evidence relevant to the criminal proceeding. The person to be examined may also consent to the physical examination without a court order. The professional institution, physician or physicians shall issue an expert report with their findings in compliance with Article 138 of this Code.

4. The pretrial judge may order blood or tissue samples, or other intrusive forensic or medical samples be taken from a defendant, only if there is a sound probability that the defendant committed a criminal offence and there is grounded cause to believe that the samples will provide evidence of the criminal offence or identity of the offender, or there exists other forensic evidence that can be matched with the samples ordered to be taken. The personal integrity of the defendant shall be respected during the execution of an order under this paragraph. The professional institution, physician or physicians shall issue an expert report with their findings in compliance with Article 138 of this Code.

5. When necessary, hair and follicle samples, saliva, urine, nasal swabs, swabs of skin surface including the groin area, fingernail and under-fingernail samples and other similar samples which do not entail bodily intrusion can be taken during a physical examination without a specific court order.

6. A physical examination involving bodily intrusion, such as taking a blood sample, during the physical examination, can only be conducted with a court order or with the voluntary consent of the person concerned.

7. A physical examination under the present Article shall be conducted by a qualified physician, nurse or technician in accordance with the rules of medical science and with full respect for the person's dignity and due consideration for the physical and psychological impact of the injury.

8. The provision under Article 139 paragraph 2 of the present Code shall apply *mutatis mutandis* to cases in which a person, other than the defendant, refuses to undergo an examination ordered by the court. Compulsion may be used only upon a separate order of the court.

9. The Ministry of Justice shall maintain all samples taken as a result of court orders and voluntary consent for a period of one (1) year after the final decision in a criminal proceeding, at which time the samples shall be destroyed. The samples shall only be available for and used for court-ordered retesting.

10. The Ministry of Justice shall maintain a record of all forensic results obtained by court orders or voluntary consent only when the subject of the forensic testing is convicted.

**Article 145**
**Molecular and Genetic Examinations and DNA Analysis**

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 136-142 of the present Code.

2. A court may order that material obtained by measures under Article 144 of the present Code be subjected to molecular and genetic examination, insofar as such measures are necessary to establish ancestry or to ascertain whether traces found originate from the defendant or the injured party.

3. For the purpose of establishing identity in criminal proceedings, cell tissue may be collected from a defendant for DNA identification in accordance with Article 144 of this Code.

4. The cell tissue collected may be used only for DNA identification provided for in paragraph 1 or paragraph 2 of the present Article; it shall be destroyed without delay once it is no longer required for that purpose. Information other than that required to establish the DNA code may not be ascertained during the examination and shall be inadmissible.

5. Evidence that has been found, secured or seized at the scene of a crime or in relation to a criminal proceeding may be examined and samples subjected to molecular and genetic examination upon the order of the state prosecutor.

6. The results of molecular and genetic examination on samples obtained under Paragraph 5 of this Article that have not been matched with a suspect or defendant may be retained by the Ministry of Justice until such time that they are matched with a suspect or defendant and that suspect or defendant is either convicted or acquitted. The Ministry of Justice shall issue regulations on the retention of the results of molecular and genetic examination under this Paragraph.

**Article 146**
**Psychological Analysis**

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 136-142 of the present Code.

2. If a psychological condition relevant to the criminal proceedings has already been evaluated or treated by a psychologist or physician, that psychologist or physician shall be summoned by the state prosecutor to give pretrial testimony based on the records taken in the normal course of treatment, which shall be obtained by court order or consent. The psychologist or physician may provide opinions based upon his or her education and experience. In lieu of testimony, the psychologist or physician may issue an expert report with their findings in compliance with Article 138 of this Code, but is not required to do so.

3. The person who has been evaluated may challenge the summons with the pre-trial judge if there are privacy concerns that are not surpassed by the relevancy to the criminal proceeding.

4. If a relevant psychological condition of a person has not been treated, the state prosecutor may request the pretrial judge to order a psychological evaluation to be done. The pretrial judge may order the psychological evaluation if there is grounded cause to believe that the psychological evaluation will result in evidence relevant to the criminal proceeding. The person to be evaluated may also consent to the psychological evaluation without a court order. The professional institution, psychologist or physician shall issue an expert report with their findings in compliance with Article 138 of this Code.

5. The pretrial judge may order the psychological evaluation of a defendant only if there is a sound probability that the defendant committed a criminal offence, there is grounded cause to believe that the psychological condition of the defendant is impaired or was impaired at the time of the criminal offence, and that impairment of his or her psychological impairment is either relevant to the criminal proceeding or to the defendant's right to a fair trial. The psychologist or physician shall issue an expert report with their findings in compliance with Article 138 of this Code.

6. The psychological examination shall be done by professional psychologists or physicians trained in psychology or psychiatry. The examinations shall be performed in a manner respectful of the right to privacy.

## Article 147
## Computer Analysis

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 136-142 of the present Code.

2. For computer equipment, electronic storage media, or similar devices that are lawfully obtained through a court order or by consent, the state prosecutor may authorize a police officer or expert to examine, analyze and search for information or data contained within the computer equipment, electronic storage media or similar device.

3. The authorized police officer or other expert shall have education, training or experience in forensic computer analysis and searching.

4. The authorized police officer or other expert shall issue an expert report with their findings in compliance with Article 138 of this Code that shall also include the following information:

> 4.1. the authorized police officer or other expert shall describe the computer equipment, data storage equipment, or specific computer files examined, including any identifying names, numbers, or exhibit tags.

4.2. the authorized police officer or other expert shall describe where and how the computer equipment, data storage equipment or specific computer files were obtained by the police.

4.3. the authorized police officer or other expert shall describe the chain of custody of the computer equipment, data storage equipment or specific computer files.

4.4. the authorized police officer or other expert shall describe specific factual information for which he or she has been authorized to search on the computer equipment, data storage equipment or specific computer files.

4.5. the authorized police officer or other expert shall describe the steps taken in keeping with the most current practices in the field of computer forensics to reliably and accurately accomplish the search, including but not limited to steps taken to protect against the loss of files, decrypt files, retrieve deleted files, or obtain metadata about computer files or emails.

4.6. the authorized police officer or other expert shall describe the results of his or her search and shall attach an electronic copy of the computer files that are relevant to the searches.

**Article 148**
**Financial Analysis**

1. Any examination or analysis under this Article shall be subject to the rules of expert analysis and testimony under Articles 136-142 of the present Code.

2. For financial records that are lawfully obtained through a court order or by consent, the state prosecutor may authorize a police officer or expert to examine, analyze and summarize financial information. The state prosecutor shall specify whether the authorized police officer or other expert shall determine:

2.1. whether financial assets are material benefits of alleged criminal offences or were used in the commission of alleged criminal offences;

2.2. the movement of financial assets that may be material benefits of alleged criminal offences or may have been used in the commission of alleged criminal offences;

2.3. whether financial assets are missing due to alleged criminal offences and, if possible, the means and methods used;

2.4. the financial harm caused by alleged criminal offences;

2.5. the financial gain from alleged criminal offences;

2.6. the amount of taxes or customs fees that might be owed by a defendant; or

2.7. any other issue relevant to the criminal proceedings.

3. The authorized police officer or other expert shall have education, training or experience in financial analysis or accounting.

4. The authorized police officer or other expert shall issue an expert report with their findings in compliance with Article 138 of this Code.

5. If an expert audit of financial records is required due to the large extent of financial criminal offences, large or complex nature of the financial records, or the financial records must be reconstructed or regularized, the state prosecutor shall request the court to authorize an audit to be performed in which case:

5.1. the Court order shall instruct the expert as to the aim and scope of the audit and the facts and circumstances which have to be ascertained. The costs of such task shall be borne by the business organization or legal person.

5.2. the ruling on regularizing accounts shall be rendered by the court upon a written and substantiated report by the expert appointed to examine the business books. The ruling shall also specify the amount to be deposited with the court by the business organization or legal person as an advance on the costs entailed in regularizing the accounts. No appeal shall be permitted against this ruling.

5.3. after the accounts have been regularized, the court shall, on the basis of the report of the expert witnesses, render a ruling by which it shall determine the amount of the costs incurred thereby and order that the costs be borne by the business organization or legal person. The business organization or legal person may appeal concerning the basis of the decision on refunding the costs and the amount of the costs. The appeal shall be decided by the three-judge panel.

5.4. the payment of the costs, if their amount has not been advanced, shall be credited to the authority that has already paid the costs in advance and remunerated the expert.

## Article 149
## Special Investigative Opportunity

1. The state prosecutor, victim, victim advocate, defendant or defence attorney may, on an exceptional basis, request the pretrial judge to take testimony from a witness or request an expert analysis for the purpose of preserving evidence where there is a unique opportunity to collect important evidence or there is a significant danger that such evidence may not be subsequently available at the main trial.

2. The pretrial judge shall grant the request in paragraph 1 of this Article only where the criminal proceedings are investigating criminal offenses which are provided for in Article 90 of this Code.

3. The pretrial judge shall impanel two (2) other judges for the Special Investigative Opportunity Panel.

4. If an indictment is filed in the criminal proceeding, at least one of the two judges impaneled under Paragraph 3 of this Article shall be assigned as the presiding trial judge or assigned to the trial panel.

5. An appeal can be filed with the review panel against the refusal of the pre-trial judge to take such testimony.

6. In a Special Investigative Opportunity under the present Article, the pre-trial judge shall take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defendant. The defendant and his or her defense counsel and the state prosecutor shall be present at the hearing for the taking of testimony. The victim and victim advocate shall also be informed of the hearing and will have the right to attend. The taking of testimony before the pre-trial judge shall be conducted in a manner in keeping with testimony taken at the main trial.

7. Any testimony taken in a Special Investigative Opportunity Panel shall be audio- or audio-video recorded, with the recording filed in the case file.

8. The testimony may be taken through video-conference technology if the witness is not within Kosovo and is not likely to return to Kosovo, or in accordance with a measure of witness protection.

**Article 150**
**Site Inspection and Reconstruction**

1. The state prosecutor can order a site inspection or a reconstruction to examine the evidence collected or to clarify facts that are important for criminal proceedings.

2. Such site inspection or reconstruction shall be conducted by the state prosecutor or by the police. The state prosecutor and police may conduct such site inspection or reconstruction for their own knowledge to assist in their determination of credibility or fact-finding, but in such case, unless paragraphs 3 or 4 of this Article are complied with, the results are inadmissible in court. The state prosecutor may repeat such site inspection or reconstruction with notice as required by the present Article. If so, the results shall then be admissible.

3. The state prosecutor shall provide notice of the site inspection and reconstruction to the suspect, defendant and his or her defense counsel, if they are known. The defense counsel has the right to be present at the site inspection or reconstruction.

4. If the suspect, defendant or his or her defense counsel are unknown to the state prosecutor, the pre-trial judge shall attend and observe the site inspection and reconstruction.

5. A reconstruction shall be conducted by recreating facts or situations under the circumstances in which on the basis of the evidence taken the event had occurred. If facts or situations are presented differently in testimonies of individual witnesses, the reconstruction of the event shall as a rule be carried out with each of the witnesses separately.

6. In reconstructing an event care must be taken not to violate law and order, offend public morals or endanger the lives or health of people.

7. In conducting a site inspection or a reconstruction, the assistance of specialists in forensic science, traffic and other fields of expertise may be obtained to protect or describe the evidence, make the necessary measurements and recordings, draw sketches or gather other information. The provisions of this Article do not prejudice the power of the police to take initial steps to gather information, make measurements, recordings, draw sketches or collect forensic evidence under Articles 70-77 of this Code.

8. Information taken under Articles 70-77 of this Code in a report that complies, *mutatis mutandis*, with paragraphs 1 and 2 of Article 138 may be admissible upon the review of a pretrial judge. The pretrial judge may order a minimal site inspection or reconstruction to confirm the findings in a report under this Paragraph. The pretrial judge must order that the report be admissible.

9. An expert witness may also be invited to attend a site inspection or reconstruction, if his or her presence is considered of service by the state prosecutor or the court.

10. After indictment, the presiding trial judge may order a site reconstruction under this Article only if the guilt or innocence of a defendant requires the trial panel to have direct knowledge from the reconstruction of or a visit to the scene of the criminal offence.

## D. Pretrial Examination of the Defendant

### Article 151
### Pretrial Examination of the Defendant

1. Prior to the filing of any indictment, the defendant shall be examined in a session of pre-trial testimony. If the defendant is being investigated for a criminal offence or offences punished with a maximum period of imprisonment of no more than three (3) years, it shall be sufficient to give the defendant an opportunity to respond in writing.

2. The defendant shall be obliged to appear before the state prosecutor upon being summoned. Article 174 paragraphs 2 through 5 of the present Code shall apply *mutatis mutandis*. The defendant may appeal to the pre-trial judge to decide on the lawfulness of his or her being made to appear before the state prosecutor.

**Article 152**
**Conduct of Pretrial Examination of the Defendant**

1. The examination of the defendant shall be conducted by the state prosecutor. The state prosecutor may entrust the examination to the police.

2. Before any examination, the defendant, whether detained or at liberty, shall be read the warning in Article 125, paragraph 3 of this Code.

3. Before any examination, the defendant shall be informed of:

3.1. the criminal offence with which he or she has been charged; and

3.2. the fact that he or she may request evidence to be taken in his or her defense. If the defendant is in detention on remand, he or she shall also be informed before any examination of his or her right to have defense counsel provided if he or she cannot afford to pay for legal assistance.

3.3. the right to remain silent and not to answer any questions, except to give information about his or her identity.

4. The defendant has the right to consult with his or her defense counsel prior to as well as during the examination.

5. An examination of the defendant by the police or state prosecutor when acting under the present Article shall be audio- or video-recorded in accordance with Article 208 or Article 209 of the present Code. In cases where this is impossible in practice, a written record of the examination shall be made in accordance with Chapter XI of the present Code and the record shall specify the reasons why the examination could not be audio- or video- recorded.

**Article 153**
**Right of the Defendant to Interpretation**

1. The defendant shall be examined through an interpreter in instances provided for by the present Code.

2. If the defendant is deaf or mute, the examination shall be conducted through a qualified sign language interpreter or in writing. If the examination cannot be carried out

in that way, a person who knows how to communicate with the defendant shall be invited to act as interpreter, unless there is a conflict of interest.

3. If the interpreter has not taken an oath beforehand, he or she shall take an oath that he or she shall faithfully interpret the questions which are put to the defendant and the statements which he or she shall make.

4. The interpreter shall comply with Article 215 of this Code.

**Article 154**
**Questioning of the Defendant during Pretrial Testimony**

1. At the first examination, the defendant should be asked to provide his or her first name and surname and nickname, if any; the name and surname of his or her parents and the maiden name of his or her mother; his or her place of birth and place of residence; the day, month and year of his or her birth; his or her personal identification number; his or her nationality and citizenship; his or her occupation and family conditions; whether he or she is literate; his or her education; his or her personal income and his or her financial position; whether criminal proceedings against him or her for some other criminal offence are in progress; and if he or she is a minor, the identity of his or her legal representative. He or she shall be informed of the obligation to report any change in address or an intended change of the place of current residence.

2. The defendant shall be examined orally. He or she may be permitted to make use of his or her notes during the examination.

3. The examination shall be conducted with full respect for the dignity of the defendant.

4. The defendant shall be asked questions in a clear, distinct and precise manner. Questions to the defendant must not proceed from the assumption that the defendant has admitted something he or she has not admitted. The defendant may be asked to confirm or deny certain facts.

5. The prohibitions under paragraph 4 of the present Article shall apply irrespective of the defendant's consent.

6. The defendant shall be asked questions based on evidence or documents that are relevant to the criminal proceeding. Any relevant evidence or documents shall be shown to the defendant during questions related to the evidence or documents. The evidence or documents shall be clearly identified for the record.

7. Objects which are related to the criminal offence or which serve as evidence shall be presented to the defendant for recognition, after he or she has first described them. If these objects cannot be brought, the defendant may be taken to the place where they are located.

8. The examination should give the defendant an opportunity to dispel the grounds for suspicion against him or her and to assert the facts that are in his or her favor.

### Article 155
### Admissibility of Defendant's Statements

If the examination of the defendant was conducted in violation of the provisions of Article 257, paragraph 4 or Article 152 of the present Code, the statements of the defendant shall be inadmissible.

## E. Review, Suspension, Termination and Time Limits of Investigations

### Article 156
### Obligation to review the case file

Every three (3) months the state prosecutor and the head of his or her office shall review the case file to determine whether the investigation should remain open, whether it should be suspended, whether it should be terminated or whether an indictment shall be filed.

### Article 157
### Suspension of Investigation

1. The state prosecutor may render a ruling to suspend the investigation if the defendant, after committing a criminal offence, has become afflicted with a temporary mental disorder or disability or some other serious disease, if he or she has fled or if there are other circumstances which temporarily prevent successful prosecution of the defendant.

2. Before the investigation is suspended, all obtainable evidence regarding the criminal offence and the criminal liability of the defendant shall be collected.

3. The state prosecutor shall resume the investigation after the obstacles that had caused suspension cease to exist.

4. The state prosecutor shall make an official note in the record of the investigation of the time and reasons for suspending the investigation and of the time when it was resumed. The state prosecutor shall inform the pre-trial judge of this suspension.

5. The time when the investigation was suspended shall not be taken into account in calculating the period of time for completing the investigation or for the expiration of the statute of limitations of a criminal offence.

**Article 158**
**Termination of Investigation**

1. The state prosecutor shall terminate the investigation if at any time it is evident from the evidence collected that:

1.1. there is no reasonable suspicion that a specific person has committed the indicated criminal offence;

1.2. the act reported is not a criminal offence which is prosecuted *ex officio*;

1.3. the period of statutory limitation for criminal prosecution has expired;

1.4. the criminal offence is covered by a pardon or an amnesty issued prior to the enactment of the Constitution of the Republic of Kosovo;

1.5. the criminal offense has been included in an amnesty that was issued before the adoption of the Constitution of the Republic of Kosovo; or

1.6. there are other circumstances that preclude prosecution.

2. The state prosecutor shall within eight (8) days of the termination of the investigation notify the injured party of this fact and the reasons for this. The state prosecutor shall immediately inform the pre-trial judge about the termination of the investigation.

3. An investigation shall terminate automatically upon its expiration under Article 159 of this Code.

**Article 159**
**Time Limits of Investigation**

1. If an investigation is initiated, the investigation shall be completed within two (2) years. If an indictment is not filed, or a suspension is not entered under Article 157 of this Code, after two (2) years of the initiation of the investigation, the investigation shall automatically be terminated.

2. The pre-trial judge may authorize a six (6) month extension of an investigation under Paragraph 1 of this Article where a criminal investigation is complex, including but not limited to if there are four or more defendants, multiple injured parties have been identified, a request for international assistance has been made, or other extraordinary circumstances exist.

3. If a defendant has been arrested and is being held in detention on remand, the pre-trial judge shall not order an extension under Paragraph 2 of this Article or any extension of the detention on remand unless the state prosecutor demonstrates that the investigation is being actively conducted and any delay is beyond the control of the state prosecutor.

**Article 160**
**Death of Defendant**

If in the course of criminal proceedings it is ascertained that the defendant has died, the state prosecutor shall render a ruling to dismiss criminal proceedings.

# CHAPTER X
## DEPRIVATION OF LIBERTY PRIOR TO INDICTMENT AND MEASURES TO ENSURE PRESENCE OF THE DEFENDANT

### 1. GENERAL PRINCIPLES

**Article 161**
**Principle of Interpretation**

1. The Articles in this Chapter shall be interpreted by the police, state prosecutor and courts under the following principles:

1.1. the defendant's right to liberty and security establishes a presumption in favour of remaining free.

1.2. a deprivation of liberty under this Chapter shall only be ordered by the court if the state prosecutor presents evidence under this Chapter which overcomes the presumption in sub-paragraph 1.1 of this paragraph.

1.3. if a deprivation of liberty under this Chapter is ordered, the police, state prosecutor or court should use the most limited restrictions on liberty possible.

1.4. this Article applies to measures to deprive liberty or to ensure the presence of the defendant during criminal proceedings.

## 2. DEPRIVATION OF LIBERTY PRIOR TO INDICTMENT

### Article 162
### Provisional Arrest and Police Detention

If a person is caught in the act of committing a criminal offence prosecuted ex officio or is being pursued, the police or any other person shall be authorized to arrest him or her provisionally even without a court order. The person deprived of his or her liberty by persons other than the police shall be immediately turned over to the police or, where that proves impossible, the police or the state prosecutor must be immediately notified. The police shall act in accordance with Article 163 and 164 of the present Code.

### Article 163
### Limits on Provisional Arrest and Police Detention

1. The police shall not deprive a person of liberty unless:

1.1. an arrest is authorized under Article 162 of this Code,

1.2. there is a court order to arrest a person,

1.3. there is an arrest order or warrant that appears to be valid which has been received through INTERPOL or through diplomatic channels,

1.4. an arrest is authorized under Article 164 of this Code.

1.5. the deprivation of liberty is brief and complies with Article 72 of this Code.

2. Any person whose liberty has been deprived through arrest under this Article shall be brought without delay to a pre-trial judge to rule on detention on remand. The delay shall not exceed forty eight (48) hours.

### Article 164
### Arrest During Investigative Stage

1. When a state prosecutor has authorized a investigative stage, the police shall only arrest and detain a person when:

1.1. there is a grounded suspicion that he or she has committed a criminal offence which is prosecuted *ex officio*; and

1.2. there are articulable grounds to believe:

1.2.1. there is a risk of flight,

1.2.2. that he or she will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

1.2.3. the seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit.

2. The arrest and detention under the present Article shall be authorized by the state prosecutor who initiated the investigative stage or, when due to exigent circumstances such authorization cannot be obtained prior to arrest, by the police who must inform the state prosecutor immediately after the arrest.

3. A person arrested under this Article has the rights of a defendant.

4. Upon arrest, the arrested person shall be informed:

4.1. orally of the rights set forth in Article 167 of the present Code; and

4.2. in writing of the other rights which he or she enjoys under the present Code.

5. Detention under the present Article may not exceed forty-eight (48) hours from the time of arrest. On the expiry of that period the police shall release the detainee, unless a pre-trial judge has ordered detention on remand.

6. As soon as possible after the arrest and no later than six (6) hours from the time of the arrest, the state prosecutor shall issue to the arrested person a written decision on detention which shall include the first and last name of the arrested person, the place, date, and exact time of the arrest, the criminal offence of which he or she is suspected, and the legal basis for the arrest.

7. Within twenty four (24) hours of the arrest, the state prosecutor shall file with the pretrial judge a request for detention on remand.

8. The request for detention on remand shall comply with Article 165 of this Code.

9. The defendant shall be represented by defence counsel at the hearing on the request for detention on remand. Defence counsel shall have access to review the case file for the defendant in preparation for the hearing.

10. As soon as possible, but no later than within forty-eight (48) hours of arrest, the pretrial judge shall hold a hearing to determine whether the defendant shall be held in detention on remand.

11. As soon as possible, but no later than forty-eight (48) hours after the hearing under Paragraph 10 of this Article, the pretrial judge shall issue a decision determining whether the defendant shall be held in detention on remand.

12. The pretrial judge must consider whether lesser measures to ensure the presence of the defendant in Article 173 of this Code may be ordered.

13. The decision of a pretrial judge to order detention on remand is appealable in accordance with the provisions of Article 189, paragraph 3 of this Code.

**Article 165**
**Request for Measure to Ensure Presence of Defendant**

1. If the state prosecutor believes that a lesser measure to ensure the presence of defendant in Article 173 of this Code is warranted, he or she shall file a request for the lesser measure to ensure the presence of the defendant.

2. If the state prosecutor believes that detention on remand is warranted, then he or she shall file a request for detention with the pretrial judge that shall include:

2.1. the first and last name of the arrested person,

2.2. the place, date, and exact time of the arrest,

2.3. the criminal offence of which he or she is suspected,

2.4. a description of the evidence that supports the grounded suspicion that the arrested person has committed the suspected criminal offence,

2.5. a description of the evidence that supports the articulable grounds to believe:

2.5.1. there is a risk of flight,

2.5.2. that the arrested person will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

2.5.3. the seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she

will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit, and

2.6. a description of articulable grounds to believe that lesser measures to ensure the presence of the defendant are insufficient.

3. If the state prosecutor's request for detention on remand fails to establish the grounded suspicion that the arrested person has committed the suspected criminal offence, the pretrial judge shall release the defendant.

4. If the state prosecutor's request for detention on remand fails to establish the articulable grounds to believe any of the three elements in Paragraph 2 subparagraph 2.5 of this Article, the pretrial judge shall consider and order a lesser measure to ensure the presence of defendant listed in Article 173 of this Code, release the defendant or request further clarification from the state prosecutor.

5 If the state prosecutor's request for detention on remand fails to establish the articulable grounds that lesser measures to ensure the presence of defendant is insufficient, the pretrial judge shall consider and order a lesser measure to ensure the presence of defendant listed in Article 173 of this Code or release the defendant.

**Article 166**
**Right of Arrested Person**

1. An arrested person has the right to the immediate assistance of defense counsel of his or her own choice upon arrest.

2. If the arrested person does not engage a defense counsel and no one engages a defense counsel for him or her, he or she shall be provided with a defense counsel at public expense.

3. The arrested person has the right to communicate confidentially with defense counsel orally and in writing. Communications between an arrested person and his or her defense counsel may be within sight but not within the hearing of a police officer.

4. The right to the assistance of defense counsel may be waived in accordance with Article 53 paragraphs 3, 4 and 5 of the present Code.

5. If the arrested person is suspected of terrorism or organized crime and there are grounds to believe that the defense counsel chosen by the arrested person is involved in the commission of the criminal offence or will obstruct the conduct of the investigation, the pretrial judge may, upon the application of the state prosecutor, order that alternative defense counsel be appointed to represent the arrested person for a maximum period of seventy-two (72) hours from the time of arrest.

**Article 167**
**Information of Arrested Person on his or her Rights**

1. An arrested person has the following rights:

1.1. to be informed about the reasons for the arrest, in a language that he or she understands;

1.2. to remain silent and not to answer any questions, except to give information about his or her identity;

1.3. to be given the free assistance of an interpreter, if he or she cannot understand or speak the language of the police;

1.4. to receive the assistance of defense counsel and to have defense counsel provided if he or she cannot afford to pay for legal assistance;

1.5. to notify or require the police to notify a family member or another appropriate person of his or her choice about the arrest; and

1.6. to receive a medical examination and medical treatment, including psychiatric treatment.

2. If the arrested person is a foreign national, he or she has the right to notify or to have notified and to communicate orally or in writing with the embassy, liaison office or the diplomatic mission of the state of which he or she is a national or with the representative of a competent international organization, if he or she is a refugee or is otherwise under the protection of an international organization.

**Article 168**
**Notification of Arrest**

1. An arrested person has the right to notify or to require the police to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change.

2. When an arrested person has not reached the age of eighteen (18) years, the police shall notify the parent or legal representative of the arrested person about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. If such notification is impossible, would be detrimental to the interests of the arrested person or is expressly refused by the arrested person, the police shall notify the Centre for Social Work.

3. When an arrested person displays signs of mental disorder or disability, the police shall notify a person nominated by the arrested person and the Centre for Social Work about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change.

4. Notification of a family member or another appropriate person in accordance with paragraph 1 of the present Article may be delayed for up to twenty-four (24) hours where the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case. There shall be no delay if the arrested person is under eighteen (18) years of age or displays signs of mental disorder or disability.

**Article 169**
**Right of Arrested Person to Medical Examination**

1. An arrested person has the right, upon request, to be examined by a doctor or dentist of his or her own choice as promptly as possible after his or her arrest and at any time during detention. If such doctor or dentist is not available, a doctor or dentist shall be designated by the police.

2. An arrested person has the right to medical treatment, including psychiatric treatment, whenever necessary, upon the request of the arrested person or family members.

3. The police may also appoint a doctor to conduct a medical examination or to provide medical treatment at any time in the case of physical injury or other apparent medical necessity. In case the arrested person refuses to undergo a medical examination or to accept medical treatment, the doctor shall render a final decision on the necessity of such examination or treatment, after due consideration of the rights of the arrested person.

4. If an arrested person displays signs of mental illness, the police may immediately order an examination by a psychiatrist.

5. The results of any medical examination or any medical treatment undertaken pursuant to the present Article shall be duly recorded, and such records shall be made available to the arrested person and his or her defense counsel.

**Article 170**
**Right of Arrested Person during Detention**

1. An arrested person shall be detained separately from sentenced persons or persons in detention on remand.

2. Persons of different sex shall not be detained in the same room.

3. A person detained for more than twelve (12) hours shall be provided with three meals daily.

4. In any period of twenty-four (24) hours, an arrested person shall have the right to at least eight (8) hours of uninterrupted rest, during which he or she shall not be examined and shall not be disturbed by the police in connection with the investigation.

**Article 171**
**Right of Arrested Person during Examinations by Police**

1. During all examinations by the police, an arrested person has the right to the presence of defense counsel. If defense counsel does not appear within two (2) hours of being informed of the arrest, the police shall arrange alternative defense counsel for him or her. Thereafter, if the alternative defense counsel does not appear within one hour of being contacted by the police, the arrested person may be examined only if the state prosecutor or the police determine that further delay would seriously impair the conduct of the investigation.

2. Articles 152 to 155 of the present Code shall apply *mutatis mutandis* to the examination of the arrested person.

3. There shall be short breaks in the examination of an arrested person at intervals of approximately two (2) hours. A break may be delayed if there are reasonable grounds to believe that delay would:

3.1. involve a risk of harm to persons or serious loss of, or damage to, property;

3.2. unnecessarily prolong the person's detention or the conclusion of the examination; or

3.3. otherwise prejudice the outcome of the investigation.

4. During an examination an arrested person shall not be required to stand and shall not be denied food, water or any necessary medical attention.

**Article 172**
**Record of Arrest and Actions by Police**

1. The police shall keep a single written record of all actions undertaken with respect to an arrested person, including:

1.1. the personal data of the arrested person;

1.2. the reasons for the arrest;

1.3. the criminal offence of which he or she is suspected;

1.4. the authorization or notification of the state prosecutor;

1.5. the place, date, and exact time of the arrest;

1.6. the circumstances of the arrest;

1.7. any decision of the state prosecutor regarding detention;

1.8. the place of detention;

1.9. the identity of the police officers and the state prosecutor concerned;

1.10. oral and written notification to the arrested person of his or her rights, as provided for in Article 164 paragraph 4 and Article 167 of the present Code;

1.11. information about the exercise of the rights in subparagraph 1.10 of this paragraph by the arrested person, especially the right to defense counsel and to notification of family members or other appropriate persons;

1.12. visible injuries or other signs which suggest the need for medical help;

1.13. the conduct of a medical examination or the provision of medical treatment; and

1.14. information about the provisional security search of the person and a description of objects taken from the person at the time of the arrest or during detention.

1.15. information on the exit of arrested person from the building, including the exact date and time, information on whether the person was released or sent before the judge, or if he or she was transferred to the detention center**.**

2. The police shall keep a written record of any examination of the arrested person, including the time of beginning and concluding the examination and the identity of the police officer who conducted the examination and any other persons present. If the defense counsel was not present, this shall be duly noted.

3. The written records under paragraph 1 of the present Article shall be signed by the appropriate police officer and countersigned by the arrested person. If the arrested person refuses to sign the written records, the police authorities shall record such refusal and any explanation and append any comments offered by the arrested person orally or in writing.

4. The written records under paragraphs 1 and 2 of the present Article shall be made available to the arrested person and his or her defense counsel on their request and in a language that the arrested person understands.

5. These records shall be preserved by the police for a period of ten (10) years from the time of the official end of the criminal proceedings or the person's release from detention, whichever is later.

## 3. MEASURES TO ENSURE PRESENCE OF DEFENDANT

### A. General Considerations

**Article 173**
**Authorized Measures to Ensure Presence of Defendant**

1. The measures to ensure the presence of defendant which may be used to ensure the presence of the defendant, to prevent re-offending and to ensure successful conduct of the criminal proceedings are:

1.1. summons;

1.2. order for arrest;

1.3. promise of the defendant not to leave his or her place of current residence;

1.4. prohibition on approaching a specific place or person:

1.5. attendance at a police station:

1.6. bail;

1.7. house detention;

1.8. diversion; and

1.9. detention on remand.

2. In deciding which measure to apply, the court shall be obliged to take account of the conditions specified for the individual measures and to ensure that it does not apply a more severe measure if a less severe measure would suffice.

3. These measures shall be terminated when the reasons that necessitated them cease to exist or shall be replaced by more lenient measures if the conditions are met for this.

4. The decisions regarding these measures shall be made by the pre-trial judge before the indictment has been filed and by the presiding trial judge after the indictment has been filed, unless provided otherwise by the present Code.

5. The term “lesser measures to ensure the presence of defendant” or “lesser measures” as used in this code shall mean a summons; a promise of the defendant not to leave his or her place of current residence; a prohibition on approaching a specific place or person; attendance at a police station; bail, house detention or diversion.

**B. Summons**

**Article 174**
**Summons**

1. The presence of the defendant in the proceedings shall be ensured by serving a summons. A summons shall be sent to the defendant by the court in accordance with Chapter XXVII of this Code.

2. A summons shall be sent to the defendant in the form of a sealed letter containing: the name and address of the court sending the summons; the name and surname of the defendant; the designation of the criminal offence with which he or she is charged; the place, day and hour at which he or she is to appear; an indication that he or she is being summoned as the defendant; a warning that an order for arrest will be issued and he or she will be compelled to appear if he or she fails to appear; and the official stamp and name of the judge who issues the summons.

3. When summoned for the first time, the defendant shall be advised in the summons of his or her right to engage a defense counsel and of the right of the defense counsel to attend his or her examination.

4. The defendant shall immediately notify the court of any change in address or the intention to change the place of current residence. The defendant shall be informed of this obligation on the occasion of the first examination or the serving of an indictment and at the same time he or she shall be warned of the consequences of non-compliance as provided for by the present Code.

5. If by reason of an illness or some other insurmountable obstacle the defendant is unable to comply with the summons, he or she shall be examined at the place where he or she is found or shall be transported to the court building or another place where the proceedings are taking place or the examination shall be postponed.

## C. Order for Arrest

### Article 175
### Order for Arrest

1. A pre-trial judge, single trial judge or a presiding trial judge may issue an order for arrest *ex officio*, upon the application of the state prosecutor or, in exigent circumstances, upon the application of the police if the conditions under Article 187 paragraph 1 of the present Code exist, or if a defendant, after being duly summoned, fails to appear and to justify his or her absence or if the summons could not be duly delivered and it is evident from the circumstances that the defendant is avoiding the receipt of the summons.

2. The order for arrest shall be issued in writing and shall contain: the name and surname of the defendant and other personal data known to the judge; the designation of the criminal offence with which he or she is charged and an indication of the pertinent provision of the Criminal Code and of the grounds on which the order is issued; and the official stamp and signature of the judge who orders the arrest. Unless the order for arrest specifies a different expiration date, the order for arrest shall expire at midnight on the 365$^{th}$ day after it is issued.

3. The order for arrest shall be executed by the police.

4. The police officer in charge of executing the order shall serve the order on the defendant and ask the defendant to accompany him or her. If the defendant refuses to comply, the police officer shall compel him or her to appear.

5. An order for the compulsory appearance of police officers or guards in an institution in which persons are kept in detention shall be executed through the intermediary of their command or warden.

6. At the time of the arrest, the person shall be informed of the reasons for the arrest in a language which he or she understands and of his or her rights under Article 167 of the present Code.

7. An arrested person shall, immediately after the arrest, be brought before the judge who issued the order.

## D. Promise of Defendant not to Leave his or her Place of Current Residence

### Article 176
### Promise of Defendant Not to Leave his or her Place of Current Residence

1. The court may seek a promise from the defendant not to go into hiding, nor to leave his or her place of current residence without the permission from the court, if there is a

grounded suspicion that he or she has committed a criminal offence and there are reasons to suspect that the defendant may go into hiding or leave for an unknown destination or leave Kosovo during the course of criminal proceedings. The promise of the defendant shall be written down in the record.

2. The travel document of a defendant obligated by the promise under paragraph 1 of the present Article may be temporarily confiscated. An appeal against a ruling to confiscate temporarily a travel document shall not stay execution.

3. On giving such promise, the defendant shall be warned that the court may order detention on remand if he or she violates the promise.

## E. Prohibition of Approaching a Specific Place or Person

### Article 177
### Prohibition of Approaching a Specific Place or Person

1. The court may prohibit the defendant from approaching a specific place or person, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offence;

1.2. the circumstances under Article 187 paragraph 1 subparagraph 1.2.2. and 1.2.3. of the present Code obtain; and

1.3. such prohibition can decrease the risk that the defendant will destroy evidence of the criminal offence, influence witnesses, co-perpetrators or accessories after the fact, repeat the criminal offence, complete an attempted criminal offence or commit a threatened criminal offence.

2. The court shall decide on a measure under the present Article in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under paragraph 1 of the present Article are met and that there is a need for this measure.

3. The court shall stipulate in the ruling an appropriate distance from the specific place or person which the defendant shall respect and may not intentionally cross.

4. The ruling shall be served on the defendant and, where applicable, a copy shall be served on the person protected under the measure.

5. The court shall order detention on remand if the defendant violates the ruling. The defendant must always be informed of the consequences of non-compliance in advance.

6. If the person protected under the measure intentionally violates the distance that the defendant is obligated to respect, the court may punish the protected person by a fine provided for in Article 444 of the present Code.

7. Unless otherwise provided in the present Article, the provisions of the present Code concerning detention on remand shall apply *mutatis mutandis* to the ordering, duration, extension and termination of the measure under the present Article.

8. The extension of a measure under the present Article before the indictment is filed shall be decided by the pre-trial judge *ex officio* or upon the application of the state prosecutor.

**F. Attendance at Police Stations**

**Article 178**
**Attendance at Police Stations**

1. The court may order that the defendant must periodically appear at a specified time at the police station in the area where the defendant has permanent or current residence or where the defendant happens to be at the time of the order, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offence; and

1.2. there are grounds to suspect that the defendant will go into hiding, leave for an unknown destination or leave Kosovo.

2. The court shall decide on a measure under the present Article in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under paragraph 1 of the present Article are met and that there is a need for this measure.

3. The ruling shall be served on the defendant and a copy shall be sent to the relevant police station on the territory where the measure is to be implemented.

4. The court may order detention on remand, if the defendant violates the ruling. The defendant must always be informed of the consequences of non-compliance in advance.

5. Unless otherwise provided in the present Article, the provisions of the present Code concerning detention on remand shall apply *mutatis mutandis* to the ordering, duration, extension and termination of the measure under the present Article.

6. The extension of a measure under the present Article before the indictment is filed shall be decided by the pre-trial judge *ex officio* or upon the application of the state prosecutor.

7. The travel document of a person subject to a ruling under the present Article may be temporarily confiscated. An appeal against the ruling to confiscate temporarily a person's travel document shall not stay execution.

## G. Bail

### Article 179
### Bail

1. The court may order that the defendant remain at liberty on bail or be released on bail from detention on remand, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offence;

1.2. the only basis for detention on remand is a fear that the defendant may flee; and

1.3. the defendant has promised that he or she will not go into hiding or leave his or her place of current residence without permission.

2. The court may also order by a ruling that the defendant remain at liberty on bail or be released on bail from detention on remand, if:

2.1. there is a grounded suspicion that the defendant has committed a criminal offence;

2.2. the defendant is not suspected of a criminal offence punishable by imprisonment of at least five (5) years under Chapters XIV, XV, XVI, XVII, XX, XXI, XXIX, XXX and XXXIII of the Criminal Code;

2.3. the only basis for detention on remand is a risk that the defendant will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit; and

2.4. the defendant has promised not to repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit.

3. The bail ordered by the court shall be provided by the defendant or another person on his or her behalf.

**Article 180**
**Ruling on Bail**

1. The court shall decide on the measure under Article 179 of the present Code in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under Article 179 of the present Code are met and that there is a need for this measure.

2. Prior to indictment, the ruling on bail shall be rendered by the pre-trial judge and, after the indictment has been filed, by the single trial judge or presiding trial judge.

3. The ruling by which bail is granted and the ruling by which it is cancelled shall be rendered after hearing the opinion of the state prosecutor, if the criminal offence is being prosecuted *ex officio,* and the opinion of the defendant or the defense counsel.

4. The ruling shall be served on the defendant.

5. The travel document of a person subject to a ruling on bail shall be temporarily confiscated, unless there are compelling reasons for the court not to confiscate the travel document. An appeal against the ruling to confiscate temporarily a person's travel document shall not stay execution.

**Article 181**
**Definition of Bail**

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

2. Bail may be provided in cash, securities, valuable objects and other movable property of high value which may readily be converted into cash and deposited for safekeeping, in the form of a mortgage for the amount of bail on a real estate of the person who gives bail, or as a personal liability of one or more persons who undertake to pay the amount of bail in case the defendant flees.

3. If the defendant flees, the amount given as bail shall be assigned to the Victim Compensation Fund by a ruling of the Court.

**Article 182**
**Noncompliance and Cancellation of Bail**

1. When bail has been ordered under Article 179 paragraph 1 of the present Code, the defendant shall be detained on remand and bail shall be cancelled, if after being duly summoned he or she fails to appear and to justify his or her non-appearance, if he or she

is preparing to flee or if some other legal ground for his or her detention on remand arises while he or she is at liberty.

2. When bail has been ordered under Article 179 paragraph 2 of the present Code, the defendant shall be detained and the amount given as bail shall be assigned to the budget by a ruling, if he or she repeats the criminal offence, completes an attempted criminal offence or commits a criminal offence which he or she has threatened to commit.

3. The defendant must always be informed of the consequences of non-compliance in advance.

4. Bail shall be cancelled once criminal proceedings have been terminated by a final ruling discontinuing the proceedings or by a final judgment. If the defendant is punished by imprisonment, bail shall be cancelled only after he or she has started serving the sentence.

5. Upon the cancellation of bail, any deposited cash, securities, valuable objects and other movable property of high value shall be returned and any mortgage shall be released.

**H. House Detention**

**Article 183**
**House Detention**

1. The court may order that the defendant be placed under house detention, if:

1.1. there is a grounded suspicion that the defendant has committed a criminal offence; and

1.2. the circumstances under Article 187 paragraph 1 subparagraph 1.2 of the present Code obtain.

2. The court shall decide on a measure under the present Article in a ruling supported by reasoning. The ruling must contain the justification for determining that the conditions under paragraph 1 of the present Article are met and that there is a need for this measure.

3. The court shall determine in the ruling that the defendant may not move from the premises in which he or she permanently or currently resides or from a public treatment or care institution. The court may restrict or prohibit contacts between the defendant and persons with whom he or she does not live or persons who are not dependent on the defendant. Exceptionally, the court may allow the defendant to move for a specific time away from the premises where house detention is being implemented whenever this is unavoidably necessary to ensure essential living needs or to perform work.

4. The ruling shall be served on the defendant and a copy shall be sent to the relevant police station on the territory where the measure is to be implemented.

5. The court may order detention on remand, if the defendant violates the ruling. The defendant must always be informed of the consequences of non-compliance in advance.

6. The court shall supervise the implementation of the measure of house detention, either directly or through the police. The police shall have the right to verify the implementation of the measure of house detention at any time, and shall randomly verify the presence of the defendant at the location of the house detention. The police shall inform the court without delay of any possible violations of the measure.

7. Unless otherwise provided for by the present Article, the provisions of the present Code on detention on remand shall apply *mutatis mutandis* to the ordering, duration, extension and termination of the measure under the present Article. Provisions of the Criminal Code on the inclusion of detention in the punishment imposed shall also apply *mutatis mutandis* to the measure under the present Article.

8. The single trial judge or presiding trial judge shall in all cases decide on the extension of house detention after the filing of the indictment based on a motion of the state prosecutor which is supported by reasoning. The defendant as well as his or her defense counsel, where the defendant has such, must be informed of the motion within three days of the expiry of the current ruling on house detention.

9. The travel document of a person subject to house detention may be temporarily confiscated. An appeal against the ruling to confiscate temporarily a person's travel document shall not stay execution.

## I. Diversion

### Article 184
### Diversion

1. A defendant who has been arrested for a criminal offence for which the maximum punishment is no more than one (1) year, and who has no previous criminal convictions or participation in diversion may receive diversion upon the order of the pretrial judge. The defendant or state prosecutor may also propose diversion. If the state prosecutor consents to, or proposes diversion to the court, the pretrial judge may suspend the criminal proceedings for one (1) year, and shall release the defendant under the following conditions:

1.1. the defendant shall make reasonable compensation to the victims of the criminal offence, if any exist, as determined by the pretrial judge,

1.2. the defendant shall report to the police station closest to his residence on a regular basis set by the pretrial judge, and

1.3. the defendant shall attend and complete counseling, psychological treatment, substance abuse treatment, educational opportunities, or other alternative actions deemed appropriate by the pretrial judge.

2. If the defendant has complied with the conditions of the pretrial judge, the criminal proceedings against the defendant shall be dismissed by the pretrial judge during the twelfth month of diversion.

3. If the defendant breaches the conditions of the pretrial judge, the criminal proceedings shall be reinstituted. The pretrial judge may, if warranted, issue an order for arrest under Article 175 of this Code.

**J. Detention on Remand**

**Article 185**
**Detention on Remand**

1. Detention on remand may only be ordered on the grounds and in accordance with the procedures provided for by the present Code.

2. Detention on remand shall last the shortest possible time. All agencies participating in criminal proceedings and agencies that provide legal assistance to them have a duty to proceed with special urgency if the defendant is being held in detention on remand.

3. Detention on remand shall, at any stage of the proceedings, be terminated and the detainee released as soon as the reasons for it cease to exist.

4. Article 166 paragraphs 2 and 3, Article 167 paragraph 2, Article 168, Article 169, Article 170 paragraph 3 and Article 171 paragraphs 3 and 4 of the present Code shall apply throughout detention on remand.

5. Upon arrest, the person subject to detention on remand shall be informed:

5.1. orally and in writing of the rights set forth in Article 167 of the present Code; and

5.2. in writing of the other rights which he or she enjoys under the present Code.

## Article 186
## Notification of Competent Social Welfare Body about the Arrest, when such a Measure is Necessary

The arrest shall be reported to the competent social welfare body, if it is necessary to take measures for the safety of the children and other family members of the arrested person who are under his or her care.

## Article 187
## Findings Required For Detention on Remand

1. The court may order detention on remand against a person only after it explicitly finds that:

1.1. there is a grounded suspicion that such person has committed a criminal offence;

1.2. one of the following conditions is met:

1.2.1. he or she is in hiding, his or her identity cannot be established or other circumstances indicate that there is a danger of flight;

1.2.2. there are grounds to believe that he or she will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

1.2.3. the seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit; and

1.3. the lesser measures to ensure the presence of defendant listed in Article 173 of the present Code would be insufficient to ensure the presence of such person, to prevent re-offending and to ensure the successful conduct of the criminal proceedings.

2. When detention on remand is ordered pursuant to paragraph 1 subparagraph 1.2 of the present Article solely because a person’s identity cannot be established, it shall be terminated as soon as identity is established. When detention on remand is ordered pursuant to paragraph 1 subparagraph 1.2 of the present Article, it shall be terminated as soon as the evidence on account of which detention on remand was ordered has been taken or secured.

3. If the defendant has violated one of the lesser measures to ensure the presence of defendant listed in Article 173 of the present Code, this shall be taken into particular consideration by the court when establishing the existence of circumstances under paragraph 1 subparagraphs 1.2 and 1.3 of the present Article.

**Article 188**
**Procedure for Order of Detention on Remand**

1. Detention on remand shall be ordered by the pre-trial judge of the competent court upon a written application of the state prosecutor and after a hearing.

2. After the arrested person has been brought before the pre-trial judge, he or she shall immediately inform such person of his or her rights under Article 167 of the present Code. This shall be entered in the record together with the exact time of the arrest and the time when the person was brought before the pre-trial judge.

3. The pre-trial judge shall then conduct a hearing on detention on remand. The state prosecutor and the defense counsel shall be present at the hearing.

4. If the arrested person fails to engage his or her own defense counsel within twenty-four (24) hours of being informed of such right or declares that he or she will not engage a defense counsel, the court shall appoint a defense counsel for him or her *ex officio*.

5. At the hearing on detention on remand, the state prosecutor shall state the reasons for his or her application for detention on remand. The defendant and his or her defense counsel may respond with their arguments.

6. The pre-trial judge shall rule on the motions of the parties when the parties have made statements on all issues that could be relevant to the application of measures under the present Chapter.

**Article 189**
**The Content of the Ruling Ordering Detention on Remand and the Appeal Against it**

1. Detention on remand shall be ordered by a written ruling including: the name and surname of the person to be detained on remand and his or her other personal data known to the pre-trial judge; the exact time of arrest; the time when the person was brought before the pre-trial judge; the time of the hearing for detention on remand; the criminal offence of which he or she has been charged; the legal grounds for detention on remand; instructions on the right to appeal; and an explanation of all material facts which dictated detention on remand, including the reasons for the grounded suspicion that the person committed a criminal offence and the material facts under Article 187 paragraph 1 subparagraph 1.2 of the present Code.

2. The ruling on detention on remand shall be served on the person concerned, his or her defense counsel and the state prosecutor. The time of the service of the ruling on the person concerned shall be indicated in the case file.

3. Each party may file an appeal within twenty-four (24) hours of being served with the ruling. The appeal shall not stay execution of the ruling. If only one party appeals, the appeal shall be served by the court on the other party who may submit arguments to the court within twenty-four (24) hours of being served with the appeal. The appeal shall be decided within forty eight (48) hours of the filing of the appeal.

4. If the pre-trial judge rejects the request of the state prosecutor for detention on remand, the pre-trial judge may order any other measure provided for under the present Chapter.

**Article 190**
**Time Limits for Detention on Remand**

1. The detainee may be held in detention on remand on the initial order under Article 188 of this Code for a maximum period of one (1) month from the day he or she was arrested. After that time period he or she may be held in detention on remand only under a ruling of the pretrial judge, single trial judge or presiding trial judge ordering an extension of detention on remand.

2. Prior to the filing of an indictment, detention on remand shall not exceed:

> 2.1. four (4) months, if proceedings are conducted for a criminal offence punishable by imprisonment of less than five (5) years;
>
> 2.2. eight (8) months, if proceedings are conducted for a criminal offence punishable by imprisonment of at least five (5) years.

3. In exceptional cases where proceedings are conducted for a criminal offence punishable by imprisonment of at least five (5) years, the case is complex as defined under Article 19 of this Code and the delay is not attributable to the state prosecutor, in addition to the prescribed periods of time provided for in paragraph 2 of this Article, detention on remand prior to the filing of an indictment may be extended by up to four (4) months for a maximum of twelve (12) months in total.

4. Upon a convincing and grounded cause to believe that public danger or a threat of violence exists upon the pretrial release of a defendant, an extension of the detention on remand under Paragraph 3 of this Article can be extended for another six (6) months for a maximum of eighteen (18) months in total.

5. If the indictment is not filed before the expiry of the prescribed periods of time provided for under paragraphs 2, 3 and 4 of the present Article, the detainee shall be released.

**Article 191**
**Extension of Detention on Remand**

1. Detention on remand may only be extended by the pretrial judge, single trial judge or presiding trial judge upon the request of the state prosecutor, who shall show that there are grounds for detention on remand under Article 187 of the present Code, that the investigation has been initiated and that all reasonable steps are being taken to conduct the investigation speedily. The injured party or victim advocate may formally or informally ask the state prosecutor to request an extension of detention on remand.

2. The defendant and his or her defense counsel shall be informed of the motion no less than three (3) days prior to the expiry of the current ruling on detention on remand.

3. Each ruling on the extension of detention on remand can be appealed. Article 189 paragraphs 3, and 4 of the present Code shall apply *mutatis mutandis.*

**Article 192**
**Court Oversight of Detention on Remand**

1. At any time, the pre-trial judge may terminate *ex officio* detention on remand while the investigation is in progress, after giving three days notice to the state prosecutor, who may appeal to a review panel the decision of the pre-trial judge to terminate detention on remand. The review panel shall render a ruling within forty-eight (48) hours of receiving the appeal from the state prosecutor.

2. At any time, the detainee or his or her defense counsel may petition the pre-trial judge, single trial judge, presiding trial judge or president of the basic court to determine the lawfulness of detention or the lawfulness of the conditions of detention.

3. If the detainee is petitioning the lawfulness of detention, the pre-trial judge, single trial judge, presiding trial judge or president of the basic court may conduct a hearing in accordance with Article 188 paragraphs 3, 4, 5, and 6 of the present Code if the petition establishes a *prima facie* case that:

> 3.1. the grounds for detention on remand in Article 187 of the present Code no longer exist due to changed circumstances or the discovery of new facts since the last court order on detention on remand; or
>
> 3.2. detention is unlawful for some other reason.

4. If the detainee is petitioning the lawfulness of detention, at the hearing the pre-trial judge, single trial judge, presiding trial judge or president of the basic court shall order the immediate release of the detainee if:

> 4.1. the grounds for detention on remand in Article 187 of the present Code no longer exist;

4.2. the period of detention on remand ordered by the court has expired;

4.3. the period of detention on remand ordered by the court exceeds the time-limits set forth in Article 190 of this Code; or

4.4. detention is unlawful for some other reason.

5. If the detainee is petitioning the lawfulness of the conditions of detention, the pre-trial judge, single trial judge, presiding trial judge or president of the basic court may conduct a hearing or visit the detention facility if the petition establishes a *prima facie* case that the conditions of detention do not satisfy the requirements of the present code or conditions exist that do not comply with the European Convention on Human Rights and Fundamental Freedoms, as interpreted by decisions of the European Court on Human Rights.

6. If the detainee is petitioning the lawfulness of the conditions of detention, at the hearing or visit to the detention facility, the pre-trial judge, single trial judge, presiding trial judge or president of the basic court shall order changes to the conditions of detention if they do not comply with a reasonable interpretation of the requirements of the present code or conditions exist that do not reasonably comply with the European Convention on Human Rights and Fundamental Freedoms, as interpreted by decisions of the European Court on Human Rights.

7. Hearings or visits under this Article shall be held within seven (7) days of the receipt of the petition by the court.

8. A petition that is substantially similar to a previous petition shall be immediately dismissed *ex officio*.

**Article 193**
**Detention on Remand After Indictment is Filed**

1. After the indictment has been filed and until the conclusion of the main trial, detention on remand may only be ordered, extended or terminated by a ruling of the single trial judge or presiding trial judge or the trial panel when it is in session. The single trial judge or presiding trial judge shall first hear the opinion of the state prosecutor, if proceedings have been initiated at his or her request, and the opinion of the defendant or the defense counsel. The parties may appeal against the ruling. Article 189 paragraphs 3 and 4 of the present Code shall apply *mutatis mutandis.*

2. Upon the expiry of two (2) months from the last ruling on detention on remand, the single trial judge or presiding trial judge, even in the absence of a motion by the parties, shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. The parties may appeal against the ruling. Article 189 paragraphs 3 and 4 of the present Code shall apply *mutatis mutandis.*

## 4. IMPLEMENTATION OF DETENTION ON REMAND

### Article 194
### Treatment and Conditions for Detained Persons

1. The personality and dignity of a person held in detention on remand must not be abused. The detainee on remand must be treated in a humane manner and his or her physical and mental health must be protected.

2. Only those restrictions which are necessary to prevent escape or communications that might be harmful to the effective conduct of proceedings may be imposed against a person in detention on remand.

### Article 195
### Detention Facility

1. Admission to a facility for detention on remand (hereinafter "detention facility") shall be based on a written ruling of a judge.

2. The detention facility shall be obliged to keep a record of the time of arrival of the detainee on remand at the detention facility and the time when the period of detention on remand ordered in respect of the detainee on remand expires and to inform the detainee on remand and his or her defense counsel about the date of expiry. If the detention facility does not receive a ruling of the court to extend detention on remand after the period in the ruling has expired, it shall immediately release the detainee on remand and inform the competent court of this.

### Article 196
### Information regarding Detainees

1. The detention facility shall collect, process, store and maintain a database on detainees on remand to ensure the lawful and proper implementation of detention on remand.

2. The database under paragraph 1 of the present Article shall comprise data on:

2.1. the identity and personal status of the detainee on remand;

2.2. the ruling on detention on remand;

2.3. the work performed while in detention on remand;

2.4. admission to the detention facility and the duration, extension and termination of detention on remand; and

2.5. the behavior of the detainee on remand and any disciplinary measures.

3. Data from the database shall be stored and used for the duration of detention on remand; after the detention on remand is terminated, the data shall be archived and stored permanently.

4. The detention facility shall forward the data under paragraph 2 of the present Article to the central records on detainees on remand, and such data may only be used by other persons authorized to use the data by law or pursuant to the written permission or request of the individual to whom the data refers.

5. The Ministry of Justice shall issue an Administrative Direction which shall define in greater detail the data under paragraph 2 of the present Article and procedures in compliance with this Article.

**Article 197**
**Segregation of Detainees**

1. Detention on remand shall be served in special detention facilities or in a separate part of a facility for serving prison sentences.

2. A person may not be detained on remand in the same room as a person of the opposite sex. As a rule, persons who participated in committing the same criminal offence shall not be accommodated in the same room and persons serving a sentence shall not be accommodated in the same room as persons in detention on remand. If possible, persons who have repeated a criminal offence shall not be accommodated in the same room as other persons in detention whom they could negatively influence.

3. The competent court may transfer a detainee on remand from one detention facility to another for reasons of safety, order and discipline or for the successful and reasonable conduct of criminal proceedings, on the motion of the director of the detention facility in which the detainee on remand is accommodated.

**Article 198**
**Items Detainees Are Permitted to Have and Use**

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

**Article 199**
**Detainees are Entitled to Rest, Exercise and Payment for Work Performed**

1. Detainees on remand have the right to eight (8) hours of uninterrupted rest every twenty-four (24) hours. In addition, detainees on remand must be guaranteed at least two (2) hours of outdoor exercise per day.

2. Detainees on remand may perform work that is necessary to maintain order and cleanliness in their area. To the extent that the institution has the facilities and on condition that it is not harmful to the conduct of criminal proceedings, detainees on remand shall be allowed to work in activities which suit their mental and physical abilities. The pre-trial judge, single trial judge or presiding trial judge shall decide on this in agreement with the management of the detention facility.

3. Detainees on remand are entitled to payment for work performed. The Ministry of Justice shall issue an Administrative Direction setting forth the manner and amount of payment.

**Article 200**
**Visitation and Right to Communicate**

1. With the permission of the pre-trial judge, single trial judge or presiding trial judge and under his or her supervision or the supervision of someone appointed by such judge, the detainee on remand may receive visits from close relatives and, upon his or her request, from a doctor or other persons, within the limits of the rules of the detention facility. Certain visits may be prohibited if they might be harmful to the conduct of the proceedings.

2. With the knowledge of the pre-trial judge, single trial judge or presiding trial judge, representatives from an embassy, liaison office, or diplomatic mission shall have the right to visit and to talk without supervision to detainees on remand who are nationals of their country. Representatives of competent international organizations shall have the same right to visit and talk to detainees on remand who are refugees or otherwise under the protection of such international organizations.

3. The Ombudsperson of Kosovo or his or her deputy may visit detainees on remand and may correspond with them without prior notification and without the supervision of the pre-trial judge, single trial judge or presiding trial judge or other persons appointed by such judge. Letters from detainees on remand to the Office of the Ombudsperson of Kosovo may not be examined. The Ombudsperson and his or her deputy may communicate confidentially with detainees on remand orally and in writing. Communications between a detainee on remand and the Ombudsperson and his or her deputy may be within the sight but not within the hearing of a police officer.

4. Detainees on remand may correspond or have other contacts with persons outside the detention facility with the knowledge and under the supervision of the pre-trial judge, single trial judge or presiding trial judge. The pre-trial judge, single trial judge or presiding trial judge may, after consulting the state prosecutor, prohibit letters and other packages being received or sent or contacts being established which are harmful to the proceedings, but may not prohibit detainees on remand from sending requests or appeals or from communicating with their defense counsel.

5. When the pre-trial, single trial judge or presiding trial judge refuses a visit pursuant to paragraph 1 of the present Article or prohibits communication pursuant to paragraph 4 of the present Article, the detainee on remand may apply to the review panel to grant such permission.

6. Following the filing of indictment and until the rendering of final judgment, the single trial judge or the presiding trial judge shall decide on all matters from paragraphs 1-4 of this Article, whereas paragraph 5 of this Article shall apply *mutatis mutandis.*

**Article 201**
**Discipline of Detainees**

1. The pre-trial judge, single trial judge or the presiding trial judge may impose a disciplinary punishment of a prohibition or restriction on visits and correspondence on a detainee on remand who has committed a disciplinary breach.

2. A disciplinary breach includes:

2.1. a physical attack on other detainees on remand, employees of the detention facility or other official persons;

2.2. the production, acceptance or introduction of items for attacks or escape;

2.3. the production or introduction of alcoholic beverages and narcotics and their distribution;

2.4. a violation of regulations on safety at work, fire safety and the prevention of the consequences of natural disasters;

2.5. repeated violations of the internal order of the detention facility;

2.6. causing serious material damage intentionally or through serious negligence; or

2.7. insulting and undignified behavior.

3. A restriction or prohibition of a visit or correspondence shall not apply to visits by or correspondence with defense counsel, doctors, the Ombudsperson of Kosovo, representatives of an embassy, liaison office, or diplomatic mission of the State of which the detainee on remand is a national or, in the case of a refugee or a person otherwise under the protection of an international organization, representatives of the competent organization.

4. An appeal may be filed with the review panel against a ruling on a punishment imposed under paragraph 1 of the present Article within twenty-four (24) hours of receipt thereof. The appeal shall not stay execution of the ruling.

5. The Panel shall decide on the appeal within forty-eight (48) hours.

**Article 202**
**Application of the Law on the Execution of Penal Sanctions to Detainees on Remand**

Unless otherwise provided for by the present Code and by other legislation issued pursuant to it, the provisions of the Law on the Execution of Penal Sanctions, or any successor law, shall apply *mutatis mutandis* to monitoring, pursuit, surveillance, maintenance of order and discipline, the use of force, personal search and search of premises in the case of detainees on remand.

**Article 203**
**Supervision of the Treatment of Detainees**

1. The competent President of the Basic Court has the ultimate responsibility to supervise the treatment of detainees on remand.

2. The competent president of the Basic Court and the judge who ordered detention on remand may, at any time, visit detainees on remand, talk to them and accept complaints.

3. The duties under this Article do not diminish the duties of the competent judge under Article 192 of this Code to evaluate petitions by detainees with valid complaints about the conditions of detention and correct unlawful conditions.

# CHAPTER XI
## RECORDS

### A. Creation and Maintenance of Records

#### Article 204
#### Record of Action in Criminal Proceeding

1.. A record shall be kept of each action undertaken in the course of criminal proceedings at the same time as the action is undertaken, and if this is not possible, immediately thereafter.

2. The record shall be written by the recording clerk of the court or, when the actions are undertaken in front of the state prosecutor, by the recording clerk of the state prosecutor's office. The record may be written by the person undertaking the action, only when a search is made of premises or a person or when an action is undertaken outside the offices of the relevant official body or competent authority and the recording clerk is not available.

3. When the record is written by the recording clerk, the person undertaking the action shall tell the recording clerk orally what shall be entered in the record.

4. A person being examined shall be allowed to state his or her answers for the record in his or her own words. This right may be denied if it is abused.

5. When the pretrial interview, pretrial testimony or special investigative opportunity requires the session to be recorded by audio- or audio-video recording, a copy of the recording shall be included with the record.

#### Article 205
#### Entries into the Record

1. The entry in the record shall include the name of the official body or competent authority before which the action is being undertaken, the place where the action is being undertaken, the date and the hour when the action began and ended, the names and surnames of the persons present and the status in which they are present, and the identification number of the criminal case in which the action is being undertaken.

2. In the event of the exercise of an action in accordance with the law, the party to the action shall be informed of the rights that belong to him or her by law. The fact that such information has been given as well as whether the party has made use of such rights must be noted in the record.

3. The party to the action shall verify by means of a signature that he or she has been allowed to exercise the rights that belong to him or her by law.

4. The record should contain the essential information about the implementation and content of the action undertaken. If physical objects or papers are confiscated in the course of the implementation of the action, this shall be indicated in the record and the Articles taken shall be attached to the record or the place where they are being kept shall be indicated.

5. In the conduct of an action, such as a site inspection, a search of premises, vehicles or persons, or the identification of persons or objects, information which is important with regard to the nature of such action or for establishing the identity of certain Articles (the description, dimensions and size of the Articles or of traces that have been left, placing identifying labels on Articles, and so on) shall also be entered in the record; and if sketches, drawings, layouts, photographs, films, or other technical recordings are made, these shall be entered in and attached to the record.

6. Documents or physical items which are referred to during the pretrial interview, pretrial testimony or special investigative opportunity shall be identified with exhibit numbers. The documents or physical items shall be referred to during the pretrial interview, pretrial testimony or special investigative opportunity by their exhibit numbers, and shall be referred to in the record by their exhibit numbers.

**Article 206**
**Integrity of the Record**

1. The record must be kept up to date; nothing in it may be deleted, added or amended. The sections which have been crossed out must remain legible.

2. All changes, corrections, and additions shall be noted at the end of the record and must be certified by the persons signing the record.

**Article 207**
**Review of the Record**

1. The person against whom an investigative action is undertaken, the persons who must be present during the investigative action, as well as the parties, the defense counsel and the injured party, if they are present, have the right to read the record or to request that it be read to them. The person undertaking the investigative action must make them aware of this right, and it shall be noted in the record whether they have been so informed and whether the record has been read. The record shall always be read if the recording clerk is not present and this shall be noted in the record.

2. The record of an examination shall be signed by the person who is being examined. If the record consists of more than one page, the person examined shall sign each page.

3. The record shall be signed at the end by the interpreter, if there was one, by the witnesses whose presence was compulsory during the conduct of the investigative action and in the case of a search it shall also be signed by the person searched or the person whose premises have been searched. If the record is not signed by the recording clerk, the record shall be signed by those persons who attended the proceedings. If there are no such persons, or if they are unable to understand the content of the record, the record shall be signed by two (2) witnesses, unless it has not been possible to ensure their presence.

4. Any person who does not know how to write shall place the print of the index finger of his or her right hand in place of a signature and the recording clerk shall enter his or her first and last name underneath the fingerprint. When it is not possible to make a fingerprint of the right index finger, the print of some other finger or the print of a finger of the left hand shall be made and the record shall indicate the finger and hand from which the print has been taken.

5. If the person examined has neither hand, he or she shall read the record of the examination, and, if he or she does not know how to read, the record of the examination shall be read to him and this shall be noted in the record.

6. If the investigative action could not be undertaken without interruption, the record shall indicate the day and hour when the interruption occurred and the day and hour when the investigative action resumed.

7. If there have been objections pertaining to the content of the record, those objections shall also be indicated in the record.

8. The record shall be signed at the end by the person who undertook the investigative action and by the recording clerk.

9. If the person who in accordance with the present Code must sign the record refuses to sign it or to place his or her fingerprint on it, this shall be noted in the record along with the reason for the refusal.

## Article 208
## Recording of Sessions by Audio Recording or Audio-Video Recording

1. Applicable sessions of pretrial testimony or special investigative opportunity session, or any other examination or interview as necessary, shall be video-recorded or audio-recorded in accordance with the following procedure:

> 1.1. the person examined shall be informed, in a language he or she fully understands and speaks that the examination is to be audio- or video-recorded.
>
> 1.2. the recording must include the data under Article 205 paragraph 1 of the present Code and the appropriate notification under Article 125 of the present

Code, as well as the information needed to identify the persons whose statements are being recorded. When the statements of several persons are being recorded, it is necessary to ensure that it is possible to identify clearly from the recording who made which statement.

1.3. in the event of an interruption in the course of the examination, the fact and the time of the interruption shall be recorded before the audio- or video- recording ends as well as the time of resumption of the examination.

1.4. at the conclusion of the examination, the person being examined shall be offered the opportunity to clarify anything he or she has said and add anything he or she may wish. At the request of the examined person, the recording shall be immediately played back and corrections and explanations of that person shall be recorded. The time of conclusion of the examination shall always be noted.

2. At the discretion of the state prosecutor or upon the order of the pretrial judge, single trial judge or presiding trial judge, the content of the tape may be transcribed. If it is transcribed, the transcript shall be completed as soon as practicable after the conclusion of the examination and, upon the request of the person examined, a copy of the transcript shall be supplied to him.

3. At least four (4) copies of the audio or audio-video recording under this Article shall be made on CD or DVD disks, or their functional equivalent, and placed with the written record of the examination in the case file. One master copy shall remain with the case file at all times, one copy shall be provided to each defence counsel at the time of indictment, one copy shall be available to the victim advocate or victim representative, one copy shall be retained by the state prosecutor.

4. The written record of the examination shall indicate or include:

4.1. the fact that the examination was recorded by an audio-recording or video-recording device;

4.2. the name of the person who performed the recording;

4.3. the names of the people present during the recorded session;

4.4. the fact that the examined person was informed in advance of the intent to record the examination;

4.5. whether the recording was played back;

4.6. a summary of the testimony; and

4.7. copies of any exhibits shown to the person being examined.

5. After making the required copies, the Recording Clerk shall seal the master copy of the recording and shall sign and file statement that the recording had not been altered or edited and is a true recording of the session.

6. If a technical error occurs in the making of the audio or audio-video recording, the person whose testimony or examination is being recorded shall be advised of the technical error while being recorded, and shall be re-questioned on issues or answers whose recording was affected by the technical error or he or she will be allowed to make corrections on issues or answers whose recording was affected by the technical error.

7. The audio or audio-video recording of the session may not be edited or altered. If an indictment is filed in the criminal proceeding for which the session was recorded, the presiding judge may rule an audio or audio-video recording of a session to be inadmissible if there is grounded cause to believe that the recording was edited or altered. Grounded cause under this paragraph cannot be premised solely upon a difference in testimony by the witness.

8. Personal data about the defendant, injured party or witness which are recorded are confidential and may be used only in the course of criminal proceedings. A violation of this Paragraph shall be considered a breach of the ethical duties of the practitioner involved and may be sanctioned by the Court.

**Article 209**
**Recording of Actions by Audio-Recording or Audio-Video Recording**

The state prosecutor, the pre-trial judge, single trial judge or the presiding trial judge may order that investigatory actions other than examinations be video-recorded or audio-recorded. Article 208 of the present Code shall apply *mutatis mutandis*.

**Article 210**
**Use of Shorthand or Typewriter, Stenography and Transcription**

The state prosecutor, the pre-trial judge, single-trial judge or the presiding trial judge may order that an investigative action in the proceedings or parts of it be taken down in shorthand or on a stenographic machine. The stenographic record shall within forty-eight (48) hours be transcribed, checked and attached to the record.

**Article 211**
**Recording by Others**

1. The pre-trial judge may permit other persons who have a legitimate interest to audio or video-record specific investigative actions, if this would have an insignificant influence on the rights, especially the right to privacy, of the defendant, the injured party, witnesses, and other participants in the proceedings. Personal details about the defendant,

injured party or witness are confidential and may be used only in the course of criminal proceedings.

2. On the motion of a party or *ab initio* the president of the Court may exceptionally authorize such recordings provided for in paragraph 1 of the present Article in the case of a main trial.

3. The parties and the defense counsel may make an audio-recording of the main trial which is held in open court. Personal data about the defendant, injured party or witness which are recorded are confidential and may be used only in the course of criminal proceedings. An audio-recording made under this paragraph shall not be played to a witness.

4. Where the recording of the main trial is permitted, the single trial judge or presiding trial judge may for justifiable reasons prohibit the recording of specific parts of the session.

**Article 212**
**The Case File**

1. All records, reports, recordings, transcripts, evidence, orders, decisions, requests, appeals, judgments or other documents relevant and important to the criminal proceeding shall be maintained in a case file.

2. The case file shall be maintained in an orderly manner by the responsible clerk.

3. The Kosovo Prosecutorial Council and Kosovo Judicial Council are empowered to set rules on internal handling of case file within prosecutors' offices and the courts, respectively.

## B. Inspection of Records and the Case File

**Article 213**
**Access to the Case File by Suspects and Defendants**

1. During initial steps by the police, the suspect shall have access to the evidence that is collected upon his or her request, except when paragraph 6 or 7 of this Article is applied mutatis mutandis

2. At the initiation of the investigative stage, the state prosecutor has a positive obligation to provide access to the case file to any named defendant or their defense counsel, subject to the exceptions within this Article.

3. At no time during the investigative stage may the defense be refused inspection of records of the examination of the defendant, material obtained from or belonging to the defendant, material concerning such investigative actions to which defense counsel has been or should have been admitted or expert analyses.

4. Upon completion of the investigation, the defense shall be entitled to inspect, copy or photograph all records and physical evidence available to the court.

5. Upon the filing of an indictment, the defendant or defendants named in the indictment may be provided with a copy or copies, respectively, of the case file.

6. In addition to the rights enjoyed by the defense under paragraphs 2, 3 and 4 of the present Article, the defense shall be permitted by the state prosecutor to inspect, copy or photograph any records, books, documents, photographs and other tangible objects in the possession, custody or control of the state prosecutor which are material to the preparation of the defense or are intended for use by the state prosecutor as evidence for the purposes of the main trial, as the case may be, or were obtained from or belonged to the defendant. The state prosecutor may refuse to allow the defense to inspect, copy or photograph specific records, books, documents, photographs and other tangible objects in his or her possession, custody or control if there is a sound probability that the inspection, copying or photographing may endanger the purpose of the investigation or the lives or health of people. In such case, the defense can apply to the pre-trial judge, single trial judge or presiding trial judge to grant the inspection, copying or photocopying. The decision of the judge is final.

7. Information can be redacted or marked out by a thick black line to obscure specific information by the state prosecutor on copies of documents that contain sensitive information. The defendant may challenge the redaction with the pretrial judge, single trial judge or presiding trial judge within three (3) days of receiving the redacted copy. The state prosecutor shall be permitted the opportunity to explain the legal basis of the redaction without disclosing the sensitive information. The judge shall review the redacted information and shall decide within three (3) days whether the redaction is legally justified.

8. Provisions of the present Article are subject to the measures protecting injured parties and witnesses and their privacy and the protection of confidential information as provided for by law.

## Article 214
## Access to the Case File by the Injured Party and Victim Advocate

1. The injured party, his or her legal representative or authorized representative, or victim advocate shall be entitled to inspect, copy or photograph records and physical evidence available to the court or to the state prosecutor if he or she has a legitimate interest.

2. The court or state prosecutor may refuse to permit the inspection, copying or photocopying of records or physical evidence if the legitimate interests of the defendant or other persons override the interest of the injured party or if there is a sound probability that the inspection, copying or photocopying may endanger the purpose of the investigation or the lives or health of people or would considerably delay the proceedings or if the injured party has not yet been examined as a witness.

3. If the state prosecutor refuses the inspection of the files, the injured party can file an appeal with the pre-trial judge. The decision of the pre-trial judge is final.

4. If the pre-trial judge refuses the inspection of the files available to the court, an appeal can be filed with the review panel.

5. Information can be redacted or marked out by a thick black line to obscure specific information by the state prosecutor on copies of documents that contain sensitive information.

6. The provisions of the present Article are subject to the measures protecting injured parties and witnesses and their privacy and the protection of confidential information as provided for by law, including Chapter XIII of the present Code.

**Article 215**
**Qualifications of Interpreters or Translators**

1. A person serving as an interpreter or translator under the present code should be qualified to interpret or translate as follows:

1.1. if available, an interpreter or translator should be certified as an interpreter or translator in the relevant languages in compliance with regulations issued under Paragraph 2 of this Article.

1.2. if an interpreter or translator under paragraph 1, subparagraph 1.1 of this Article is unavailable, the interpreter or translator should have a degree in the language or languages involved and at least two (2) years experience as an interpreter or translator,

1.3. if an interpreter or translator under paragraph 1, subparagraphs 1.1 and 1.2 of this Article is unavailable, the interpreter or translator should have at least four (4) years experience as an interpreter or translator in the language or languages involved, or

1.4. if an interpreter or translator under paragraph 1, subparagraphs 1.1, 1.2 and 1.3 of this Article is unavailable, the interpreter or translator should have demonstrated sufficient proficiency in the relevant languages to interpret or translate accurately and without bias.

2. The Ministry of Justice is empowered to issue regulations on the certification of translators and interpreters as competent to interpret and translate professionally in criminal proceedings in those languages commonly used in criminal proceedings.

# CHAPTER XII
## EVIDENCE DURING INVESTIGATION

### A. Application of the Defendant or the Injured Party to Collect or Preserve Evidence

#### Article 216
#### Application by the Defendant to Collect or Preserve Evidence

1. During the investigation the defendant may apply to the state prosecutor to collect certain evidence.

2. The state prosecutor shall collect such evidence or testimony if it is relevant to the proceedings and:

2.1. if there is a danger that the evidence or testimony will be lost or is unlikely to be available for trial,

2.2. if such evidence may justify the release of the defendant from detention on remand,

2.3. if the evidence or testimony sought has a reasonable probability that it will be exculpatory, or

2.4. if there are other justified reasons to collect such evidence or testimony.

3. If the defendant or defence counsel applies to the state prosecutor to collect certain evidence that is located outside of Kosovo, the state prosecutor may collect such evidence in compliance with Article 219 of this Code.

4. If the state prosecutor rejects the application to collect evidence, he or she shall render a decision supported by reasoning and notify the defendant. The defendant may appeal such decision to the pre-trial judge.

## Article 217
## Application by the Injured Party to Collect or Preserve Evidence

1. During the investigation the injured party may apply to the state prosecutor to collect certain evidence.

2. The state prosecutor shall collect such evidence or testimony if it is relevant to the proceedings and:

2.1. if there is a danger that the evidence or testimony will be lost or is unlikely to be available for trial,

2.2. if such evidence may be efficient to take with other evidence sought by the state prosecutor, or

2.3. is directly relevant to a claim filed by the injured party in the criminal proceedings.

3. If the injured party applies to the state prosecutor to collect certain evidence that is located outside of Kosovo, the state prosecutor may collect such evidence in compliance with Article 219 of this Code.

4. If the state prosecutor rejects the application to collect evidence, he or she shall render a decision supported by reasoning and notify the injured party, the injured party's authorized representative, or victim advocate. The injured party, the injured party's authorized representative, or victim advocate may appeal such decision to the pre-trial judge.

## Article 218
## Declaration of Damages by Injured Party

1. During the investigatory stage or within sixty (60) days of the filing of the indictment, the injured party may file a simple declaration of damage from the charged criminal offence. The victim advocate may assist the injured party in filing a declaration of damage. The victim advocate's office may issue a standard form for a declaration on damage that shall satisfy this Article.

2. The declaration may be filed anonymously if permitted by the Court and if the identity of the victim is disclosed to the Court.

3. The Declaration of Damage shall describe:

3.1. the person who caused the damage,

3.2. how the damage occurred,

3.3. how the damage was caused by, or was a foreseeable result of the criminal offence, and

3.4. if there were costs due to the damage or the loss caused by the criminal offence, the declaration shall provide a reasonable estimate of the costs or losses.

4. Damaged party who has not properly filed a declaration of damage.

5. A Court may consider a damaged party who refuses to file a declaration of damage not to be a party to the criminal proceedings.

6. If the declaration of damage provides an estimate of the costs or losses, it shall also serve as a property claim.

**Article 219**
**International Requests**

1. The state prosecutor or competent judge shall, at the earliest possible time, initiate international legal requests, requests for extraditions, requests for prisoner transfers or requests for executions of judgments.

2. All international requests shall be made in compliance with the Law on International Legal Cooperation in Criminal Matters, Nr. 04/L-31, or successor law.

3. The state prosecutor or competent judge shall make all international requests in consultation and compliance with the Office of International Legal Cooperation in the Ministry of Justice, or successor agency.

4. The Minister of Justice shall have final approval of all international requests made to foreign governments.

5. The state prosecutor or competent judge shall not speak to media about pending or intended international requests but shall refer the media to the Ministry of Justice.

6. Evidence obtained informally from foreign governments, law enforcement agencies, prosecutors or courts shall be admissible if accompanied by a statement from that foreign government, law enforcement agency, prosecutor or court which demonstrates that the evidence is reliable and was obtained in accordance with the law of that foreign state. Such evidence may not form the sole or decisive basis for a finding of guilt. Such information shall be accompanied at the main trial by a notice of corroboration under Article 263 of this Code.

7. If the Office of International Legal Cooperation receives and approves a request for assistance from a foreign government, the Office of International Legal Cooperation shall assign the request to the appropriate state prosecutor, who shall initiate a criminal proceeding with the limited purpose of obtaining the requested information or performing

the requested action. If the requested information or action is not permitted by the law or is not possible to obtain or perform, the state prosecutor shall inform the Office of International Cooperation and shall terminate the criminal proceeding.

# CHAPTER XIII
## PROTECTION OF INJURED PARTIES AND WITNESSES

### Article 220
### Definitions

1. For purposes of the present Chapter, the following definitions shall apply:

1.1. the term **"serious risk**" means a warranted fear of danger to the life, physical or mental health or property of the injured party, cooperative witness, witness or a family member of an injured party or witness as an anticipated consequence of the injured party, cooperative witness or witness giving evidence during an examination or testimony in court;

1.2. the term "**family member**" means the spouse, extra-marital partner, a person blood relation in a direct line, an adoptive parent, an adopted child, a brother, a sister or a foster parent;

1.3. the term **"anonymity**" means the absence of revealed information regarding the identity or whereabouts of an injured party, cooperative witness or witness or the identity or whereabouts of a family member of an injured party, cooperative witness or witness or the identity of any person who is associated with an injured party, cooperative witness or a witness.

### Article 221
### Petition for Protective Measure or Anonymity

1. At any stage of the proceedings, the state prosecutor, defendant, defence counsel, injured party, cooperative witness or witness may file a written petition with the competent judge for a protective measure or an order for anonymity if there is a serious risk to an injured party, cooperative witness, witness or his or her family member.

2. The petition shall contain a declaration of factual allegations. The competent judge shall file the petition and declaration in a sealed envelope and only the competent judge over the stage of the proceedings and the state prosecutor may have access to the sealed contents.

3. After receipt of the petition, the competent judge may order appropriate protective measures for an injured party, cooperative witness or a witness, or if he or she deems it

necessary prior to making a decision on the petition, convene a closed hearing to hear further information from the state prosecutor, the defendant, the defence counsel, the injured parties, cooperative witness or the witnesses. In the case of a petition requesting an order made pursuant to Articles 223 and 224 of the present Code, the competent judge shall convene a hearing in closed session.

4. The competent judge may make an order for a protective measure for an injured party, cooperative witness or witness where he or she determines that:

4.1. there exists a serious risk to the injured party, cooperative witness, witness or his or her family member; and

4.2. the protective measure is necessary to prevent serious risk to the injured party, cooperative witness, witness or his or her family member.

5. The state prosecutor shall be immediately notified by the competent judge of any petition made by the defendant, defence counsel, injured party, cooperative witness or witness and is entitled to make recommendations and statements regarding the facts to the competent judge at a hearing and in writing if there is no hearing ordered by the competent judge.

**Article 222**
**Order for Protective Measures**

1. The competent judge may order such protective measures as he or she considers necessary, including but not limited to:

1.1. omitting or expunging names, addresses, place of work, profession or any other data or information that could be used to identify the injured party, cooperative witness or witness;

1.2. non-disclosure of any records identifying the injured party, cooperative witness or witness;

1.3. efforts to conceal the features or physical description of the injured party, cooperative witness or witness giving testimony, including testifying behind an opaque shield or through image or voice-altering devices, contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, or video-taped examination prior to the court hearing with the defence counsel present;

1.4. assignment of a pseudonym;

1.5. closed sessions to the public:

1.6. orders to the defence counsel not to disclose the identity of the injured party,

cooperative witness or witness or not to disclose any materials or information that may lead to disclosure of identity;

1.7. temporary removal of the defendant from the courtroom if a cooperative witness or witness refuses to give testimony in the presence of the defendant or if circumstances indicate to the court that the witness will not speak the truth in the presence of the defendant; or

1.8. any combination of the above methods to prevent disclosure of the identity of the injured party, cooperative witness or witness.

2. Other provisions of the present Code shall not apply where they conflict with protective measures under paragraph 1 of the present Article.

3. An order for a protective measure shall be in writing and shall not contain any information which could lead to the discovery of the identity of the injured party, cooperative witness, witness or his or her family member, or which could reveal the existence of, or expose to serious risk, the operational security of ongoing and confidential police investigations.

4. Once a protective measure has been ordered in respect of an injured party, cooperative witness or witness, the petitioning party may subsequently request an amendment of a protective measure. Only the competent judge of the stage of the proceedings may amend or rescind the order, or authorize the release of protected material to another judge for use in other proceedings. If, at the time of a request for amendment or release, the original court no longer has jurisdiction over the case, the competent judge at the court which has jurisdiction may authorize such amendment or release, after giving written notice to, and hearing any argument of, the state prosecutor.

## Article 223
## Order for Anonymity from the Public

1. Where protective measures under Article 222 paragraph 1 of the present Code are insufficient to guarantee the protection of a witness proposed by the defence, the competent judge may in exceptional circumstances make an order for anonymity whereby a witness proposed by the defence shall remain anonymous to the public, the injured party and their legal representatives or authorized representatives.

2. Before making an order for anonymity, the competent judge shall conduct a hearing, in a closed session, at which the witness at issue and other persons deemed necessary, such as police and military personnel providing security, shall be examined. Apart from these persons, only the state prosecutor, essential court and prosecution personnel and the defence counsel may be present.

3. The competent judge can only issue an order for anonymity if he or she first finds that:

3.1. there exists a serious risk to the witness or his or her family member and the complete anonymity of the witness is necessary to prevent such serious risk;

3.2. the testimony of the witness is relevant to a material issue in the case so as to make it unfair to compel the defence to proceed without it;

3.3. the credibility of the witness has been fully investigated and disclosed to the judge in a closed session; and

3.4. the need for anonymity of the witness to provide justice outweighs the effect of the interest of the public or the injured party in knowing the identity of the witness in the conduct of the proceedings.

**Article 224**
**Order for Anonymity from the Defendant**

1. Where protective measures provided under Article 222 paragraph 1 of the present Code are insufficient to guarantee the protection of an injured party, cooperative witness or witness not proposed by the defence, the competent judge may in exceptional circumstances make an order for anonymity whereby the injured party, cooperative witness or witness shall remain anonymous to the defendant and the defence counsel.

2. The state prosecutor shall request an order for anonymity from the defendant only by a written motion filed under seal which describes facts that demonstrate that:

2.1. there exists a serious risk to the injured party, cooperative witness or witness who would be subject to the order for anonymity, and

2.2. anonymity would prevent the serious risk to the injured party, cooperative witness or witness.

3. A court shall not issue an order under this Article based on a request under paragraph 2 of this Article which is based on a general description of danger to witnesses in similar cases.

4. Before making an order for anonymity, the competent judge shall conduct a hearing, in a closed session, at which the injured party, cooperative witness or witness at issue and other persons deemed necessary, such as police or military personnel providing security, shall be examined. Apart from these persons, only the state prosecutor, and essential court and prosecution personnel may be present.

5. The competent judge can only issue such order for anonymity if he or she finds that:

5.1. there exists a serious risk to the injured party, cooperative witness or witness or to his or her family member and the complete anonymity of the injured party, cooperative witness or witness is necessary to prevent such serious risk;

5.2. the testimony of the injured party, cooperative witness or witness is relevant to a material issue in the case so as to make it unfair to compel the prosecution to proceed without it;

5.3. the credibility of the injured party, cooperative witness or witness has been fully investigated and disclosed to the competent judge in a closed session; and

5.4. the need for anonymity of the injured party, cooperative witness or witness to provide justice outweighs the interest of the defendant in knowing the identity of the injured party, cooperative witness or witness in the conduct of the defence.

**Article 225**
**Form of Order for Anonymity**

1. An order for anonymity shall be in writing and shall not contain any information which could lead to the discovery of the identity of the injured party, cooperative witness, witness or his or her family member or which could reveal the existence of or expose to serious risk the operational security of ongoing and confidential police investigations.

2. Information in the record of the closed session shall be removed from the record and sealed and stored as an official secret immediately after the identification and prior to examination of the injured party, competent witness or witness.

3. The restricted data may be inspected and used by the state prosecutor and the competent judge only in an appeal against an order issued under Article 223 or 224 of the present Code. An appeal against an order for anonymity and the use of methods to prevent disclosure of identity to the public, injured parties, witnesses, defence counsel and the defendant may be made to a review panel, if the order has been issued by a pre-trial judge. Otherwise it may only be appealed in an appeal of the judgment.

**Article 226**
**Prohibition of Questions that may Reveal Identity**

The court shall prohibit all questions to which the answers could reveal the identity of an injured party, cooperative witness or witness protected by a protective measure or restricted information.

**Article 227**
**Witness Protection**

Special and Extraordinary measures, ways and procedures for witness protection and cooperative witnesses are governed by the Law on Witness Protection, Law No. 04/L-015.

### Article 228
### Additional Protective Measures in Cases of Domestic Violence

Protection measures in cases of Domestic Violence before the Basic Court are governed by the Law on Protection Against Domestic Violence, Law No. 03/L-182.

## CHAPTER XIV
## ALTERNATIVE PROCEEDINGS

### Article 229
### Alternative Proceedings

The state prosecutor shall consider and use alternative proceedings under this chapter or diversion under Article 184 of the present Code when such proceedings or diversion would comply with the duties and competencies of the state prosecutor under Article 49 of the present Code.

### Article 230
### Provisional Suspension of Proceedings

1. The state prosecutor may suspend the criminal prosecution of a criminal offence punishable by a fine or imprisonment of up to three (3) years, with the consent of the injured party taking into account the nature, circumstances and character of the criminal offence and the perpetrator, if the defendant undertakes to behave as instructed by the state prosecutor and to fulfill certain obligations to relieve or remove the harmful consequences of the criminal offence, including:

1.1. the elimination of, or compensation for, damage;

1.2. the payment of a contribution to a public institution or a charity or fund for compensation for damage to victims of criminal offences; or

1.3. the performance of work in public interest.

2. If the defendant fulfils the obligation within a prescribed period of time not exceeding six (6) months, the criminal report shall be dismissed or the investigation shall be terminated.

3. If the defendant fails to act in accordance with his or her undertaking under paragraph 1 of the present Article, the state prosecutor may recommence the prosecution of the criminal offence.

4. The present Article shall not apply in cases of domestic or sexual violence.

**Article 231**
**Conditions when Prosecution is not Obligatory**

1. The state prosecutor shall not be obliged to initiate a criminal prosecution or may abandon prosecution:

1.1. if the criminal law provides that the court may waive the punishment of a perpetrator of a criminal offence and the state prosecutor determines that in view of the actual circumstances of the case a judgment alone without a criminal sanction is not necessary; or

1.2. if the perpetrator of a criminal offence punishable by a fine or imprisonment of up to one (1) year expresses genuine remorse over the criminal offence and has prevented harmful consequences or compensated for damage and the state prosecutor determines that in view of the actual circumstances of the case a criminal sanction would not be justified.

**Article 232**
**Mediation Proceedings**

1. The state prosecutor may refer the criminal report on a criminal offence punishable by a fine or by imprisonment of up to three (3) years for mediation. Before so doing, the state prosecutor shall take account of the type and nature of the act, the circumstances in which it was committed, the personality of the perpetrator and his or her prior convictions for the same criminal offence or for other criminal offences, as well as his or her degree of criminal liability.

2. The mediation shall be conducted by an independent mediator. The mediator shall be obliged to accept a case referred by the state prosecutor and shall be obliged to take measures to ensure the contents of the agreement are proportionate to the seriousness and consequences of the act.

3. An agreement may only be reached through mediation with the consent of the defendant and the injured party.

4. On receiving notification that an agreement has been reached, the state prosecutor shall dismiss the criminal report. The mediator is obliged to inform the state prosecutor of a failure to reach an agreement and the reasons for such failure. The length of time for reaching an agreement may not exceed three (3) months.

5. An agreement concluded due to mediation shall be enforceable, *mutatis mutandis*, under the Law on Obligational Relationships and the Law on Mediation, or successor law.

**Article 233**
**Negotiated Pleas of Guilty**

1. At any time prior to the filing of the indictment, the state prosecutor and the defense counsel may negotiate the terms of a written plea agreement under which the defendant and state prosecutor agree to the charges of an indictment and the defendant agrees to plead guilty in return for:

1.1. the state prosecutor's agreement to recommend a more lenient punishment to the court, but not under one below the minimum provided for by law or the minimum set under paragraph 7 of this Article; or

1.2. other considerations in the interest of justice, such as the waiver of the punishment as foreseen by Article 234 of the present Code.

2. At any time following the filing of the indictment and before the completion of the main trial, the state prosecutor and the defense counsel may negotiate the terms of a written plea agreement under which the defendant agrees to plead guilty in return for:

2.1. the state prosecutor's agreement to recommend a more lenient punishment to the court, but not under one below the minimum provided for by law or the minimum set under paragraph 7 of this Article; or

2.2. other consideration in the interests of justice, such as the waver of the punishment as foreseen by Article 234 of the present Code.

3. In cases when the defendant wishes to enter into a guilty plea agreement, the defendant's counsel, or the defendant if not represented by counsel, shall request the state prosecutor for a preliminary meeting to commence negotiations for a plea agreement. At all such negotiations, a defendant must be represented by counsel, in accordance with paragraph 1 of this Article.

4. Upon receiving a request for a preliminary meeting, the state prosecutor shall inform the chief of his or her respective office, who shall give written authorization for such meeting for plea agreement discussions, at which the defendant's statements will be given limited immunity as provided in paragraph 11 of this Article. All plea agreements must be in writing and cleared by the Chief of the respective state prosecutor's office before being formally offered to the defendant.

5. In cases when the state prosecutor wishes to enter into a guilty plea agreement, the state prosecutor shall obtain the approval of the Chief of his or her respective office to commence negotiations for a plea agreement. Upon the approval of the Chief of his or her respective office, the state prosecutor shall either:

5.1. send a letter to the defense counsel with a description of the offered plea agreement, including the terms required under paragraph 12 of this Article, or

5.2. meet with the defense counsel and defendant to negotiate the possibility of and terms for a plea agreement. paragraph 4 of this Article shall apply *mutatis mutandis*.

6. The written plea agreement may include a provision that the state prosecutor will make an application under Article 236 of the present Code, to the court to issue an order declaring the defendant be a "co-operative witness" as defined in Article 235 of the present Code. If such defendant provides assistance, as a co-operative witness, the state prosecutor shall recommend to the court more lenient punishment in accordance with paragraph 7 of this Article that reflects the extent of the assistance and cooperation provided by the defendant, while taking into account the severity of the criminal charges.

7. Pursuant to a written plea agreement, the state prosecutor may recommend more lenient punishment under paragraph 1 sub-paragraph 1.1, paragraph 2 sub-paragraph 2.1 and paragraph 6 of this Article, but only to the extent allowed under the following formulation:

7.1. for plea agreements consummated during the main trial, a defendant may be sentenced to a minimum of ninety percent (90%) of the minimum possible imprisonment set by the appropriate provisions of the Criminal Code.

7.2. for plea agreements consummated prior to the main trial, a defendant may be sentenced to a minimum of eighty percent (80%) of the minimum possible imprisonment set by the appropriate provisions of the Criminal Code.

7.3. for plea agreements consummated prior to the main trial where the defendant participates as a cooperative witness and provides evidence in a criminal proceeding, a defendant may be sentenced to a minimum of sixty percent (60%) of the minimum possible imprisonment set by the appropriate provisions of the Criminal Code.

7.4. for plea agreements consummated prior to the main trial where the defendant participates as a cooperative witness in a covert investigation and provides evidence in a criminal proceeding, a defendant may be sentenced to a minimum of forty percent (40%) of the minimum possible imprisonment set by the appropriate provisions of the Criminal Code.

8. The defendant and the defense counsel shall be present during the plea negotiations and must agree to the terms of any written plea agreement before it may be presented to the court. When the defendant is not participating as a cooperative witness, the following conditions apply. The state prosecutor shall inform the injured party of the negotiated plea agreement, once the agreement reaches its final form. When the injured party has a claim for damages arising from the criminal conduct that has been filed or is charged in the indictment, the plea agreement must address the injured party's claim, and the state prosecutor must inform the injured party that the defendant is seeking to negotiate a plea agreement. The injured party must be given an opportunity to present a statement to the court regarding such property claim prior to the court's acceptance of the plea agreement.

9. Where the defendant shall participate as a cooperative witness, the state prosecutor shall ensure that the injured party's claim for damages is treated by the plea agreement. When the injured party has a claim for damages arising from the criminal conduct that has been filed or is charged in the indictment, the plea agreement must treat the injured party's claim. The injured party must be given an opportunity to present a statement to the court regarding such property claim prior to the court's sentencing of the defendant pursuant to the plea agreement.

10. The court shall not participate in the plea negotiations, but may set a reasonable deadline not longer than three (3) months for the conclusion of the negotiations to prevent delay of the procedure.

11. At any time prior to acceptance of the plea agreement by the court, either the state prosecutor or the defendant may reject a plea agreement and the single trial judge or presiding trial judge shall schedule the court trial as provided for under Chapter XIX of this Code. If the state prosecutor and the defense counsel or defendant fails to reach a guilty plea agreement, or if the plea agreement is not accepted by the court, any statements of the defendant made during the plea negotiations, as provided in paragraph 3, 4 and 5 of this Article, shall be inadmissible as evidence in the court trial or other related proceedings.

12. A written plea agreement must state every term of the agreement, must be signed by the chief prosecutor of the respective office, the defense counsel and the defendant, and shall be binding on each party. At a minimum, the plea agreement must specify:

12.1. the charges to which the defendant will plead guilty;

12.2. whether the defendant agrees to cooperate;

12.3. the rights that are waived;

12.4. defendant's liability for restitution to an injured party and confiscation of all assets subject to forfeiture under Chapter XVIII of the present Code.

13. The plea agreement may also include a provision in which the parties agree on a range of punishment to be proposed by the state prosecutor if the defendant cooperates substantially, whereas if the court imposes a sentence outside of this range to the detriment of one party, that party shall be entitled to appeal for the decision on the sentence.

14. The written plea agreement must be presented to the court in a hearing open to the public, except as provided in paragraph 16 of this Article.

15. If the written plea agreement is negotiated prior to indictment, a separate indictment for the defendant subject to the plea agreement shall be filed concurrent with the plea agreement. They may both be presented in a sealed and stamped envelope. The initial hearing with the single trial judge or presiding trial judge may also serve as a hearing under this Article.

16. The court may officially accept or reject the plea agreement in accordance with the factors to be considered in paragraph 18 of this Article. The guilty plea agreement shall enter into effect only after it is officially accepted by the court on the record.

17. If the defendant agrees to be a co-operative witness and when the foreseen measures in Chapter XIII of the present Code are ensured to him/her, upon the request of either party, the court may order the hearing to consider the guilty plea agreement to be closed to the public and may order the written plea agreement to be sealed.

18. In considering whether to accept the guilty plea agreement, the court must question the defendant, his or her defense counsel and the state prosecutor, and shall determine whether:

18.1. the defendant understands the nature and the consequences of the guilty plea;

18.2. the guilty plea is voluntarily made by the defendant after sufficient consultation with defense counsel, if defendant has a defense counsel, and the defendant has not been forced to plead guilty or coerced in any way;

18.3. the guilty plea is supported by the facts and material proofs of the case that are contained in the indictment, by the materials presented by the prosecutor to supplement the indictment and accepted by the defendant, and any other evidence, such as the testimony of witnesses, presented by the prosecutor or defendant; and

18.4. none of the circumstances under Article 253, paragraphs 1 and 2 of this Code exists.

19. In considering the guilty plea agreement, the court must invite the views of the state prosecutor, the defense counsel and the injured party. If the defendant's agreement to cooperate and plead guilty is under seal pursuant to paragraph 17 of this Article, the court shall permit the injured party to make a statement at the end of defendant's cooperation, prior to sentencing.

20. If the court is not satisfied that all of the conditions set forth in paragraph 18 of the present Article are fulfilled, the court shall reject the guilty plea and the case shall proceed to trial as provided for by this Code.

21. If the court is satisfied that all of the conditions in paragraph 18 of the present Article are established, the court shall accept the guilty plea agreement and order that the agreement be filed with the court. The court shall set a date for the parties to make their statements regarding sentencing after which the Court shall impose the punishment. This date, however, may be deferred for the defendant to serve as a co-operative witness.

22. After the court accepts the guilty plea and the written plea agreement, but before the punishment is imposed, the court may not permit defendant to withdraw the guilty plea or the state prosecutor to rescind the plea agreement unless the court finds that any of the

conditions in paragraph 18 of this Article are no longer satisfied. The party seeking to withdraw from the agreement bears the burden of proof in making such application to the court.

**Article 234**
**Waiver of Punishment**

1. Upon an application by the state prosecutor, the court may waive the punishment of a perpetrator who is not a co-operative witness or reduce such punishment in accordance with Article 75 of the Criminal Code when the perpetrator voluntarily cooperated and his or her cooperation prevented any further criminal offences by others, or led to a successful prosecution of other perpetrators of a criminal offence.

2. If the perpetrator is found guilty of a criminal offence for which a punishment of at least ten (10) years of imprisonment can be imposed, the court shall not suspend or waive the punishment.

**Article 235**
**Cooperative Witnesses**

1. For the purposes of the present Chapter, the term "co-operative witness" means a suspect or a defendant with respect to whom the indictment has not yet been read at the main trial and who is expected to give evidence in court which is:

1.1. likely to prevent further criminal offences by another person;

1.2. likely to lead to the finding of truth in criminal proceedings;

1.3. voluntarily made with full agreement to testify truthfully in court;

1.4. determined by the court to be truthful and complete; or

1.5. such that it might lead to a successful prosecution of other perpetrators of a criminal offence.

**Article 236**
**Application to Declare Cooperative Witness**

1. The state prosecutor may make a written application to a court for an order declaring a person to be a co-operative witness. The application shall contain a separate declaration of factual allegations by the state prosecutor.

2. The state prosecutor may make a reasoned request for an order to keep the factual allegations in the declaration secret from other parties and their legal counsel.

3. The court may, at any time after receiving a request for secrecy from the state prosecutor, make an order for secrecy with respect to factual allegations contained in a declaration.

4. Any violation of an order for secrecy established under paragraph 2 of the present Article shall be prosecuted by the state prosecutor under Article 202 of the Criminal Code and Article 202, paragraph 2, of the Criminal Code shall not apply.

**Article 237**
**Procedure to Declare Cooperative Witness**

1. Upon receiving the application, the pre-trial judge, single trial judge or the presiding judge shall hear the application in a session which is closed to the public. The state prosecutor and the legal counsel of the cooperative witness may participate in a hearing to evaluate the credibility of the cooperative witness and to ensure that the requirements of Article 235 of the present Code are met. Statements made to the judge during this examination cannot be used in criminal proceedings against the cooperative witness or against any other person as evidence to support a finding of guilt.

2. The provisions applicable to the examination of witnesses shall be applied *mutatis mutandis* to the examination of the cooperative witness, and the examination shall be recorded pursuant to the provisions of the present Code.

3. At the conclusion of the hearing the pre-trial judge, single trial judge or the presiding trial judge may issue an order declaring a person to be a co-operative witness if he or she determines that the criteria for a cooperative witness, as provided for in Article 235 of the present Code, are met.

4. The order shall specify:

4.1. the criminal offences, by describing the acts and their qualifications, for which the prohibition of the initiation or continuation of criminal proceedings or the imposition of punishment is ordered;

4.2. a prohibition on the initiation or continuation of criminal proceedings against the co-operative witness and on the imposition of a punishment on the co-operative witness for the criminal offences specified in the order;

4.3. the nature and substance of cooperation given by the co-operative witness;

4.4. the conditions for the revocation of the order.

5. The pretrial judge, single trial judge or presiding judge shall not issue such order if the co-operative witness is suspected by the state prosecutor or charged by indictment of being the organizer or the leader of a group of two (2) or more persons which commits a criminal offence.

6. The order shall not prohibit the initiation or continuation of criminal proceedings against a co-operative witness for criminal offences committed after the order was issued or for criminal offences punishable by imprisonment of at least ten (10) years.

### Article 238
### Revocation of Declaration of Cooperative Witness

1. Upon an application by the state prosecutor, the order provided for in Article 237 of the present Code may be revoked by a review panel if it is established that the testimony of the co-operative witness was false in any relevant part or that the co-operative witness omitted to state the complete truth.

2. The co-operative witness shall be warned of the consequences of giving testimony that is false in any relevant part or purposely omitting to state the complete truth before being heard by the pre-trial judge under Article 237 paragraph 1 of the present Code, and before giving testimony under the protection of the order. Any such testimony must be either in written form in the language of the co-operative witness, signed by him or her to acknowledge its truthfulness, or recorded on audio- or video-tape which is determined to be authentic by the court.

### Article 239
### Defendant Shall Receive Notice Identifying Cooperative Witness

The defendant against whom the cooperative witness is expected to testify shall be served with a copy of the order declaring the person to be a cooperative witness prior to the main trial of the defendant.

## CHAPTER XV
## INDICTMENT AND PLEA STAGE

### Article 240
### Criminal Trial Only Conducted after Filing of Indictment

1. After the investigation has been completed and when the state prosecutor considers that the information that he has in relation to the criminal offence and the offender provide a well-grounded suspicion that the defendant has committed a criminal offence or criminal offences, proceedings before the court may be conducted only on the basis of an indictment filed by the state prosecutor.

2. If the investigation is completed and there is insufficient evidence to support a well-grounded suspicion that the defendant has committed a criminal offence or criminal offences, the state prosecutor shall file a ruling that terminates the investigation.

**Article 241**
**The Indictment**

1. The indictment shall contain:

1.1. an indication of the court before which the main trial is to be held; and

1.2. the first name and surname of the defendant and his or her personal data;

1.3. an indication as to whether and for how long detention on remand or other measures to ensure the presence of defendant were ordered against the defendant, whether he or she is at liberty and, if he or she was released prior to the filing of the indictment, how long he or she was held in detention on remand;
1.5. the legal name of the criminal offence with a citation of the provisions of the Criminal Code;

1.4. the time and place of commission of the criminal offence, the object upon which and the instrument by which the criminal offence was committed, and other circumstances necessary to determine the criminal offence with precision;

1.6. a recommendation as to evidence that should be presented at the main trial along with the names of witnesses and expert witnesses, documents to be read and objects to be produced as evidence.

1.7. an explanation of the grounds for filing the indictment on the basis of the results of the investigation and the evidence which establishes the key facts;

1.8. if a special investigative opportunity has been conducted, the indictment shall name the judges on the panel who heard the special investigative opportunity.

1.9. the indictment shall identify with specificity any building, immovable property, movable property, funds or other asset subject to forfeiture. The indictment must also describe the appropriate proof required to justify the forfeiture under Chapter XVIII of the present Code.

2. If the defendant is at liberty, the state prosecutor may make a motion in the indictment that detention on remand be ordered; if the defendant is in detention on remand, the state prosecutor may make a motion that he or she be released.

3. A single indictment may be filed for several criminal offences or against several defendants only when, in accordance with Article 35 of the present Code, joint proceedings may be conducted.

**Article 242**
**Procedure for Filing the Indictment**

1. The indictment shall be filed in the competent court in as many copies as there are defendants and their defense counsel, plus one (1) copy for the court. A complete file on the investigation shall also be submitted to the court by the state prosecutor.

2. The Court shall assign a single trial judge or presiding trial judge and panel based on an objective and transparent case allocation system, as appropriate. If a special investigative opportunity has been conducted, one of the panel judges shall be assigned to be the single trial judge or either the presiding trial judge or a judge on the trial panel.

3. The single trial judge or presiding trial judge may *ex officio* determine whether it has jurisdiction over the matter within the indictment.

4. The single trial judge or presiding trial judge shall immediately schedule an initial hearing to be held within thirty (30) days of the indictment being filed.

5. If the defendant is being held in detention on remand, the initial hearing shall be held at the first opportunity, not to exceed fifteen (15) days from the indictment being filed.

6. The single trial judge or presiding trial judge shall notify the state prosecutor, defendants and defence attorneys of the time and place of the initial hearing.

**Article 243**
**Filings Supplemental to the Indictment**

1. Concurrent with filing the indictment, the state prosecutor shall file the following documents if appropriate:

> 1.1. the state prosecutor shall file a notice of corroboration under Article 263 of the present Code with any statement taken under Article 132 of the present Code or evidence obtained under Article 219, paragraph 6 of the present Code that he or she intends to submit as direct evidence without the presence of the witness. The notice of corroboration shall describe the independent evidence that corroborates the statement that the state prosecutor intends to submit as direct evidence. This notice of corroboration may be supplemented or filed at a later date if a witness for whom this provision applies is not longer available to testify at the main trial.
>
> 1.2. the state prosecutor shall file a request to continue or implement any measure to ensure the presence of the defendant. Articles 173 to 193 of the present Code shall apply *mutatis mutandis* to any request under this paragraph.

2. The state prosecutor may file notices of corroboration or requests under this Article at other times if he or she could not know the basis for filing the notice or request at the time the indictment was filed.

**Article 244**
**Materials Provided to Defendant upon Indictment**

1. No later than at the filing of the indictment the state prosecutor shall provide the defense counsel or lead counsel with one (1) copy of the following materials or copies thereof which are in his or her possession, control or custody, including those in the possession, control or custody of the police, if these materials have not already been given to the defense counsel during the investigation:

1.1. records of statements or confessions, signed or unsigned, by the defendant;

1.2. names of witnesses whom the state prosecutor intends to call to testify and any prior statements made by those witnesses;

1.3. information identifying any persons whom the state prosecutor knows to have admissible and exculpatory evidence or information about the case and any records of statements, signed or unsigned, by such persons about the case;

1.4. results of physical or mental examinations, scientific tests or experiments made in connection with the case;

1.5. criminal reports and police reports; and

1.6. a summary of, or reference to, tangible evidence obtained in the investigation.

2. The statements of the witnesses shall be made available in a language which the defendant understands and speaks.

3. After the filing of the indictment, the state prosecutor shall provide the defense counsel with any new materials provided for in paragraph 1 of the present Article within ten (10) days of their receipt.

4. The provisions of the present Article are subject to the measures protecting injured parties, witnesses and their privacy and confidential information, as provided for by law.

**Article 245**
**The Initial Hearing**

1. At the initial hearing, the state prosecutor, defendant or defendants, and defence counsel shall be present.

2. During the initial hearing, the single trial judge or presiding trial judge shall provide copies of the indictment to the defendant or defendants, if they have not already received copies of the indictments.

3. During the initial hearing, the single trial judge or presiding trial judge shall rule on any motion to extend or implement measures to ensure the presence of the defendant.

4. During the initial hearing, the single trial judge or presiding trial judge shall ensure that the state prosecutor has fulfilled the obligation relating to the disclosure of evidence under Article 244 of the present Code.

5. During the initial hearing, the single trial judge or presiding trial judge shall schedule a second hearing no less than thirty (30) days after the initial hearing, and no more than forty (40) days after the initial hearing. In the alternative, the single trial judge or presiding trial judge may only require the filing of motions by a date set no more than thirty (30) days after the initial hearing.

6. The single trial judge or presiding trial judge shall inform the defendant and defence counsel that prior to the second hearing, they must:

6.1. file any objections to evidence listed in the indictment,

6.2. file any requests to dismiss the indictment as legally prohibited, and

6.3. file any requests to dismiss the indictment for failing to describe a criminal offence under the law.

7. No witnesses or expert witnesses shall be examined or other evidence presented during the initial hearing, unless the witness is required for the decision to extend or implement measures to ensure the presence of the defendant under paragraph 3 of this Article.

**Article 246**
**Plea**

1. At the beginning of the initial hearing the single trial judge or presiding trial judge shall instruct the defendant of the rights not to plead his or her case or to answer any questions and, if he or she pleads his or her case, not to incriminate himself or herself or his or her close relative, nor to confess guilt; to defend himself or herself in person or through legal assistance by a defence counsel of his or her own choice; to object to the indictment; and to challenge the admissibility of evidence presented in the indictment.

2. The single trial judge or presiding trial judge shall then satisfy himself or herself that the right of the defendant to defence counsel has been respected and that the state prosecutor has fulfilled the obligation relating to the disclosure of evidence under Article 244 of the present Code.

3. The state prosecutor shall then read the indictment to the defendant.

4. The single trial judge or presiding trial judge shall satisfy himself or herself that the defendant understands the indictment and afford the defendant the opportunity to plead

guilty or not guilty. If the defendant has not understood the indictment, the single trial judge or presiding trial judge shall call on the state prosecutor to explain it in a way the defendant may understand without difficulty. If the defendant does not want to make any statement regarding his or her guilt, he or she shall be considered to have pleaded not guilty.

## Article 247
## Plea Agreements during the Initial Hearing

1. If a plea agreement under Article 233 of the present Code has been filed with the indictment, the single trial judge or presiding trial judge shall evaluate the plea agreement and accept it, reject it, or schedule a separate hearing in accordance with the procedures in Article 248 and Article 233 of the present Code.

2. If the defendant pleads not guilty, the court may not sentence the defendant unless the defendant changes his or her plea to guilty or the court convicts the defendant after the main trial, regardless of the plea agreement.

3. Hearings under this chapter may be held with measures of secrecy upon the request of the state prosecutor under Chapter XIII of the present Code.

4. A plea agreement under Article 233 of the present Code or a guilty plea under Article 248 of the present Code may be considered by the court at any time prior to the closing of the main trial.

## Article 248
## Guilty Pleas during the Initial Hearing

1. Where the defendant pleads guilty on each count of the indictment under Articles 246 or 247 of the present Code, the single trial judge or presiding trial judge shall determine whether:

1.1. the defendant understands the nature and consequences of the guilty plea;

1.2. the guilty plea is voluntarily made by the defendant after sufficient consultation with defence counsel, if the defendant has a defence counsel;

1.3. the guilty plea is supported by the facts of the case that are contained in the indictment, materials presented by the state prosecutor to supplement the indictment and accepted by the defendant; and any other evidence, such as the testimony of witnesses, presented by the state prosecutor or the defendant; and

1.4. the indictment does not contain any obvious legal errors or factual misstatements.

2. In considering the guilty plea of the defendant, the single trial judge or presiding trial judge may invite the views of the state prosecutor, the defence counsel and the injured party.

3. If the single trial judge or presiding trial judge is not satisfied that the matters provided for in paragraph 1 of the present Article are established, he or she shall render a ruling to reject the guilty plea and proceed with the initial hearing as if the guilty plea has not been made.

4. If the single trial judge or presiding trial judge is satisfied that the matters provided for in paragraph 1 of the present Article are established, he or she shall render a ruling to accept the guilty plea made by the defendant and shall proceed with sentencing, schedule a hearing to determine a matter relevant for sentencing, or shall suspend sentencing pending the completion of the cooperation by the defendant with the state prosecutor.

5. The defendant who does not plead guilty during the initial hearing may choose to change their plea to guilty at any time. For any defendant wishing to plead guilty under this paragraph, the single trial judge or presiding trial judge shall conduct, *mutatis mutandis,* a hearing under this Article.

**Article 249**
**Objections to Evidence**

1. Prior to the second hearing, the defendant may file objections to the evidence listed in the indictment, based upon the following grounds:

1.1. the evidence was not lawfully obtained by the police, state prosecutor, or other government entity;

1.2. the evidence violates the rules in Chapter XVI of the present Code;

1.3. there is an articulable ground for the court to find the evidence intrinsically unreliable.

2. The state prosecutor shall be given an opportunity to respond to the objection verbally or in writing.

3. For all evidence where an objection has been filed, the single trial judge or presiding trial judge shall issue a written decision with reasoning that permits or excludes the evidence.

4. Inadmissible evidence shall be excluded from the file and sealed. Such evidence shall be kept by the court, separated from other records and evidence. The excluded evidence may not be examined or used in the criminal proceedings, except in an appeal against the ruling on admissibility.

5. All evidence where no objection has been filed shall be admissible at the main trial, unless the court *ex officio* determines that the admission of the evidence would violate rights guaranteed to the defendant under the Constitution of the Republic of Kosovo.

6. Either party may appeal a decision under paragraph 3 of the present Article. The appeal must be made within five (5) days of the receipt of the written decision.

**Article 250**
**Request to Dismiss Indictment**

1. Prior to the second hearing, the defendant may file a request to dismiss the indictment, based upon the following grounds:

1.1. the act charged is not a criminal offence;

1.2. circumstances exist which exclude criminal liability;

1.3. the period of statutory limitation has expired, a pardon covers the act, or other circumstances exist which bar prosecution; or

1.4. there is not sufficient evidence to support a well-grounded suspicion that the defendant has committed the criminal offence in the indictment.

2. The state prosecutor shall be given an opportunity to respond to the request verbally or in writing.

3. The single trial judge or presiding trial judge shall issue a written decision with reasoning that either denies the request or dismisses the indictment.

4. Either party may appeal a decision under paragraph 3 of this Article. The appeal must be made within five (5) days of the receipt of the written decision.

**Article 251**
**Responses**

1. The state prosecutor shall have the opportunity to respond to an objection under Article 249 or a request under Article 250 of the present Code.

2. The response under paragraph 1 of the present Article may be verbal during the second hearing or in writing.

3. The single trial judge or presiding trial judge shall provide the state prosecutor with one (1) week to file a written response to an objection under Article 249 or a request under Article 250 of the present Code.

4. In lieu of a response to a request under Article 250 of the present Code, the state prosecutor may file an amended indictment under Article 252 of the present Code.

**Article 252**
**Amended Indictment**

1. If a request to dismiss the indictment filed by the defendant under Article 250 of the present Code can be remedied by amending the indictment, the state prosecutor shall file an amended indictment in accordance with Article 241 of the present Code within one (1) week of the second hearing.

2. If an amended indictment is filed against one defendant or multiple defendants, the single trial judge or presiding trial judge shall schedule an initial hearing under Article 245 of the present Code as though the indictment was new.

3. The defendants may file any new objections under Article 249 or requests under Article 250 of the present Code, but only as to those parts of the indictment that have been amended,

4. The defendant may renew his or her previous objections under Article 249 of the present Code or requests under Article 250 of the present Code. If he or she does not renew his or her previous objections or requests, the single trial judge or presiding trial judge shall conclude that those objections or requests are not relevant to the amended indictment and shall not consider them further.

5. The state prosecutor may only amend the indictment once, unless he or she has obtained new information that requires the indictment to be amended.

**Article 253**
**Dismissal of Indictment**

1. For every request to dismiss the indictment under Article 250 of the present Code, the single trial judge or presiding trial judge shall render a ruling to dismiss the indictment and to terminate the criminal proceedings if he or she determines that:

1.1. the act charged is not a criminal offence;

1.2. circumstances exist which exclude criminal liability;

1.3. the period of statutory limitation has expired, an amnesty or pardon covers the act, or other circumstances exist which bar prosecution; or

1.4. there is not sufficient evidence to support a well-grounded suspicion that the defendant has committed the criminal offence in the indictment.

2. In rendering a ruling under the present Article, the single trial judge or presiding trial judge shall not be bound by the legal designation of the criminal offence as set forth by the state prosecutor in the indictment.

3. In response to a request under Article 250 of the present Code, the state prosecutor may dismiss the indictment if the request under Article 250 of the present Code has merit.

## Article 254
## Second Hearing and Scheduling of the Main Trial

1. At the second hearing, the state prosecutor, defendant or defendants, and defence counsel shall be present, unless the single trial judge or presiding trial judge only require the filing of motions by the date of the second hearing.

2. During the second hearing, the single trial judge or presiding trial judge shall ensure that the defence counsel has fulfilled the obligation relating to the disclosure of evidence under Article 256 of the present Code.

3. During the second hearing, the single trial judge or presiding trial judge shall consider any objection under Article 249 or request under Article 250 of the present Code. He or she may request the state prosecutor to respond verbally during the hearing or in writing, in accordance with Articles 249-253 of the present Code.

4. During the second hearing, the single trial judge or presiding trial judge shall schedule any hearings in accordance with Article 255 of the present Code, if such hearings are needed.

5. During the second hearing the single trial judge or presiding trial judge shall schedule the main trial, unless he or she still must rule on a pending objection under Article 249 or request under Article 250 of the present Code.

6. If the single trial judge or presiding trial judge still must rule on a pending objection under Article 249 or request under Article 250 of the present Code, he or she shall issue a written decision with reasoning on the pending motions after the second hearing. He or she shall also schedule the main trial by a written order issued concurrently with the above written decision or decisions.

7. No witnesses or expert witnesses shall be examined or other evidence presented during the second hearing.

## Article 255
## Hearings to Determine Validity of Motions

1. If the single trial judge or presiding trial judge determines that a hearing is necessary to evaluate the defendant’s objection under Article 249 or a request under Article 250 of the

present Code, he or she shall schedule and conduct a hearing as soon as possible, but within three (3) weeks after the date of the second hearing.

2. The single trial judge or presiding trial judge shall issue a written decision with reasoning as soon as possible after the hearing held under this Article, but within three (3) weeks of the date of the hearing held under this Article.

### Article 256
### Materials Provided by the Defense

1. The defense shall provide to the state prosecutor at the second hearing:

1.1. notice of the intent to present an alibi, specifying the place or places at which the defendant claims to have been present at the time of the alleged criminal offence and the names of witnesses and any other evidence supporting the alibi;

1.2. notice of the intent to present a ground for excluding criminal liability, specifying the names of witnesses and any other evidence supporting such ground; and

1.3. notice of the names of witnesses whom the defense intends to call to testify.

2. The defense counsel may supplement the information provided in paragraph 1 of this Article to the state prosecutor in writing at any time prior to trial.

3. If the defense counsel has not performed the duty under paragraphs 1 and 2 of this Article and the court finds no justifiable reasons for such omission, the court may impose a fine of up to two hundred and fifty (250) EUR upon the defense counsel and inform the bar association of this.

## CHAPTER XVI
## EVIDENCE

### Article 257
### General Rules of Evidence

1. The rules of evidence set forth in the present Article shall apply in all criminal proceedings before the court and, in cases provided for by the present Code, to proceedings before a state prosecutor and the police.

2. Evidence obtained in violation of the provisions of criminal procedure shall be inadmissible when the present Code or other provisions of the law expressly so prescribe.

3. The court cannot base a decision on inadmissible evidence.

4. In any questioning or examination it is prohibited to:

4.1. impair the defendant's freedom to form his or her own opinion and to express what he or she wants by ill-treatment, induced fatigue, physical interference, administration of drugs, torture, coercion or hypnosis;

4.2. threaten the defendant with measures not permitted under the law;

4.3. hold out the prospect of an advantage not envisaged by law; and

4.4. impair the defendant's memory or his or her ability to understand.

5. The prohibition under paragraph 4 of the present Article shall apply irrespective of the consent of the subject of the questioning or examination.

6. If questioning or examination has been conducted in violation of paragraph 4 of the present Article, no record of such questioning or examination shall be admissible.

**Article 258**
**Evidence and Order within the Court**

1. The single trial judge or presiding trial judge shall be responsible for the orderly functioning of the main trial, including the taking of evidence.

2. The court may prevent evidence from being taken if:

2.1. if the taking of such evidence to supplement other evidence is unnecessary or is superfluous because the matter is common knowledge;

2.2. if the fact to be proven is irrelevant to the decision or has already been proven;

2.3. if the evidence is wholly inappropriate, impossible or unobtainable; or

2.4. if the application is made to prolong the proceedings.

3. The court may prevent evidence or exclude evidence

**Article 259**
**Manifestly Irrelevant or Intrinsically Unreliable Evidence Inadmissible**

1. Any evidence that is unrelated to the proving an element of the criminal offence, the damage caused by the criminal offence, a defense to the prosecution, or other relevant

issue may be ruled to be manifestly irrelevant and is inadmissible.

2. Any evidence that is intrinsically unreliable as defined in Article 19, paragraph 1, subparagraph 1.29 of the present Code shall be inadmissible.

**Article 260**
**Consideration of Admissible Evidence at Main Trial**

1. Once the single trial judge or presiding trial judge excludes evidence in accordance with Article 249 of the present Code, that evidence may only be considered by the court upon retrial if the decision by the single trial judge or presiding trial judge to exclude is reversed on appeal.

2. Evidence may be considered by the single trial judge or the trial panel during the main trial if it is not excluded under Article 249 or is not inadmissible under Article 259 of the present Code.

3. The single judge, presiding judge or a member of the trial panel, shall assess the credibility, relevance and probative value of evidence that is admitted under paragraph 2 of the present Article.

**Article 261**
**Prior Statements Used at Main Trial**

1. A statement by the defendant given to the police or the state prosecutor may be admissible evidence in court only when taken in accordance with the provisions of Article 73, paragraph 1, Article 131, or Article 132 and in accordance with Articles 151 through 155 of the present Code. Such statements can be used to challenge the testimony of the defendant in court or as direct evidence in accordance with Article 262 paragraph 2 of the present Code.

2. Pretrial interviews may be used as evidence in accordance with Article 123 paragraph 2 of the present Code.

3. Pretrial testimony may be used as evidence in accordance with Article 123 paragraph 3 of the present Code.

4. A special investigative opportunity may be used as evidence in accordance with Article 123 paragraph 4 of the present Code.

**Article 262**
**Evidence as a Basis of Guilt**

1. The court shall not find the accused guilty based solely, or to a decisive extent, on

testimony or other evidence which could not be challenged by the defendant or defence counsel through questioning during some stage of the criminal proceedings.

2 The court shall not find the accused guilty based solely, or to a decisive extent, upon statements given by the defendant to the police or the state prosecutor.

3. The court shall not find the accused guilty based solely, or to a decisive extent, on testimony given by a single witness whose identity is anonymous to the defence counsel and the accused.

4. The court shall not find any person guilty based solely on the evidence of testimony given by the cooperative witness.

### Article 263
### Notice of Corroboration

1. A state prosecutor who intends to rely on prior statements under Article 261 or evidence obtained under Article 219, paragraph 6 of the present Code, shall file a notice of corroboration.

2. A notice of corroboration shall contain:

> 2.1. a description of the testimony, statements or other evidence upon which the state prosecutor intends to rely that would be limited under Article 262 of the present Code.
>
> 2.2. a brief description of any other testimony, documents or evidence that corroborates the incriminating information in the evidence listed under subparagraph 2.1 of this paragraph.

3. The notice of corroboration should be filed with the indictment, but no later than the start of the main trial.

## CHAPTER XVII
## FREEZING ASSETS AND ATTACHMENT ORDERS

### Article 264
### Temporary Freezing of Assets

1. If an investigative stage is authorized for a criminal offence listed in Article 90 of the present Code, the state prosecutor may issue an order to prevent the sale, transfer of ownership, or withdrawal from an account any item that is described in paragraph 2 or 3 of this Article.

2. Any building, immobile property, mobile property or asset that the state prosecutor has articulable evidence which demonstrates grounded suspicion that:

2.1. the building, immobile property, mobile property or asset was used in the criminal offence being investigated,

2.2. the building, immobile property, mobile property or asset is evidence of the criminal offence being investigated, or

2.3. the building, immobile property, mobile property or asset is a proceed of the criminal offence being investigated.

3. Any financial account belonging to the defendant of the investigation that may contain funds which are:

3.1. proceeds of the criminal offence being investigated, or

3.2. used in the continuing commission of the criminal offence being investigated.

4. An order by the state prosecutor under this Article shall have the following effect:

4.1. any bank or financial institution which receives the order under this Article shall immediately prevent any further activity from occurring with the bank account described in the order. The bank shall not be responsible to the owner of the bank account for compliance with the order under this paragraph.

4.2. Any other party which receives the order under this Article shall take any reasonable step to comply with the order.

5. An order from the state prosecutor under this Article may only be issued once and shall be effective for only seventy-two (72) hours from the issuance of the order.

6. The order of the state prosecutor shall describe the building, immovable property, movable property, financial account or asset and shall command the recipient to prevent the sale, transfer of ownership or withdrawal from the account for seventy-two (72) hours from the issuance of the order. The order shall state the time of issuance and the time of expiration of the order.

7. An order under this paragraph may only be issued by the state prosecutor if he or she also submits a request to the pretrial judge for an attachment order under Article 265 of the present Code for the asset described in the order.

**Article 265**
**Attachment Order**

1. The state prosecutor who issues an order to temporarily freeze assets under Article 264 of the present Code shall immediately submit to the pretrial judge a request for an attachment order for the asset described in the order to temporarily freeze assets.

2. The request for an attachment order shall contain the following:

2.1. a copy of the order to temporarily freeze assets,

2.2. a description of the articulable evidence that justifies the order,

2.3. a description of the necessity of the attachment order to prevent the sale, transfer or withdrawal from the account of the asset described, and

2.4. the identity of all persons with a financial or property interest in the asset described, as listed in cadastral records or other government records.

3. The pretrial judge shall issue an attachment order for each asset requested if the state prosecutor demonstrates with articulable evidence grounded cause to justify the order.

4. The pretrial judge shall deny or issue the attachment order prior to the expiration of the order to temporarily freeze assets.

5. An attachment order issued by any pretrial judge in Kosovo shall have jurisdiction throughout Kosovo.

6. The attachment order shall describe the building, immovable property, movable property, financial account or asset and shall command the recipient to prevent the sale, transfer of ownership or withdrawal from the account for thirty (30) days from the issuance of the order. The order shall state the time of issuance and the time of expiration of the order.

7. The attachment order shall be served on the financial institution or other party on whom the order to temporarily freeze assets was served.

8. The attachment order shall also be served on the defendant and all other persons with an interest in the asset described. The attachment order shall schedule a hearing within three (3) weeks and shall state the following: "The property listed in the attachment order has been frozen for thirty (30) days. A hearing has been scheduled. If you intend to challenge the freezing of this property, you should attend the hearing and you will have the opportunity to argue for the release of the property. The long-term attachment of the property may be ordered at this hearing and this will affect your interest in the property."

9. An attachment order under this Article shall have the following effect:

9.1. any bank or financial institution which receives the order under this paragraph shall immediately prevent any further activity from occurring with the bank account described in the order. The bank shall not be responsible to the owner of the bank account for compliance with the order under this paragraph.

9.2. any other party which receives the order under this paragraph shall take any reasonable step to comply with the order.

**Article 266**
**Hearing to Confirm Attachment of Property**

1. The pretrial judge may consider evidence or witnesses in support of the previous issuance of the attachment order when deciding whether to issue a long-term attachment order at the conclusion of the attachment hearing. He or she shall also base the long-term attachment order on the evidence presented during the attachment hearing under paragraphs 2, 3 and 4 of this Article.

2. The state prosecutor shall present evidence or witnesses in support of the attachment order.

3. The defendant may present evidence or witnesses to counter the evidence in support of the attachment order, or may argue against the legal basis for the attachment order.

4. Other parties with an interest in the property shall present evidence or witnesses to counter the evidence in support of the attachment order, or may argue against the legal basis for the attachment order.

5. The pretrial judge shall only issue a long term attachment order for each asset requested if there exists articulable evidence that demonstrates a grounded cause to justify the order.

6. At the conclusion of the hearing, the pretrial judge shall issue an order that:

6.1. denies the attachment of the property and issues and order immediately releasing the property, or

6.2. confirms the attachment of the property and immediately issues a long-term attachment order.

7. The court may order the seizure of property for it to be managed by the Agency for the Management of Sequestered and Confiscated Assets at the end of the hearing only if the court is convinced that an attachment order will be unable to prevent the property from leaving its jurisdiction.

8. Except for funds held in a frozen or attached financial account, the defendant or user of the property shall maintain the use of the property but may not sell or otherwise transfer the ownership of the property.

9. A long term attachment order issued by any pretrial judge in Kosovo shall have jurisdiction throughout Kosovo.

10. A long term attachment order issued by a pretrial judge shall not expire until the end of the main trial, the termination of the investigation or by operation of paragraph 11 of this Article.

11. If property listed in a long term attachment order is not listed in the indictment under Article 241 of the present Code, the single trial judge or presiding trial judge may decide on a release to all parties listed in the long-term attachment order.

12. An order for long-term attachment can be appealed to the court of appeals within ten (10) days of the order. The appeal will not stay execution of the order for long-term attachment.

# CHAPTER XVIII
# CONFISCATION AND FORFEITURE

## 1. PROCEDURES BEFORE INDICTMENT

### Article 267
### Temporary Confiscation

1. Buildings, immovable property, movable property and assets that are temporarily confiscated under Article 112 of the present Code shall either be:

1.1. returned to the owner under Article 116 of the present Code,

1.2. maintained pending use as evidence and/or permanent confiscation under Article 268 of the present Code.

2. Contraband that has been temporarily sequestrated under Article 105 of the present Code shall not be returned to the owner and shall be destroyed after it is no longer to be used as evidence.

3. Assets that have been seized which are otherwise subject to confiscation and forfeiture under the law shall be considered to have been temporarily confiscated or sequestered under this Chapter.

4. Within sixty (60) days of the temporary confiscation of a building, immovable property, movable property or asset, the state prosecutor shall request a temporary measure for securing property under Article 268 of the present Code.

## Article 268
## Request for Temporary Measures for Securing Property

1. For buildings, immovable property, movable property and assets that are temporarily confiscated and which shall be used as evidence or which may be subject to permanent confiscation, the state prosecutor shall submit a written request to the pretrial judge for temporary measures to secure the property.

2. The request for temporary measures shall describe:

2.1. the building, immovable property, movable property or asset subject to the request,

2.2. the grounded suspicion that the building, immovable property, movable property or asset was either:

2.2.1. the proceed of the criminal offence being investigated; or

2.2.2. used or intended to be used in the commission of the criminal offence;

2.3. the substantial likelihood that the building, immovable property, movable property or asset will be unavailable for confiscation at the conclusion of the criminal proceedings or will be used in the commission of a criminal offence unless temporary measures are taken;

2.4. all persons with a legal interest in the building, immovable property, movable property or asset; and

2.5. the proposed temporary measures to be taken under Article 269 of the present Code.

3. The state prosecutor shall serve a copy of the request for temporary measures upon every person listed in paragraph 2 sub-paragraph 2.4 of this Article. If a copy of the request for temporary measures cannot be served upon every person listed in paragraph 2 sub-paragraph 2.4, the state prosecutor shall make a reasonable effort to inform every person listed in sub-paragraph 2.4 of this Article of the existence and consequences of the request for temporary measures.

## Article 269
## Temporary Measures for Securing Property

1. The state prosecutor may request, and the Agency for Managing Sequestered or Confiscated Assets shall be responsible for executing, the following temporary measures for securing property:

1.1. maintaining the property in a safe;

1.2. maintaining the property in a secured warehouse;

1.3. maintaining immovable property with a property manager;
1.4. maintaining funds in a bank account authorized by the court;

1.5. disposition of the property under paragraph 2 or 3 of this Article;

1.6. reasonable steps to maintain the property as evidence; or

1.7. reasonable steps to maintain the property or its equivalent as an asset.

2. For property that will require exceptional costs to manage, maintain, feed or place in a storage, the state prosecutor may request a reasonable measure that will minimize the exceptional costs but maintain the value of the property. Efforts under this paragraph may include the sale of the property at a market rate, the slaughter or sale of livestock, or the processing of crops or materials into final products.

3. For property that will quickly diminish in value or is absolutely fungible, the state prosecutor may request a reasonable measure that will prevent the loss of value or unnecessary costs of maintenance. Efforts under this paragraph may include the sale of the property at a market rate, the comingling of property, or the processing of crops or materials into final products.

4. The sale of any property under this Article shall be conducted in a manner consistent with Article 8 of the Law on Managing Sequestrated or Confiscated Assets, Law No. 03/L-141.

5. Funds from the sale of any property under this Article shall be maintained in a manner consistent with Article 9 of the Law on Managing Sequestrated or Confiscated Assets, Law No. 03/L-141.

## Article 270
## Objections by Third Parties

1. All persons with a legal interest in the building, immovable property, movable property or asset listed in Article 268 paragraph 4 of the present Code shall have an opportunity to object to the temporary measures proposed by the state prosecutor.

2. If the building, immovable property, movable property or asset is alleged to have been used in a criminal offence, the person objecting to the temporary measure must establish that:

2.1. he or she did not know of the use of the property in the criminal offence,

2.2. he or she could not have known of the use of the property in the criminal offence,

2.3. the property cannot be used again for a criminal offence, and

2.4. the temporary measure being proposed would unreasonably harm the interests of the person objecting.

3. If the building, immovable property, movable property or asset was alleged to have been a material benefit acquired by criminal offence, the person objecting to the temporary measure must establish that:

3.1. he or she has had a property interest in the building, immovable property, movable property or asset for over 6 months prior to the temporary confiscation of the property,

3.2. he or she paid a market rate for the property interest in the building, immovable property, movable property or asset,

3.3. he or she did not know of acts in furtherance of the criminal offence,

3.4. the suspect or defendant would be unable to use, transfer, or otherwise access the building, immovable property, movable property or asset, and

3.5. the temporary measure being proposed would unreasonably harm the interests of the person objecting.

4. The objection may propose a less restrictive temporary measure or no temporary measure be ordered.

5. The objection may challenge whether the description of the building, immovable property, movable property or asset subject to the request is correct.

**Article 271**
**Objections by Defendant**

1. The defendant may object to the request for temporary measures under Article 268 of the present Code.

2. The objection may challenge whether:

2.1. the description of the building, immovable property, movable property or asset subject to the request is correct,

2.2. there is a grounded suspicion that the building, immovable property, movable property or asset was either:

2.2.1. the proceed of the criminal offence being investigated; or

2.2.2. used or intended to be used in the commission of the criminal offence;

2.3. there is a substantial likelihood that the building, immovable property, movable property or asset will be unavailable for confiscation at the conclusion of the criminal proceedings or will be used in the commission of a criminal offence unless temporary measures are taken;

2.4. the proposed temporary measures to be taken under Article 269 of the present Code are reasonable or necessary.

**Article 272**
**Hearing for Order of Temporary Measures**

1. The pretrial judge shall decide on the request for temporary measures filed by the state prosecutor under Article 273 of the present Code if the court receives no objections within fourteen (14) days of the request.

2. If, within fourteen (14) days of the request, the pretrial judge receives an objection from the defendant or from a third party, the pretrial judge may issue a written order under Article 273 of the present Code without a hearing or after a hearing.

3. A pretrial judge may require a hearing before ordering temporary measures under Article 273 of the present Code if the defendant or third party has raised a factual question that requires the taking of evidence or clarification of facts.

**Article 273**
**Order of Temporary Measures**

1. The pretrial judge shall order, modify or deny the temporary measures requested by the state prosecutor under Article 268 of the present Code.

2. An order under paragraph 1 of this Article which orders or modifies a temporary measure requested by the state prosecutor under Article 268 of the present Code shall describe:

2.1. the building, immovable property, movable property or asset subject to the request,

2.2. the grounded suspicion that the building, immovable property, movable property or asset was either:

2.2.1. the proceed of the criminal offence being investigated; or

2.2.2. used or intended to be used in the commission of the criminal offence;

2.3. the substantial likelihood that the building, immovable property, movable property or asset will be unavailable for confiscation at the conclusion of the criminal proceedings or will be used in the commission of a criminal offence unless temporary measures are taken;

2.4. the temporary measures under Article 269 of the present Code which are to be implemented.

2.5. the order shall also provide reasoning for the rejection of any objections received under Article 270 or Article 271 of the present Code or the modification of the temporary measures due to those objections.

2.6. the order may place a reasonable time limit on the temporary measure.

2.7. the order shall be transmitted to the Agency for Managing Sequestered or Confiscated Assets within ten (10) days.

2.8. the Agency for Managing Sequestered or Confiscated Assets shall execute the order within fifteen (15) days of the issuance of the order, unless an objection is filed under paragraph 4 of this Article.

3. By order under paragraph 1 of this Article which denies a temporary measure requested by the state prosecutor under Article 268 of the present Code shall instead be ordered the property to be released to the owner or possessor.

3.1. the order shall be transmitted to the Agency for Managing Sequestered or Confiscated Assets within ten (10) days.

3.2. the Agency for Managing Sequestered or Confiscated Assets shall execute the order within fifteen (15) days of the issuance of the order, unless an objection is filed under paragraph 4 of this Article.

4. An objection to the order of temporary measures under this Article may be heard by a review panel. An objection stays the execution of the order under this Article until the decision by the review panel.

## 2. PROCEDURES AFTER INDICTMENT

### Article 274
### Inclusion of property that is subject to criminal forfeiture in the indictment

1. If a building, immovable property, movable property or asset subject to an order under Article 273 of the present Code or long-term attachment order under Article 266 of the present Code is not listed in the indictment in compliance with Article 241, paragraph 1 sub-paragraph 1.9 of the present Code, prior to the second hearing the owner or possessor may file a request to the single trial judge or presiding trial judge to release the property to the owner or possessor.

2. If the building, immovable property, movable property or asset subject to an order under Article 273 or long-term attachment order under Article 266 of the present Code is subject to another legal process of forfeiture, the single trial judge or presiding trial judge shall deny the request under paragraph 1 of this Article.

3. If the building, immovable property, movable property or asset subject to an order under Article 273 or long-term attachment order under Article 266 of the present Code is necessary as evidence at the main trial, the single trial judge or presiding trial judge shall deny the request under paragraph 1 of this Article.

4. If the building, immovable property, movable property or asset subject to an order under Article 273 or long-term attachment order under Article 266 of the present Code may be listed in an indictment that has not been filed, the state prosecutor shall inform the single trial judge or presiding trial judge. The single trial judge or presiding trial judge shall suspend the request under paragraph 1 of this Article, but will permit the requestor to renew the request in six (6) months if no other indictment is filed.

5. If no other indictment is filed and the requestor renews the request after six (6) months, the single trial judge or presiding trial judge shall issue an order under paragraph 6 of this Article. The state prosecutor may request an extension of three (3) months only under exceptional circumstances.

6. The single trial judge or presiding trial judge shall grant the request under paragraph 1 of this Article after verifying that the building, immovable property, movable property or asset subject to an order under Article 273 or long-term attachment order under Article 266 of the present Code is not listed in the indictment in compliance with Article 241, paragraph 1 subparagraph 1.9 of the present Code.

7. An order under this Article may be appealed. An appeal under this paragraph shall not delay the criminal proceedings or the execution of an order under this Article.

## Article 275
## Evidence required to forefeit material benefits acquired by criminal offence

1. Before the court can order a final order of criminal forfeiture for a building, immovable property, movable property or asset listed in the indictment, the indictment shall allege and the state prosecutor shall prove at the main trial that the building, immovable property, movable property or asset was a material benefit of the criminal offence being investigated, in accordance with Articles 276-280 of the present Code.

2. The state prosecutor, injured party or defendant may question witnesses and submit evidence at the main trial to support or contest the proof required under paragraph 1 of this Article.

3. A qualified financial expert may express an opinion whether the building, immovable property, movable property or asset listed in the indictment was proceed of the criminal offence being investigated in a report under Article 148 of the present Code and during testimony at the main trial.

4. If the injured party has filed a property claim to recover the property acquired through the commission of a criminal offence or to receive the monetary equivalent thereof, that property claim may support the proof required under paragraph 1 of this Article, but may not serve as the sole or decisive proof under paragraph 1 of this Article.

## Article 276
## Determination of Material Benefits of Criminal Offence

1. A building, immovable property, movable property or asset that was directly obtained due to the acts constituting the criminal offence is a material benefit acquired by that criminal offence.

2. Funds that were directly obtained due to the acts constituting the criminal offence are a material benefit acquired by that criminal offence.

3. A building, immovable property, movable property or asset that was purchased by funds that were directly obtained due to the acts constituting the criminal offence is a material benefit acquired by that criminal offence.

4. Funds that were indirectly obtained due to the acts constituting the criminal offence, including interest, gross profit, or an increase due to the rate of monetary exchange, shall be a material benefit of that criminal offence if the indirectly obtained funds would not have been created without funds described in paragraph 2 of this Article.

5. A building, immovable property, movable property or asset that was purchased by funds that were indirectly obtained in accordance with paragraph 4 of this Article is a material benefit acquired by that criminal offence.

## Article 277
## Accounting for Material Benefit of Criminal Offence

1. For the purposes of the present code, if funds which are a material benefit of a criminal offence are commingled with funds that are not a material benefit of a criminal offence, any amount which is available for forfeiture and which is equal to or less than the amount of the material benefit shall be considered to be material benefit of the criminal offence.

2. The single trial judge or trial panel shall rely on rules of accounting and the available evidence to determine a reasonable estimate of the amount of the material benefit of the criminal offence.

## Article 278
## Material Benefit of Criminal Offence Possessed by Third Party

1. If proceeds of a criminal offence are transferred to another person, business organization or legal person prior to confiscation, those proceeds shall be subject to confiscation if:

1.1. the proceeds of the criminal offence were transferred from the possession of the defendant,

1.2. the transfer was for substantially less than the fair market value of the criminal proceeds, and

1.3. there is evidence that the defendant still retains control or use of the criminal proceeds.

2. If the proceeds of a criminal offence are in the possession of another person, business organization or legal person, those proceeds shall be subject to confiscation if:

2.1. the person, business organization or legal person obtained possession of the proceeds of a criminal offence as a direct result of the criminal offence,

2.2. there is evidence that the defendant still retains control or use of the criminal proceeds or maintains control of the business organization or legal person.

## Article 279
## Rights of Third Party Possessing Material Benefit of Criminal Offence

1. Where the confiscation of a material benefit acquired by the commission of a criminal offence is at issue, the person to whom the material benefit has been transferred, including the representative of a business organization or legal person, shall be summoned for examination during the investigation and at the main trial. He or she shall be informed that proceedings may be conducted in his or her absence.

2. The representative of a business organization or legal person shall be examined at the main trial after the accused. The same shall apply in respect of a recipient of the material benefit, if he or she was not summoned as a witness.

3. The recipient of the material benefit and the representative of a business organization or legal person shall, in connection with determination of the material benefit, be entitled to move for evidence to be taken and, with the permission of the single trial judge or presiding trial judge, to put questions to the defendant, witnesses and expert witnesses.

4. The exclusion of the public from the main trial shall not apply in respect of the recipient of the material benefit, including the representative of a business organization or a legal person.

5. If the court finds only in the course of the main trial that the issue of confiscation of the material benefit acquired by the commission of a criminal offence is at issue, it shall recess the main trial and summon the person to whom the material benefit has been transferred or the representative of a business organization or a legal person.

**Article 280**
**Procedure for Third Party Possessing Material Benefit of Criminal Offence**

1. Confiscation and forfeiture of the material benefit acquired by the commission of a criminal offence may be imposed in a judgment in which the accused is declared guilty or a judicial admonition is imposed, as well as in a ruling on a measure of mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs.

2. In the enacting clause of the judgment or ruling the court shall specify the object or sum of money to be confiscated. Where there are justifiable grounds, the court shall permit the payment of the material benefit in installments fixing the time limit and the amounts thereof.

3. A certified copy of the judgment or ruling shall be served on the person to whom the material benefit has been transferred as well as on the representative of a business organization or a legal person, if the court has imposed the confiscation of material benefit acquired by the commission of a criminal offence on that person, business organization or legal person.

**Article 281**
**Property Resulting from Corrupt Acts**

1. In cases in which criminal proceedings are not concluded with a judgment in which the accused is pronounced guilty, objects originating from a criminal offence under Article 344 of the Criminal Code and unlawfully given or accepted rewards, gifts or benefits as provided for in Articles 214, 314, 315, 428, 429, 430 and 431 of the Criminal Code shall also be confiscated:

1.1. if the legal elements of a criminal offence under Article 344 of the Criminal Code are established and it is also established that certain objects originate from a criminal offence under Article 344 of the Criminal Code; or

1.2. if the legal elements of a criminal offence under Article 214, 314, 315, 428, 429, 430 and 431 of the Criminal Code are established and it is also established that a reward, gift or benefit was given or accepted.

2. Upon the reasoned application of a state prosecutor, the court shall render a separate ruling on confiscation under paragraph 1 of the present Article. The state prosecutor shall submit in the application all data and circumstances of importance for the determination of the proceeds of crime, the objects originating from the criminal offence or the unlawfully given or received reward, gift or benefit.

3. A certified copy of the ruling under paragraph 2 of the present Article shall be served on the owner of the confiscated money or property, if he or she is known. If the owner is unknown, the ruling shall be displayed on the bulletin-board of the court and, after eight (8) days, the service on the unknown owner shall be deemed to have been performed.

4. Owners of confiscated money or property shall have the right to appeal against the ruling under paragraph 2 of the present Article, if they consider that there were no legal grounds for confiscation.

**Article 282**
**Property Subject to Automatic Forfeiture**

1. Property that is inherently dangerous or illegal shall be subject to forfeiture automatically, regardless of the finding of the single trial judge or trial panel regarding the guilt or innocence of the defendant. The possessor, user, or defendant shall not have a right to object.

2. Property subject to paragraph 1 of this Article shall include:

2.1. weapons that have been used in or created by a criminal act under Articles 371 to 376 of the Criminal Code.

2.2. chemicals, objects, substances, equipment or weapons that have been used in or created by a criminal act under Articles 121,122, 124, 125, 127, 128, 129, 135, 136, 137, 138, 139, 140, 143, 144, 147, 148, 149, 150, 151, 152, 153, 158, 159, 161, 163, 172, 173, 174, 175, or 176 of the Criminal Code.

2.3. chemicals or substances used in or created by a criminal act under Articles 262, 263, 264, 265, 266, 269, 270, 346, 347, 348, 350, 353, 354 or 355 of the Criminal Code, as well as any animals, crops, food or water contaminated by the criminal act.

2.4. chemicals, plants, laboratory equipment or substances used in or created by a

criminal act under Articles 272-280 of the Criminal Code.

2.5. counterfeit money or items used in or created by a criminal act under Article 292, 293, 301 303, or 306 of the Criminal Code.

3. For items listed in paragraph 2 of this Article which are necessary as evidence for the main trial, the item shall be destroyed or otherwise rendered safe, but photographs, laboratory tests or an expert report shall serve as admissible evidence of the existence, identity and composition of the inherently dangerous item. For items under paragraph 2, subparagraphs 2.2, 2.3, 2.4 and 2.5 of this Article, a small sample shall be retained.

4. The police shall inform the state prosecutor of actions taken under paragraph 3 of this Article within twenty-four (24) hours.

## Article 283
## Proof Required to Forfeit Property Used in Criminal Offence

1. Before the court can order a final order of criminal forfeiture for a building, immovable property, movable property or asset listed in the indictment, the indictment shall allege and the state prosecutor shall prove at the main trial that the building, immovable property, movable property or asset was used in the criminal offence.

2. For the purpose of this Article, a building, immovable property, movable property or asset was used in the criminal offence if:

2.1. the building, immovable property, movable property or asset was directly used to perform an act in furtherance of the criminal offence,

2.2. the building, immovable property, movable property or asset provided shelter that was necessary to perform an act in furtherance of the criminal offence,

2.3. the building, immovable property, movable property or asset was used to fund an act or acts in furtherance of the criminal offence, or

2.4. the building, immovable property, movable property or asset was necessary to facilitate an act in furtherance of the criminal offence. A building, immovable property, movable property or asset is necessary to facilitate the act if the criminal offence would not have occurred except for the use of the building, immovable property, movable property or asset.

3. The state prosecutor, injured party or defendant may question witnesses and submit evidence at the main trial to support or contest the proof required under paragraph 1 of this Article.

4. A qualified financial expert may express an opinion whether the building, immovable property, movable property or asset listed in the indictment was a proceed of the criminal

offence being investigated in a report under Article 148 of the present Code and during testimony at the main trial.

5. If the injured party has filed a property claim to recover the objects acquired through the commission of a criminal offence or to receive the monetary equivalent thereof, that property claim may support the proof required under paragraph 1 of this Article, but may not serve as the sole or decisive proof under paragraph 1 of this Article.

**Article 284**
**Reasoned Order that Property is Forfeited Required**

1. The single trial judge or trial panel shall, concurrent with the judgment of the trial, issue an order supported by reasoning that determines whether each building, immovable property, movable property or asset listed in the indictment in compliance with Article 241, paragraph 1 subparagraph 1.9 of the present Code, shall be forfeited or released.

2. Each building, immovable property, movable property or asset listed in the indictment in compliance with Article 241, paragraph 1 subparagraph 1.9 of the present Code shall be considered separately in the order under paragraph 1 of present Article.

3. The state prosecutor may request that the building, immovable property, movable property or asset be sold or liquidated. Funds from the sale or liquidation shall be used in accordance with paragraph 5 of this Article.

4. The state prosecutor may request that the building, immovable property, movable property or asset be retained for the use by the government of Kosovo.

5. If funds are forfeited directly or through paragraph 3 of this Article, the state prosecutor, injured party or victim advocate may request that the funds be used to compensate the injured party. Any remaining funds shall be transferred to the budget.

6. The order under paragraph 1 of this Article shall instruct the Agency on the Management of Sequestered or Confiscated Assets to sell, liquidate, or retain the building, immovable property, movable property or asset. If a request under paragraph 5 of this Article is made, the court may order the compensation of the injured party. The single trial judge or trial panel may set additional conditions on the use of the property, if retained by the government.

7. The order shall be sent to anyone who has a property right in the building, immovable property, movable property or asset, who may appeal the order.

8. If the order is not appealed within one (1) week, the order shall be sent to the Agency on the Management of Sequestered or Confiscated Assets for execution.

# CHAPTER XIX
# MAIN TRIAL

## 1. Preparation for the Main Trial

### Article 285
### Scheduling of Main Trial

1. The day, hour and venue of the main trial shall be determined by an order issued by the single trial judge or presiding trial judge in accordance with Article 254 of the present Code.

2. The single trial judge or presiding trial judge shall schedule the main trial to commence within one (1) month from the second hearing or the last order issued under Article 254 paragraph 5 of the present Code.

3. If the single trial judge or presiding trial judge determines that the trial cannot be held within the time period set in paragraph 2 of this Article, the single trial judge or presiding trial judge shall issue a decision delaying the main trial until the first available date.

4. If the single trial judge or presiding trial judge determines that the trial cannot be held within the time period set in paragraph 2 of this Article because of the absence of the defendant, the single trial judge or presiding trial judge shall issue an order for the defendant's arrest. If the defendant has not been present for the initial hearing or second hearing, the single trial judge or presiding trial judge shall issue a decision suspending the main trial as to the missing defendant. The main trial shall commence as to the missing defendant when he or she is arrested.

### Article 286
### Venue of Main Trial

1. The main trial shall be held at the place where the court has its seat, and in the courthouse.

2. Where, in a particular case, the courthouse is unsuitable due to the lack of space or other justified reasons, president of the court may order that the main trial be held in another building.

### Article 287
### Persons Summoned to Main Trial

1. The persons summoned to appear at the main trial shall include the accused, his or her defence counsel, the state prosecutor, the injured party and their legal representatives and

authorized representatives, as well as the interpreter. Witnesses and expert witnesses proposed by the state prosecutor in the indictment and by the accused under Article 256 of the present Code shall also be summoned to the main trial.

2. Articles 174 and 132 of the present Code shall apply to the contents of the summonses served on the accused and witnesses. The summons served on the accused shall state that he or she will be deemed to have renounced his or her right to appeal if he or she fails to declare an appeal within eight (8) days of the date of the announcement of the judgment. When defence is not mandatory, the accused shall be instructed in the summons that he or she has the right to engage defence counsel but that the main trial need not be postponed because defence counsel has not come to the main trial or because the accused has engaged defence counsel only at the main trial.

3. The accused shall be served with the summons no less than eight (8) days before the main trial so as to have sufficient time between the service of the summons and the day of the main trial to prepare his or her defence. At the request of the accused, or at the request of the state prosecutor and with the agreement of the accused, this prescribed period of time may be shortened.

4. The injured party who has not been summoned to appear as a witness shall be informed in a summons that the main trial may be held in his or her absence and that his or her statement on a property claim shall be read.

5. The accused, witnesses and expert witnesses shall be informed in the summonses of the consequences of failure to appear at the main trial.

6. At the request of the Ombudsperson of Kosovo, the Ombudsperson shall also be notified of the main trial for the purpose of monitoring the criminal proceedings within the limits of his or her authority.

**Article 288**
**Requests after Main Trial Scheduled**

1. The parties, defence counsel and the injured party may request even after the main trial has been scheduled that new witnesses or expert witnesses be summoned to the main trial or that new evidence be collected. The request must be supported by reasoning and must indicate which facts are to be proven and by which of the items of evidence proposed.

2. The single trial judge or presiding trial judge shall grant a request under paragraph 1 of this Article if the new witness, new expert witness or new evidence was unknown at the time of the second hearing, does not substantially duplicate another witness, expert witness or evidence, and the defendant's right to a fair trial could be harmed by rejecting the request.

3. If the single trial judge or presiding trial judge rejects the motion for new evidence to be collected, such rejection may be appealed within fourty-eight (48) hours of the receipt

of the order denying the request.

4. The parties and defence counsel shall be informed of the order to collect new evidence prior to the opening of the main trial.

**Article 289**
**Reserve Judges**

If it appears that the main trial may last for some time the presiding trial judge may request the president of the court to assign one judge to attend the main trial in order to replace members of the trial panel in the event that they are prevented from attending the main trial. This judge shall be called the reserve judge. If a special investigative opportunity was held during the criminal proceedings, one of the two (2) judges who served on that panel, but were not the pretrial judge, shall serve as a member of the trial panel and the other as a reserve judge.

**Article 290**
**Examination of Witnesses or Expert Witnesses Outside of Trial**

1. If a witness or an expert witness who was summoned to the main trial is unable to appear because of a chronic illness or some other impediment, such witness or expert witness may be examined at the place where he or she resides, unless such witness or expert witness has already been examined during a special investigative opportunity.

2. The parties, defence counsel and the injured party shall be informed of the time and place of the examination if that is possible considering the urgency of the proceedings. If the accused is in detention on remand the single trial judge or presiding trial judge shall decide whether his or her presence at the examination is necessary, providing that in the absence of the accused his or her defence counsel can be present. When the parties, the defence counsel and the injured party are present, they shall have the rights under Article 149 paragraph 6 of the present Code.

**Article 291**
**Adjournment of Main Trial**

1. The single trial judge or presiding trial judge may for well-founded reasons adjourn the date of the main trial upon motion of the parties, the defence counsel or *ex officio*.

2. If the single trial judge or presiding trial judge adjourns the date of the main trial under paragraph 1 of this Article, he or she may schedule periodic hearings to discuss the status of the case, pending issues and to ensure a timely disposition of the case or scheduling of the main trial.

**Article 292**
**Withdrawal of indictment prior to opening of the main trial**

1. The state Prosecutor may withdraw the indictment prior to opening of the main trial if he/she files a notice of withdrawal from the indictment. In such a case the single trial judge or presiding trial judge shall dismiss the indictment.

2. A withdrawn indictment may not be refiled by the state prosecutor.

## 2. Public character of the Main Trial

**Article 293**
**Publicity of the main trial**

1. The main trial shall be held in open court.

2. The main trial may be attended by the adults.

3. No arms or dangerous instruments are allowed inside the courtroom except for police officers guarding the accused who are authorized by the single trial judge, presiding trial judge or president of the court.

**Article 294**
**Public May be Excluded**

1. At any time from the beginning until the end of the main trial, the single trial judge or trial panel may exclude on the motion of the parties or *ex officio,* but always after it has heard the parties, the public from the whole or part of the main trial if this is necessary for:

1.1. protecting official secrets;

1.2. maintaining the confidentiality of information which would be jeopardized by a public hearing;

1.3. maintaining law and order;

1.4. protecting the personal or family life of the accused, the injured party or of other participants in the proceedings;

1.5. protecting the interests of children; or

1.6. protecting injured parties, cooperative witnesses and witnesses as provided for in Chapter XIII of the present Code.

**Article 295**
**Persons that shall not be excluded from the main trial and maintenance of confidentiality**

1. The exclusion of the public shall not apply to the parties, the injured party, their representatives and the defence counsel, except under the conditions of the provisions regarding the protection of injured parties, cooperative witnesses and witnesses as set forth in Chapter XIII of the present Code.

2. The single trial judge or presiding trial judge may grant permission for certain officials, academics, public figures and, on the request of the accused, also the spouse or extra-marital partner of the accused and his or her close relatives to attend a main trial which is not open to the public.

3. The single trial judge or presiding trial judge shall warn the persons attending the main trial which is closed to the public of their obligation to keep confidential all information that comes to their knowledge at the trial and shall inform them that disclosing such information constitutes a criminal offence.

**Article 296**
**Decision to Exclude**

1. The exclusion of the public shall be determined by the single trial judge or presiding trial judge in a ruling which must be supported by reasoning and made public.

2. The ruling on the exclusion of the public may be challenged only in an appeal against the judgment.

**3. Conduct of the Main Trial**

**Article 297**
**Main Trial with Single Trial Judge**

1. If the trial is before a single trial judge, the single trial judge, recording clerk and any assigned reserve judge shall be continuously present at the main trial.

2. It shall be the duty of the single trial judge to confirm that the court has been constituted in accordance with the law and whether there are reasons for excluding the recording clerk.

## Article 298
## Main Trial with Trial Panel

1. If the trial is before a trial panel, the presiding trial judge, members of the trial panel, the recording clerk and any assigned reserve judge shall be continuously present at the main trial.

2. It shall be the duty of the presiding trial judge to confirm that the trial panel has been constituted in accordance with the law and whether there are reasons for excluding a member of the trial panel or the recording clerk.

## Article 299
## Single Trial Judge or Presiding Trial Judge in Charge of Main Trial

1. The single trial judge or presiding trial judge shall direct the main trial and call on the parties, the injured party, the legal and authorized representatives, the defence counsel, and the expert witnesses to give their testimony or pose their questions.

2. Members of a trial panel may pose questions to any witness or expert witness.

3. It shall be the duty of the single trial judge or presiding trial judge to ensure that the case is thoroughly and fairly examined in accordance with the rules of evidence as provided for by the present Code.

4. The single trial judge or presiding trial judge shall ensure that evidence is taken in accordance with Chapter XVI of the present Code.

5. The single trial judge or presiding trial judge shall rule on the motions of the parties.

6. The rulings of the single trial judge or presiding trial judge shall always be announced and entered in the record of the main trial with a brief explanation.

## Article 300
## Sequence for examination of evidence at the main trial

The main trial shall proceed in the sequence provided for by the present Code. However, the single trial judge or presiding trial judge may decide to alter the sequence of the hearing due to special circumstances, in particular the number of accused, the number of criminal offences or the volume of the evidential material.

**Article 301**
**Maintenance of order and media in the courtroom**

1. The single trial judge or presiding trial judge shall be obliged to ensure the maintenance of order in the courtroom and the dignity of the court. Toward this end, he or she may immediately upon the opening of the session warn the persons present to behave properly and not to obstruct the work of the court. The single trial judge or presiding trial judge may order a personal search of persons present at the main trial.

2. The single trial judge or presiding trial judge may order that the audience present at the main trial be removed from the session if it is not possible to ensure by the measures for the maintenance of order provided for by the present Code that the main trial shall be held without disturbance.

3. Photography, film, television and other recordings apart from the official recording of the main trial is permitted, unless the single trial judge or presiding trial judge limits photography, film, television or other recordings in a reasoned written decision.

**Article 302**
**Disturbance of Order or Failure of Comply with Directions of Court**

1. If the accused, defence counsel, the injured party, legal or authorized representative, witness, expert witness, interpreter or some other person attending the main trial disturbs order or fails to comply with the directions of the single trial judge or presiding trial judge regarding the maintenance of order, the single trial judge or presiding trial judge shall warn him or her. If the warning is of no avail, the single trial judge or presiding trial judge may order that the accused be removed from the courtroom, while other persons may not only be removed but can also be punished by a fine of up to one thousand (1.000) EUR.

2. With the order of the single trial judge or presiding trial judge the accused may be removed from the courtroom temporarily, but if he or she has already been examined in the main trial he or she may be removed for as long as the evidentiary proceedings last. Before the evidentiary proceedings are concluded, the single trial judge or presiding trial judge shall summon the accused and inform him or her of the course of the main trial. If the accused continues to violate order or if he or she abuses the dignity of the court, the single trial judge or presiding trial judge may order him or her to be removed again. In such case, the main trial shall be concluded in the absence of the accused and the single trial judge or presiding trial judge or a judge sitting in the trial panel shall inform him or her of the judgment in the presence of the recording clerk.

3. The single trial judge or presiding trial judge may deny the defence counsel or the authorized representative the right to defend or represent their clients at the main trial if after being punished they continue to disturb order. In such case the party shall be requested to engage another defence counsel or authorized representative. If the accused cannot engage another defence counsel immediately or the latter cannot be appointed by

the court without prejudice to the defence, the main trial shall be recessed or adjourned. The ruling on this issue, together with an explanation, shall be entered in the record of the main trial. A separate appeal against this ruling shall not be allowed.

4. If a state prosecutor violates order, the single trial judge or presiding trial judge shall notify the supervisor of the state prosecutor of this, and may also suspend the main trial and ask the supervisor of that state prosecutor to appoint another state prosecutor for the case.
5. When the court removes from the courtroom or fines a member of the bar or an attorney in training who violates order, the bar association shall be informed.

**Article 303**
**Appeals of Rulings at Main Trial**

1. An appeal may be filed against a ruling imposing punishment; and the single trial judge or trial panel may revoke the ruling.

2. No appeal shall be permitted against other decisions relating to the maintenance of order and the direction of the main trial.

**Article 304**
**Criminal Offences Committed at Main Trial**

1. If the accused commits a criminal offence at the main trial, the provisions of Article 351 of the present Code shall apply.

2. If a person other than the accused commits a criminal offence while the court is in session at the main trial, the single trial judge or trial panel may, upon an oral charge by the state prosecutor, recess the main trial and try the criminal offence committed right away or may consider it after concluding the main trial.

3. Where there are grounds to suspect that a witness or an expert witness has given false testimony at the main trial, such offence may not be tried immediately. In such case, the single trial judge or presiding trial judge may order that a separate record be made of the testimony of the witness or the expert witness and that the record be referred to the state prosecutor.

4. If the perpetrator of a criminal offence which is prosecuted *ex officio* cannot be tried immediately, the competent state prosecutor shall be notified of this for further action.

## 4. Preconditions for the Main Trial

### Article 305
### Opening of Session

The single trial judge or presiding trial judge shall open the session and announce the case to be tried at the main trial and, if there is a trial panel, the composition of the trial panel. He or she shall then determine whether all the persons summoned have appeared and, if they have not, he or she shall check whether they were served with a summons and whether the absent persons have justified their absence.

### Article 306
### Failure of the State Prosecutor to Appear at the Main Trial

If the state prosecutor fails to appear at the main trial scheduled upon an indictment which he or she has filed, the main trial shall be adjourned and the single trial judge or presiding trial judge shall notify the chief-prosecutor of the state prosecutor thereof.

### Article 307
### Failure of Accused to Appear at Main Trial

1. If a duly summoned accused fails to appear at the main trial without justifying his or her absence, the single trial judge or presiding trial judge shall issue an order for arrest of the accused in accordance with Article 175 of the present Code. If the accused cannot be produced immediately, the single trial judge or trial panel shall adjourn the main trial and order that the accused be compelled to appear at the next session. If the accused justifies his or her absence before being arrested, the single trial judge or presiding trial judge shall revoke the order for arrest.

2. If a duly summoned accused is obviously evading the main trial and there are no reasons for his or her detention on remand under Article 187 of the present Code, the single trial judge or trial panel may order detention on remand to ensure his or her presence at the main trial. An appeal against this ruling shall not stay its execution. Articles 185 through 203 of the present Code shall apply, *mutatis mutandis*, to detention on remand ordered for this reason. Unless terminated earlier, the detention shall last until the announcement of the judgment, but no longer than one (1) month.

### Article 308
### Failure of Defence Counsel to Appear at Main Trial

If a duly summoned defence counsel fails to appear at the main trial without notifying the court of the reason for his or her absence as soon as he or she learns about it, or if the defence counsel leaves the main trial without permission of the single trial judge or trial

panel, the court shall ask the accused to engage immediately another defence counsel. If the accused fails to do so and it is impossible to appoint a defence counsel without prejudicing the defence, the main trial shall be adjourned.

### Article 309
### Failure of Witness or Expert Witness to Appear at Main Trial

1. If a duly summoned witness or an expert witness fails to appear without justification, the single trial judge or trial panel may order that he or she be compelled to appear immediately.

2. The main trial may commence in the absence of a summoned witness or expert witness. In such case, the single trial judge or trial panel shall decide in the course of the main trial whether the main trial should continue in the absence of the witness or the expert witness or should be adjourned or recessed.

## 5. Adjournment and Recess of the Main Trial

### Article 310
### Reasons for adjourning the main trial

1. In addition to cases specified in the present Code, the main trial may be adjourned under a ruling of the single trial judge or trial panel, if new evidence has to be collected, or if it is established in the course of the main trial that the accused has become afflicted by a temporary mental disorder or disability after committing the criminal offence, or if there are other impediments which prevent the successful completion of the main trial.

2. Whenever possible, the ruling by which the main trial is adjourned shall specify the day and hour at which the main trial shall be resumed. In the same ruling, the single trial judge or trial panel may order the collection of such evidence that is likely to be lost with the passing of time.

3. No appeal shall be permitted against a ruling under paragraph 2 of the present Article.

### Article 311
### Change of Composition of Trial Panel during Adjournment

1. When the composition of the trial panel has changed, the adjourned main trial shall start from the beginning. However, after hearing the parties, the trial panel may in this case decide not to examine the witnesses and expert witnesses again and not to conduct a new site inspection, if one was done, but rather to read the testimony of the witnesses and the expert witnesses given at the previous main trial or the record of the site inspection.

2. If the composition of the trial panel has not changed, the adjourned main trial shall be continued and the presiding trial judge shall give a short account of the course of the previous main trial. However, the trial panel may in this case also decide to recommence the main trial from the beginning.

3. If the main trial has been adjourned for more than three (3) months or if it is held before a new presiding trial judge, the main trial shall recommence from the beginning and all the evidence shall be examined again.

**Article 312**
**Recess of Main Trial**

1. In addition to instances specified in the present Code, the single trial judge or presiding trial judge may order a recess of the main trial for purposes of rest or at the end of the working day or in order to allow a short period of time for specific evidence to be collected or for the preparation of the prosecution or the defence.

2. A recessed main trial shall always continue in front of the same single trial judge or trial panel.

3. If the main trial cannot continue in front of the same trial panel or if it is recessed for more than eight (8) days, the provisions of the Article 311 of the present Code shall apply.

**Article 313**
**Change in composition of trial panel due to lack of jurisdiction**

If in the course of the main trial held before a single trial judge the facts upon which the charge is founded indicate that a criminal offence is involved for which a trial panel of three (3) judges is competent, the trial shall be transferred to an appropriate panel within the Basic Court and the main trial shall recommence from the beginning.

**Article 314**
**Time to Complete Main Trial**

1. Unless the single trial judge or trial panel adjourns the main trial under Article 310 of the present Code, the main trial shall be completed within the following time limits:

1.1. if the main trial is before a single trial judge, the main trial shall be completed within ninety (90) days, unless the single trial judge issues a reasoned decision to extend the time for the main trial for one of the reasons in paragraph 2 of the present Article.

1.2. if the main trial is before a trial panel, the main trial shall be completed within one hundred and twenty (120) days, unless the trial panel issues a reasoned decision to extend the time for the main trial for one of the reasons in paragraph 2 of the present Article.

2. The main trial may be extended by a reasoned decision under paragraph 1 of the present Article if there exist circumstances which require more time, including but not limited to:

2.1. there are an unusually large number of witnesses;
2.2. the testimony of one or more witnesses is unusually lengthy;

2.3. the number of exhibits is unusually big; or

2.4. the security of the trial requires the extension.

3. The main trial may be extended for thirty (30) days for each decision under paragraph 1 of the present Article.

## 6. The Record of the Main Trial

### Article 315
### Record of the Proceedings of the Main Trial

1. A record must be made in writing of the proceedings of the main trial. The entire course of the main trial in its essentials must be entered in this record.

2. In addition, the main trial shall be either audio- or video-recorded or recorded stenographically, unless there are reasonable grounds for not so doing.

3. The record of the main trial shall include a transcript of the audio-recording of the main trial and a record of the course of the main trial, its main components and decisions taken, as provided for in Articles 317, 318 and 319 of the present Code.

4. When the accused has been punished by imprisonment or after the announcement of an appeal in other instances, the audio- or video-recording of the main trial shall be entirely transcribed within three (3) working days after the completion of the main trial. The time limit may be extended by the single trial judge or presiding trial judge, if this is justified by circumstances, for a period of fifteen (15) days. The single trial judge or presiding trial judge shall review and confirm the transcript and shall insert it in the record as a constituent part of the record of the main trial.

5. The decision on how the main trial shall be recorded shall be taken by the single trial judge or presiding trial judge.

## Article 316
## Verbatim Record

1. When the main trial is recorded only in writing, the single trial judge or presiding trial judge may order, upon a motion of a party or *ex officio*, that testimony which he or she considers particularly important be entered in the record verbatim.

2. If necessary, and especially where testimony has been entered in the record verbatim, the single trial judge or presiding trial judge may order that particular part of the record to be read immediately. Testimony recorded verbatim shall always be read immediately if so requested by a party, defence counsel or the person whose testimony has been entered in the record.

## Article 317
## Inspection, correction and signing of the main trial, initial hearing and second hearing records

1. The record of the main trial, initial hearing and second hearing shall be finalized at the end of the session. It shall be signed by the recording clerk, single trial judge, presiding judge and parties that are present.

2. The parties shall be entitled to check the finalized record and attachments, to make comments on the contents and to request corrections.

3. Corrections of incorrectly entered names, numbers and other obvious writing errors may be ordered by the single trial judge or presiding trial judge upon a motion by a party or a person being examined or *ex officio*. Other corrections and additions to the record may only be ordered by the single trial judge or the trial panel.

4. Comments and motions of parties regarding the record, as well as corrections and amendments to the record, shall be entered in an addendum to the finalized record. The reasons why certain suggestions and comments were not accepted shall also be indicated in the addendum. The recording clerk and either the single trial judge or presiding trial judge shall sign the addendum to the record.

## Article 318
## Content of the Record of the Main Trial

1. The introductory part of the record of the main trial shall indicate: the court in which the main trial is held; the case number; the venue and the time of the session; the names of the single trial judge or presiding trial judge and panel members, recording clerk, state prosecutor, the accused and his or her defence counsel, the injured party and his or her legal representative or authorized representative, victim advocate, and the name of the interpreter; the criminal offence in question, and whether the main trial was public or the public was excluded.

2. The record shall contain in particular the following information: the identification of the indictment; whether the state prosecutor changed or expanded the indictment; what motions were filed by the parties and what decisions the single trial judge, presiding trial judge or the panel have taken on them; what evidence has been presented; and whether certain records and other writings were read, or sound or other recordings played, exhibits used, and comments of the parties thereon. If the public was excluded from the main trial, the record shall indicate that the single trial judge or presiding trial judge warned those present of the consequences of unauthorized disclosure of confidential information of which they learned at the main trial.

3. Only the essential content of the testimony of the prosecutor, defendant, witnesses and expert witnesses shall be entered in the record. Upon request of a party the single trial judge or presiding trial judge shall order that the record of a previous testimony, or a part thereof, be read.

4. Upon the request of a party, a question or an answer which the single trial judge or trial panel dismissed as impermissible shall also be entered in the record.

**Article 319**
**Entering the enactment clause of the judgment in the record of the main trial**

1. The complete enacting clause of the judgment and an indication of whether the judgment was announced in public shall be entered in the record of the main trial. The enacting clause of the judgment contained in the record of the main trial shall be considered as the original.

2. A ruling on detention on remand, if rendered, shall also be entered in the record of the main trial.

**Article 320**
**Records of trial panel's deliberation and voting**

1. If the main trial is before a trial panel:

1.1. separate records shall be kept concerning the deliberation and voting of the trial panel.

1.2. the records on the deliberation and voting of the trial panel shall contain the course of the voting and the judgment rendered.

1.3. these records shall be signed by all the members of the trial panel and the recording clerk. Separate opinions shall be appended to the record of the deliberation and voting unless they have been entered in the record.

1.4. the record of the deliberation and voting of the panel of judges shall be sealed in an envelope. This record may be examined only by the higher court when it is ruling on a legal remedy, and in that case it must again seal the record in an envelope and indicate on the envelope that it has examined the record.

## 7. Commencement of the Main Trial and the Plea of the Accused

### Article 321
### Attendance of persons summoned at the main trial and establishment of defendant's identity

After the single trial judge or presiding trial judge has established that all persons summoned have appeared at the main trial or the single trial judge or trial panel has decided to conduct the main trial in the absence of some of the persons summoned or to postpone a decision on these issues, the single trial judge or presiding trial judge shall call on the accused and ask him or her to give his or her personal data, except data about prior convictions, in order to determine his or her identity.

### Article 322
### Initial instructions of the court to witnesses and injured parties

1. Having established the identity of the accused, the single trial judge or presiding trial judge shall direct the witnesses and expert witnesses to a designated place where they shall wait until called upon to testify. The single trial judge or presiding trial judge may, if necessary, call on the expert witnesses to remain in the courtroom to follow the course of the main trial.

2. If the injured party is present and has not yet filed his or her property claim, the single trial judge or presiding trial judge shall remind him or her that he or she may file a motion to realize such claim within criminal proceedings.

3. The single trial judge or presiding trial judge may take necessary measures to prevent collusion between witnesses, expert witnesses and the parties.

### Article 323
### Instructions to the Accused

1. The single trial judge or presiding trial judge shall invite the accused to follow closely the course of the main trial and shall instruct him or her that he or she may state his or her case, address questions to the co-accused, witnesses and expert witnesses, and make comments on and give explanations of their testimony.

2. The single trial judge or presiding trial judge shall then instruct the accused that:

1.1. he or she has a right not to give testimony in connection with his or her case or to answer any questions;

1.2. if he or she gives testimony, he or she shall not be obliged to incriminate himself or herself or his or her next of kin, nor to confess guilt; and

1.3. he or she may defend himself or herself in person or through legal assistance by a defence counsel of his or her own choice.

**Article 324**
**Reading of Charges in Indictment**

The main trial shall open with the reading by the state prosecutor of the charges against the defendant in the indictment. The defendant may waive the reading of the charges against him or her.

**Article 325**
**Plea by Defendant to Indictment**

1. The single trial judge or presiding trial judge shall satisfy himself or herself that the accused understands the indictment and afford the accused the opportunity to plead guilty or not guilty.

2. If the accused has not understood the charge, the single trial judge or presiding trial judge shall call on the prosecution to explain the charge in a way the accused may understand without difficulty.

3. If the accused does not want to give any testimony regarding his or her guilt, it shall be considered that he or she has pleaded not guilty.

**Article 326**
**Guilty Plea by Defendant at Trial**

1. If the accused pleads guilty on each count of the indictment at the main trial, the trial panel shall determine whether the requirements under Article 248, paragraph 1 of the present Code have been met.

2. In considering a guilty plea of the accused, the single trial judge or presiding trial judge may invite the views of the state prosecutor, the defence counsel and the injured parties.

3. If the trial panel is not satisfied that the requirements under Article 248, paragraph 1, of the present Code have been met, it shall proceed as if the guilty plea has not been made.

4. If the trial panel is satisfied that the requirements under Article 248, paragraph 1, of the present Code have been met, the main trial shall continue with the closing statements.

5. If there are multiple defendants and one or more pleads guilty, the main trial shall continue as to the defendants who did not plead guilty. The single trial judge or presiding trial judge shall postpone the sentencing of the defendants who plead guilty at the beginning of the main trial until the end of the main trial. If evidence had been taken in the main trial that only incriminates the defendant who has plead guilty, but is not relevant evidence against the remaining defendants who have not plead guilty, such evidence cannot be considered against the remaining defendants.

6. If the defendant pleads guilty under this Article as a result of a plea agreement, the single trial judge or presiding trial judge shall follow Article 233 and Article 247 of the present Code *mutatis mutandis.*

## 8. Order of Presentation of Evidence

### Article 327
### Sequence of Presentation of Evidence at Main Trial

1. Evidence in the main trial shall be presented in the following order:

1.1. opening statements,

1.2. the evidence presented by the state prosecutor,

1.3. the evidence presented by the injured party, if any,

1.4. the evidence presented by the defendant, and

1.5. closing statements.

## 9. Opening Statement

### Article 328
### Opening Statement

1. If the defendant does not plead guilty at the beginning of the trial, the single trial judge or the presiding trial judge shall call on the state prosecutor, the injured party and the defence counsel to summarize the evidence that supports their case or claim. The state prosecutor shall speak first, then the injured party and the defence counsel.

2. Persons presenting opening statements may refer to the admissible evidence, the applicable law, and may use charts, diagrams, court-approved transcripts of tapes, summaries and comparisons of evidence, if they are based on admissible evidence, as well as enlargements of exhibits and any demonstrative or illustrative exhibit or demonstration made in court.

3. The presentation of opening statements by the parties may be subject to time limits by the single trial judge or presiding trial judge.

## 10. Presentation of Evidence

### Article 329
### General Rules of Presentation of Evidence

1. Presentation of evidence shall include all facts deemed by the court to be important for a correct and fair adjudication.

2. The rules of evidence as provided for in Chapter XIV of the present Code shall be observed during the main trial.

3. The parties and the injured party may until the conclusion of the main trial move that new facts be looked into and that new evidence be collected and shall be entitled to repeat the motions which the single trial judge, presiding trial judge or the trial panel had earlier dismissed.

4. In addition to the evidence proposed by the parties or the injured party, the trial panel shall have the authority to collect evidence that it considers necessary for the fair and complete determination of the case.

### Article 330
### Examination of witness or expert without the presence of other witnesses

A witness who has not yet testified shall not, as a rule, attend the presentation of evidence, and an expert witness who has not yet given his or her expert findings and opinion shall not attend a hearing when another expert witness gives testimony on the same matter.

### Article 331
### Evidence Given by Witness at Main Trial

1. The single trial judge or presiding trial judge shall issue a schedule of the witnesses, beginning with the witnesses proposed by the state prosecutor, the witnesses proposed by

the injured party or victim advocate, and then the witnesses proposed by the defendant or defence counsel. If possible, the schedule shall call witnesses in the order that the state prosecutor, injured party, victim advocate, defendant and defence counsel proposed.

2. The state prosecutor, defendant or injured party may request the court to hear witnesses to rebut testimony or evidence presented by opposing parties under paragraph 1 of the present Article.

**Article 332**
**Direct examination, Cross Examination and reexamination of witness**

1. When a party presents evidence, the party proposing the evidence shall question the witness or present the evidence first.

2. Other parties will then be given the opportunity to cross examine the witness or challenge the witness' credibility.

3. The party who sponsored the evidence shall be given the final opportunity to clarify answers with the witness or rehabilitate the witness' credibility.

4. If a party is represented by more than one counsel, only the lead counsel may examine witnesses, cross examine witnesses and rehabilitate witnesses.

**Article 333**
**Direct Examination of Witnesses**

1. The party who proposes the witness shall examine him or her first.

2. The party examining the witness may ask questions of the witness in compliance with the rules of evidence.

3. The party may show a witness an exhibit in compliance with Article 336 of the present Code.

4. If a witness or an expert witness cannot recall the facts he or she has presented in previous testimony, the party who proposes the witness may show him or her admissible evidence which refreshes his or her memory.

**Article 334**
**Cross Examination of Witnesses**

1. The party who is cross examining a witness may:

1.1. ask questions of the witness in compliance with the rules of evidence; and

1.2. ask the witness to confirm or deny a fact. If the witness provides an answer that is contradicted by admissible evidence, the party cross examining the witness may then show or read the contradicting evidence to the witness. The party cross examining the witness or the court may ask the witness to explain the difference;

1.3. ask questions of the witness which examine the reliability of the witness' testimony or any bias the witness may have.

2. Exhibits used during cross examination shall be clearly identified for the court and the record shall reflect the use of the exhibit.

**Article 335**
**Redirect Examination**

After the witness has been cross examined, the party who proposes the witness shall have the opportunity to ask questions that clarify testimony that was unclear, explain differences in testimony, concerns about the reliability of the witness' testimony, or any bias the witness may have.

## 11. Rules Relating to Witnesses

**Article 336**
**Exhibits in Aid of Witness Testimony**

1. A party may show an exhibit to a witness and question the witness about that exhibit during the examination, cross examination or redirect examination.

2. An exhibit may be a document, chart, summary, videotape, audiotape, or other physical evidence.

3. Any exhibit that summarizes or demonstrates admissible evidence that is numerous, large or has been destroyed shall be first shown to a witness who can identify the admissible evidence used, explain how the exhibit was created, and demonstrate that the exhibit is a true, reliable and accurate representation of the original admissible evidence.

4. Any exhibit under paragraphs 2 or 3 of the present Article shall be admitted if it is a true, reliable and accurate representation of the original admissible evidence. The exhibit shall be added to the record if it hasn't already been admitted.

**Article 337**
**Use of prior witness testimony**

1. A party present evidence in the main trial from the previous testimony of a witness if it was obtained during a Special Investigative Opportunity under Article 149 of the present Code.

2. A party may present evidence in the main trial from the previous testimony of a witness if it was obtained during a session of pretrial testimony under Article 132 of the present Code, the witness is not available to testify, and a Notice of Corroboration has been filed in accordance with Article 263 of the present Code.

3. The state prosecutor may present evidence in the main trial from audiotapes or videotapes of the accused taken in accordance with Article 88 or Article 92 of the present Code.

4. If a videotape or audiotape of the testimony or statement under paragraphs 1-3 of the present Article was made, it shall be replayed at the main trial in its entirety, unless the single trial judge or trial panel decides that the entire videotape or audiotape would contain excessive irrelevant information. In such case, the single trial judge or trial panel can order specific, relevant portions of the videotape or audiotape to be replayed at trial.

5. This Article does not prohibit the use of prior statements by a witness during the cross-examination of that witness.

**Article 338**
**Reading of other previously entered statements**

1. Except in cases provided for in the present Code, records containing the testimony of witnesses, the co-accused or participants who have already been convicted of the criminal offence as well as records and other documents regarding the findings and opinions of expert witnesses may be read according to a decision of the trial panel only in the following cases:

> 1.1. if the persons who have been examined have died, become afflicted with mental disorder or disability or cannot be found, or if their appearance before the court is impossible or involves considerable difficulties due to old age, illness or other important reasons;
>
> 1.2. if the witnesses or expert witnesses refuse to testify at the main trial without lawful reasons; or
>
> 1.3. if the parties agree that the direct examination of a witness or expert witness who has failed to appear, irrespective of whether he or she has been summoned or not, be replaced by reading the records of his or her previous examination.

2. Records of previous examinations of persons exempt from the duty to testify may not be read if such persons were not summoned to the main trial or if they exercised their right not to testify at the main trial. If such persons exercised their right not to testify at the main trial after they had already been examined or if they did not come to court when summoned, the record of their prior examination shall be inadmissible evidence.

3. The reasons for the reading of the record shall be indicated in the record of the main trial and during the reading it shall be announced whether or not the witness or expert witness took the oath.

**Article 339**
**Witnesses Subject to Special Protection**

1. The examination of a witness under the age of sixteen (16) years of age who is a victim of a criminal offence under Chapter XX of the Criminal Code shall not be permitted in the main trial if his or her testimony has already been taken under Article 132 or Article 149 of the present Code and if the trial panel recognizes that a new examination is not necessary. If such witness is examined, the trial panel may decide to exclude the public.

2. If a child is present at a hearing as a witness or an injured party, he or she shall be taken out of the courtroom as soon as his or her presence is no longer necessary.

3. Measures for the protection of injured parties and witnesses as provided for in Chapter XIII of the present Code shall be observed during the main trial.

**Article 340**
**Oath**

1. Before the examination of a witness, the single trial judge, presiding trial judge or the pre-trial judge when acting under Article 149 of the present Code may require the witness to take an oath. A child and a person proven or suspected with good reason to have committed the criminal offence or participated in the criminal offence in relation to which he or she is being examined cannot be required to take an oath. If a witness has taken an oath in the pre-trial proceedings, he or she shall only be reminded at the main trial of the oath already taken.

2. The oath of a witness shall read: “Conscious of the significance of my testimony and my legal responsibility I solemnly swear that I shall tell the truth, the whole truth, and nothing but the truth, and that I shall not withhold anything which has come to my knowledge.”

3. Before the beginning of the examination of an expert witness, the single trial judge or presiding trial judge may require him or her to take an oath. Prior to the main trial, the expert witness may take an oath only before the court and only where there is a danger that he or she might be kept from appearing at the main trial. The reason for his or her

taking an oath shall be entered in the record. A permanent expert witness who has taken a general oath for the type of examinations concerned shall be only reminded at the main trial of the oath already taken.

4. The oath of an expert witness shall read: “Conscious of the significance of my testimony and my legal responsibility, I solemnly swear that I shall perform my expert analysis conscientiously and to the best of my knowledge and that I shall state my findings and opinion accurately and completely.”

5. Mute witnesses and expert witnesses who are literate shall take the oath by signing the text of the oath, and deaf witnesses and expert witnesses shall read the text of the oath. If a deaf or mute witness or expert witness is illiterate, the oath shall be given through an interpreter.

**Article 341**
**Expert statement**

1. An expert witness shall communicate his or her findings and opinion to the court through a report that complies with Article 138 of the present Code.

2. At the main trial, the report shall be entered into the record. The expert shall describe his or her findings and explain his or her analysis. The expert may use exhibits in assistance of his or her testimony.

3. The party which did not request the expert analysis may cross-examine the expert witness about his or her report, his or her analysis, or his or her education, experience, or basis for his or her expertise.

**Article 342**
**Presence of Witnesses in Courtroom**

1. Witnesses and expert witnesses who have been examined shall remain in the courtroom unless the single trial judge or presiding trial judge upon hearing the parties permits them to leave or removes them temporarily from the courtroom.

2. The single trial judge or presiding trial judge may order, on the motion of the parties or *ex officio*, that the examined witnesses and expert witnesses be removed from the courtroom and then called in and examined again in the presence or in the absence of other witnesses and expert witnesses.

**Article 343**
**Evidence Taken outside of Court**

1. If it becomes known at the main trial that a summoned witness or expert witness is unable to appear before the court or that his or her appearance involves considerable difficulties, the trial panel may, if it deems his or her testimony to be important, order that he or she give his or her testimony to the single trial judge or presiding trial judge or a judge on the trial panel outside the main trial, or that the testimony be given to a pre-trial judge in whose jurisdictional territory the witness or expert witness resides.

2. If an inspection or reconstruction of the event has to be carried out outside the main trial, it shall be conducted by the single trial judge or presiding trial judge or a judge on the trial panel.

3. The parties and the injured party shall always be advised when and where a witness shall be examined or when and where an inspection or reconstruction of an event shall take place, and shall be instructed of their right to attend these actions. If the parties and the injured party are present at these actions, they shall have the rights under Article 149 paragraph 2 of the present Code.

**Article 344**
**Reading of records or replay of recordings**

1. The record of a site inspection conducted outside the main trial, of a search of premises and a person and of the confiscation of objects, documents, books, files and other papers as well as technical recordings of evidentiary value shall be read or reproduced at the main trial in order to establish their contents. The trial panel shall have the discretion to allow an oral summary of these records, as well as the reproduction of the sound or camera recordings of the course of these investigative actions. Documents of evidentiary value shall, if possible, be submitted in their original form.

2. Objects which may serve to clarify an issue may in the course of the main trial be shown to the accused and, if need be, to a witness or an expert witness.

**Article 345**
**Examination of the Accused after Presentation of Evidence**

1. After the examination of witnesses, expert witnesses and presentation of material evidence the examination shall take place of the accused who has pleaded not guilty.

2. The provisions applying to the examination of the defendant in the pre-trial proceedings shall apply *mutatis mutandis* to the examination of the accused at the main trial.

3. Co-accused who have not yet been examined shall not be present during the examination of the accused.

**Article 346**
**Examination of the Accused**

1. The accused has the right to not declare. If he or she chooses to declare, his or her testimony shall be conducted in accordance with paragraph 2 through 4 of the present Article.

2. The lead defense counsel shall question the defendant in accordance with Article 333 of the present Code.

3. The state prosecutor shall question the defendant in accordance with Article 334 of the present Code.

4. The co-defendants, if any, may question the defendant in accordance with Article 334 of the present Code.

5. The injured party may question the defendant in accordance with Article 334 of the present Code.

6. The defense counsel may conduct redirect examination of the defendant in accordance with Article 335 of the present Code.

7. After the single trial judge or presiding trial judge has assured himself or herself that the parties have no more questions, he or she may proceed to examine the accused, if the testimony or answers of the accused contain gaps, ambiguities or contradictions. Thereafter, the trial panel may put questions directly to the accused.

8. After the examination has been completed, the single trial judge or presiding trial judge shall ask the accused whether he or she has anything to add in his or her defence. If the accused elaborates upon his or her defence, he or she may again be examined.

**Article 347**
**Examination of Co-Accused**

1. After the examination of the first accused has finished, each of the other accused, if there are any, shall be examined in turn in compliance with Article 346 of the present Code. Each accused shall be entitled to address questions to the other co-accused who have been examined.

2. The previous testimony of co-accused during the main trial may be used by the parties under Article 334 of the present Code. If the testimony of individual co-accused on the

same circumstances differ, the single trial judge or presiding trial judge may also confront the co-accused.

**Article 348**
**Motions to Supplement the Evidentiary Proceedings**

1. Upon completion of the evidentiary proceedings, the single trial judge or presiding trial judge shall ask the parties and the injured party if they have any motions for supplementing the evidentiary proceedings.

2. If no motions for supplementing the evidentiary proceedings are made or if such motion has been made and denied, and the court finds that the case has been clarified, the single trial judge or presiding trial judge shall announce that the evidentiary proceedings are concluded.

**Article 349**
**Criminal Records of the Accused**

The data from the criminal register as well as other data about convictions for criminal offences may be read only when the presentation of evidence is completed. When the accused has pleaded guilty, all the information regarding the previous convictions of the accused shall be read out before the parties make their closing statements.

## 12. Amendments and Extension of the Indictment

**Article 350**
**Modification of Indictment at Main Trial**

1. If the state prosecutor finds in the course of the main trial that the evidence presented indicates that the factual situation as described in the indictment has changed, he or she may modify the indictment orally during the main trial and may also make a motion to recess the main trial in order to prepare a new indictment.

2. If the trial panel grants the recess of the main trial in order for a new indictment to be prepared, it shall determine the time in which the state prosecutor shall be obliged to file a new indictment. A copy of the new indictment shall be served on the accused. If the state prosecutor fails to file a new indictment within the prescribed period of time, the court shall resume the main trial on the basis of the previous indictment.

3. When the indictment has been modified, the accused or the defence counsel may make a motion to recess the main trial in order to prepare the defence. The trial panel shall recess the main trial to allow for the preparation of defence, if the indictment has been substantially modified or extended.

**Article 351**
**Extension of indictment at the main trial**

1. If the accused commits a criminal offence during a hearing in the course of the main trial or if a previous criminal offence committed by the accused is discovered in the course of the main trial, the trial panel shall, in acting upon a charge by the state prosecutor which may also be submitted orally, extend the main trial to include this new offence as well.

2. In such case, the court may recess the main trial to give the defence time to prepare, and after hearing the parties it may decide that the accused be tried separately for the offence under paragraph 1 of the present Article.

3. If another department within the basic court is competent to adjudicate a matter under paragraph 1 of the present Article, the panel shall after hearing the parties decide whether it shall refer the matter about which it is conducting the main trial to the competent higher court for adjudication.

## 13. Closing Statements

**Article 352**
**Parties' Closing Statements**

1. Upon completion of the evidentiary proceedings, the single trial judge or presiding trial judge shall call on the parties, the injured party and the defence counsel to sum up their arguments. The state prosecutor shall speak first, then the injured party and the defence counsel, and finally the accused.

2. Persons presenting closing statements may refer to the admissible evidence, as well as the proceedings, the applicable law, the character and demeanour of the witnesses as observed in the judicial proceedings, and may use charts, diagrams, court-approved transcripts of tapes, summaries and comparisons of evidence, if they are based on admissible evidence, as well as enlargements of exhibits and any demonstrative or illustrative exhibit or demonstration made in court.

**Article 353**
**Closing Statement by State Prosecutor**

1. In his or her closing statement the state prosecutor shall present his or her evaluation of the evidence taken at the main trial, explain his or her conclusions concerning facts which are important for the decision, and shall present and justify his or her proposal regarding the criminal liability of the accused, the provisions of the Criminal Code to be applied and the mitigating and aggravating circumstances to be taken into consideration in considering the punishment. The state prosecutor may not propose the amount of the

punishment, although he or she may propose that a judicial admonition or one of the alternative punishments under Article 49 of the Criminal Code be imposed.

2. When the accused who is a cooperative witness pleads guilty based on a plea agreement, the public prosecutor may recommend the range of punishment, judicial admonition or an alternative punishment provided for by the Criminal Code of Kosovo, to the court.

**Article 354**
**Closing Statement on Behalf of Injured Party**

In his or her closing statement, the injured party or his or her authorized representative may explain his or her declaration of injury or property claim and call attention to evidence of the criminal liability of the accused.

**Article 355**
**Closing Statement and Comments on Behalf of Accused**

1. The defence counsel or the accused himself or herself shall present the defence in a closing statement and may comment on the allegations of the prosecution and the injured party.

2. After the defence counsel has presented arguments for the defence, the accused shall have the right to speak him or herself, to assert whether he or she agrees with the defence presented by his or her counsel and to supplement such defence.

3. The state prosecutor and the injured party shall have the right to respond to the defence, and defence counsel or the accused shall have the right to comment on those responses.

4. The accused shall always have the right to speak last.

**Article 356**
**Presentation of Closing Statements**

1. The presentation of closing statements by the parties may be subject to time limits by the single trial judge or presiding trial judge.

2. The single trial judge or presiding trial judge may, upon prior warning, interrupt the speaker who in his or her closing statements offends public order and morality, insults another person, repeats himself or herself or speaks at great length on matters manifestly irrelevant to the case. The interruption and the reason for this shall be noted in the record of the main trial.

3. When several persons act for the prosecution and several defence counsels represent the defence, only the lead counsel or a co-counsel designated by the lead counsel may present closing arguments on behalf of their party.

4. After all closing statements have been presented, the single trial judge or presiding trial judge shall ask whether anyone has any further statement to make.

**Article 357**
**Conclusion of the main trial, deliberation and voting**

1. If after the closing statements of the parties the single trial judge or trial panel does not find a need for any further evidence, the single trial judge or presiding trial judge shall indicate that the main trial has been concluded.

2. The single trial judge or trial panel shall then withdraw for deliberation and voting in order to render a judgment.

**Article 358**
**Dismissal of Indictment**

1. The trial panel shall dismiss the indictment by a ruling:

1.1. if the proceedings were conducted without the request of the state prosecutor;

1.2. if the required motion of the injured party or the permission of the competent public entity is lacking, or if the competent public entity has withdrawn permission; or

1.3. if there are other circumstances which bar prosecution.

2. The single trial judge or trial panel may render a ruling by which the indictment is dismissed even after the main trial has been scheduled.

# CHAPTER XX
# JUDGMENT

## 1. Rendering of the Judgment

### Article 359
### Rendering and announcement of judgment

1. If in its deliberations the court finds that there is no need to re-open the main trial so as to supplement the proceedings or to obtain clarification of a particular issue, the court shall render a judgment.

2. The judgment shall be rendered and announced in the name of the people.

### Article 360
### Subjective identity and object of the judgment over the indictment

1. The judgment may relate only to the accused and only to an act which is the subject of a charge contained in the indictment as initially filed or as modified or extended in the main trial.

2. The court shall not be bound by the motions of the state prosecutor regarding the legal classification of the act.

3. The court shall not be bound by any agreement between the state prosecutor and the defence regarding modification of the charges or the guilty plea, except for plea agreements accepted by the court under Article 233 of the present Code.

### Article 361
### Basis of Judgment

1. The court shall base its judgment solely on the facts and evidence considered at the main trial.

2. The court shall be bound to assess conscientiously each item of evidence separately and in relation to other items of evidence and on the basis of such assessment to reach a conclusion whether or not a particular fact has been established.

## 2. Types of Judgments

### Article 362
### Form of Judgment

1. The court shall, by a judgment, reject the charge or acquit the accused of the charge or pronounce the accused guilty.

2. If the charge includes several criminal offences, the judgment shall specify whether, and for which offence, the charge is rejected or the accused is acquitted, or the accused is pronounced guilty.

### Article 363
### Rejection judgment

1. The court shall render a judgment rejecting the charge, if:

1.1. the state prosecutor withdraws the charge during the period from the opening until the conclusion of the main trial;

1.2. the accused was previously convicted or acquitted of the same act under a final judgment or proceedings against him or her were terminated in a final form by a ruling; or

1.3. the period of statutory limitation has expired, an amnesty or pardon covers the act, or there are other circumstances which bar prosecution.

### Article 364
### Judgment of Acquittal

1. The court shall render a judgment acquitting the accused, if:

1.1. the act with which the accused is charged does not constitute a criminal offence;

1.2. there are circumstances which exclude criminal liability; or

1.3. it has not been proven that the accused has committed the act with which he or she has been charged.

**Article 365**
**Judgment of Guilty**

1. In a judgment pronouncing the accused guilty the court shall state:

1.1. the act of which he or she has been found guilty, together with facts and circumstances indicating the criminal nature of the act committed, and facts and circumstances on which the application of pertinent provisions of criminal law depends;

1.2. the legal designation of the act and the provisions of the criminal law applied in passing the judgment;

1.3. the punishment imposed on the accused, including an alternative punishment under the Criminal Code, or a waiver of punishment;

1.4. an order to impose mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs or to confiscate the assets subject to forfeiture;

1.5. the decision to include the time spent in detention on remand or imprisonment under an earlier sentence in the amount of the punishment; and

1.6. the decision on costs of criminal proceedings and on a property claim and on whether the final judgment should be announced in the press or radio or television.

2. If the accused is punished by a fine, the judgment shall state the time within which he or she must pay the fine and the manner of substituting the fine if the fine cannot be collected by means of compulsion.

**3. Announcement of the Judgment**

**Article 366**
**Announcement of Judgment**

1. The judgment shall be announced by the single trial judge or presiding trial judge immediately after the court has rendered it. If the court is unable to render judgment on the day the main trial is completed, it shall postpone the announcement by a maximum of three (3) days and shall determine the time and place for the announcement of the judgment.

2. The single trial judge or presiding trial judge shall read the enacting clause of the judgment in open court and in the presence of the parties, their legal representatives and authorized representatives and defence counsel, after which he or she shall give a brief account of the grounds for the judgment.

3. The judgment shall be announced even in the absence of a party, a legal representative, authorized representative or defence counsel. If the accused is not present, the single trial judge or presiding trial judge may report the judgment to him or her orally or that the judgment shall be served on him or her in writing.

4. If the public was excluded from the main trial, the enacting clause of the judgment shall always be read out in open court. The trial panel shall decide whether and to what extent the public should be excluded while the grounds for the judgment are announced.

5. All persons present shall stand while the enacting clause of the judgment is being read.

**Article 367**
**Detention on Remand after Announcement of Judgment**

1. In rendering a judgment by which the accused is punished by imprisonment, the single trial judge or trial panel may:

1.1. order extend detention on remand if conditions set forth in Article 187 paragraph 1 of the present Code are met, or

1.2. terminate detention on remand if the accused is in detention on remand and the grounds on which it was ordered have ceased to exist.

2. If a single trial judge or trial panel imposes a sentence with imprisonment of five (5) or more years, and imposes detention on remand, for the accused if he or she is not in detention, or extends it when the accused is already in detention.

3. If the sentence imposed is lower than five (5) years than the detention shall be imposed or extended if conditions set forth in Article 187 paragraph 1 of the present Code are met.

4. The trial panel shall always terminate detention on remand and order the release of the accused if:

4.1. the accused is acquitted of the charge;

4.2. he or she is found guilty but the punishment has been waived;

4.3. he or she is only punished by a fine or has received a judicial admonition;

4.4. one of the alternative punishments is imposed, with exception of the punishment of semi-liberty under Article 61 of the Criminal Code;

4.5. due to the inclusion of detention on remand in the amount of punishment he or she has already served the sentence; or

4.6. the charge is rejected, except in a case in which it is rejected on grounds of lack of competence of the court.

5. Before ordering or terminating detention on remand under paragraphs 3 or 4 of the present Article, the single trial judge or trial panel shall first hear the opinion of the state prosecutor, if the proceedings were initiated upon his or her request, and either the accused or his or her defence counsel.

6. If the accused is in detention on remand and the single trial judge or trial panel finds that the grounds on which detention on remand was ordered still exist, it shall extend detention on remand under a separate ruling. It shall also render a separate ruling when detention on remand is to be ordered or cancelled. An appeal against this ruling shall not stay execution.

7. Detention on remand ordered or extended under the provisions of paragraphs 3 or 6 of the present Article may last until the judgment becomes final, but no longer than the expiry of the term of punishment imposed in the judgment of the basic court.

8. An accused in detention on remand who has been punished by imprisonment may upon his or her request be transferred to a penal institution under a ruling of the single trial judge or presiding trial judge even before the judgment has become final.

### Article 368
### Instructions and Warnings Accompanying Judgment

1. After announcing the judgment, the single trial judge or presiding trial judge shall instruct the parties of their right to appeal. The instruction shall be entered into the record of the proceedings of the main trial.

2. Where an alternative punishment listed under the Article 49 of the Criminal Code has been imposed, the single trial judge or presiding trial judge shall warn the accused of the meaning of the punishment and the conditions by which he or she is bound to abide.

3. The single trial judge or presiding trial judge shall remind the parties of their obligation to report to the court any change in address until the final conclusion of proceedings.

## 4. Drawing up and Serving of Judgments

### Article 369
### Timing and Service of Written Judgment

1. The judgment shall be drawn up in writing within fifteen (15) days of its announcement, if the accused is in detention on remand or if detention on remand has been imposed on him/her, while in all other cases it is drawn within thirty (30) days of its

announcement. When a case is complex, the single trial judge or presiding trial judge may ask the president of the court to extend the deadline by up to sixty (60) more days for the judgment to be drawn up.

2. The judgment shall be signed by the single trial judge or presiding trial judge and the recording clerk.

3. A certified copy of the judgment containing an instruction on the right to appeal shall be served on the parties.

4. A certified copy of the judgment with an instruction on the right to appeal shall be served on the injured party, on a person from whom an object is confiscated under the judgment and on a legal person upon which the confiscation of the material benefit acquired by the commission of a criminal offence has been imposed.

5. Where, under the provisions on a single punishment for concurrent criminal offences, the court has rendered a judgment taking into account judgments rendered by other courts, certified copies of the final judgment shall be sent to the courts concerned.

**Article 370**
**Content and Form of Written Judgment**

1. The judgment drawn up in writing shall be fully consistent with the judgment as it was announced. It shall have an introduction, the enacting clause and a statement of grounds.

2. The introduction shall include: an indication that the judgment is rendered in the name of the people; the name of the court; the first name and surname of the single trial judge or presiding trial judge, members of the trial panel and the recording clerk; the first name and surname of the accused; the criminal offence of which the accused was convicted and an indication as to whether he or she was present at the main trial; the day of the main trial; whether the main trial was public; the first name and surname of the state prosecutor, counsel, legal representative and authorized representative present at the main trial; the day of the announcement of the judgment that has been rendered; and the date when the judgment was drawn up.

3. The enacting clause of the judgment shall include the personal data of the accused and the decision by which the accused is pronounced guilty of the act of which he or she is accused or by which he or she is acquitted of the charge for that act or by which the charge is rejected.

4. If the accused has been convicted, the enacting clause of the judgment shall contain the necessary data specified in Article 365 of the present Code, and if he or she was acquitted or the charge was rejected, the enacting clause shall contain a description of the act with which he or she was charged and the decision concerning the costs of criminal proceedings and the property claim if such claim was filed.

5. In the event of concurrent criminal offences the court shall indicate in the enacting clause, the punishment determined for each separate offence, whereupon it shall indicate the aggregate punishment.

6. In the statement of grounds for a judgment, the court shall present the grounds for each individual point of the judgment.

7. The court shall state clearly and exhaustively which facts it considers proven or not proven, as well as the grounds for this. The court shall also, in particular, make an evaluation of the credibility of conflicting evidence, the grounds for not approving individual motions of the parties, and the reasons by which the court was guided in settling points of law and, in particular, in establishing the existence of a criminal offence and the criminal liability of the accused, as well as in applying specific provisions of criminal law to the accused and his or her act.

8. If the accused has been sentenced to a punishment, the statement of grounds shall indicate the circumstances the court considered in determining the punishment. The court shall, in particular, explain by which grounds it was guided if it found that it was an especially serious case or that it is necessary to impose a sentence which is more severe than what has been prescribed, or if it found that it was necessary to reduce the sentence or to waive the sentence, or to impose an alternative punishment or to impose a measure of mandatory rehabilitation treatment or confiscation of the material benefit acquired by the commission of a criminal offence.

9. If the indictment lists assets subject to forfeiture, the judgment shall indicate whether the assets shall be forfeited or not. The judgment shall provide reasoning for the forfeiture of each asset that is ordered to be forfeited, and the judgment shall provide reasoning for each asset which is not being ordered to be forfeited.

10. If the accused is acquitted of a charge, the statement of grounds shall state, in particular, on which of the reasons provided for in Article 364 of the present Code it is acting.

11. In the statement of grounds for a judgment rejecting a charge, the court shall not evaluate the principal matter but shall confine itself only to the reasons for the rejection of the charge.

## Article 371
## De Minimus Errors in Judgment

1. Errors in names and numbers, other obvious writing and computing errors, deficiencies regarding the form of the written judgment and discrepancies between the judgment drawn up in writing and its original shall be corrected under a separate ruling of the single trial judge or presiding trial judge, on the motion of the parties, defence counsel or *ex officio*.

2. If de minimus or harmless errors in the judgment are the subject of an appeal, the court of appeals may correct the judgment under Article 403 of the present Code.

3.If the judgment as drawn up in writing and its original differ with respect to the data provided for in Article 365 paragraph 1 subparagraphs 1.1 through 1.4 and subparagraph 1.6 of the present Code, the ruling on corrections shall be served on persons referred to in Article 369 of the present Code. In such case, the prescribed period of time for filing an appeal against the judgment shall run from the day of service of such ruling. No separate appeal may be permitted against this ruling.

**Article 372**
**Execution of Penal Sanctions**

1. If the court decides on extension or imposition of detention on remand following the announcement of judgment and the accused agrees with it, or when the court imposes a punishment based on provisions of Article 369 paragraph 5 of the present Code, it shall be deemed that the accused is serving the sentence pursuant to provisions of the Law on Execution of Penal Sanctions.

2. If the judgment includes a penal sanction with a punishment from Article 367, paragraph 2 or 3 or in the final, written judgment under Article 369 paragraph 5 of the present Code, but the accused has left Kosovo or is evading service, the single trial judge or presiding trial judge shall issue an order for the arrest of the accused in compliance with Article 175 of the present Code.

**Article 373**
**Judgment against Legal Persons and Execution of Judgment**

Investors, shareholders or lenders to a legal person shall not have standing to object to judgments and its execution against a legal person, unless that person is the representative of the defendant legal person under Article 20 of the Law on Liability of Legal Persons for Criminal Offences, Law No. 04/L-030 or successor law.

# CHAPTER XXI
# LEGAL REMEDIES

## 1. Legal Remedies

### Article 374
### Types of Legal Remedies

1. Unless otherwise provided for under the present code, a party may seek legal remedies from a court of higher instance through:

1.1. an appeal against the judgment of the Basic Court to the Court of Appeals.

1.2. an appeal against the judgment of the Court of Appeals to the Supreme Court of Kosovo under Article 407 paragraph 1 of the present Code or where the judgment has imposed a sentence of life-long imprisonment.

1.3. an appeal against a decision of the Basic Court to the Court of Appeals.

1.4. an application for extraordinary legal remedies from the Basic Court or Court of Appeals to the Supreme Court of Kosovo.

2. An order of a pretrial judge may be reviewed by a panel comprised of three (3) basic court judges if authorized under the present code. An order reviewed by a review panel under this paragraph is reviewable by the Court of Appeals or Supreme Court only during an appeal against the judgment of the Basic Court.

## 2. General Rules of Appellate procedure

### Article 375
### Fairness in Legal Remedies

1. No party shall be permitted to have ex parte communication with the review panel, court of appeals or the Supreme Court regarding an objection or request for legal remedy that is pending before the review panel, court of appeals or the Supreme Court, or which the party intends to file before the review panel, court of appeals or the Supreme Court.
2. No judge of the review panel, court of appeals or Supreme Court shall engage in an ex parte communication with a party regarding an objection or request for legal remedy to which the party has an interest which is pending before the court of appeals or the Supreme Court, or which the party intends to file before the review panel, court of appeals or the Supreme Court.

3. The judge with whom the party attempts to have ex parte communications in violation of paragraph 1 or 2 of this Article shall immediately refuse the communications and shall inform the other parties of the attempted ex parte communication.

**Article 376**
**Form of Objections or Request for Legal Remedy**

1. As a general rule, objections or requests for legal remedy must contain:

1.1. the file number of the case;

1.2. the name of the defendant;

1.3. a description of the legal status of the case, including whether the objection or request was filed within the period of time allowed;

1.4. a description of the relevant facts contained in the record;

1.5. a description of the legal basis for the objection or request;

1.6. a description of the remedy being requested;

1.7. a description of the legal basis for the remedy;

1.8. if the objection or request is on behalf of the defendant, a statement that the defendant consents to the request,

2. The objection or request must clearly identify the information which complies with paragraph 1 of the present Article.

3. The objection or request shall be filed with the basic court, which shall serve the objection or request upon the opposing party.

4. No objection or request shall be considered which does not comply with this Article.

**Article 377**
**Form of Reply to Objection or Request for Legal Remedy**

1. A reply to an objection or request for legal remedy must contain:

1.1. the file number of the case;

1.2. the name of the defendant;

1.3. a description of the legal status of the case, including whether the reply was filed within the period of time allowed;

1.4. a description of the relevant facts contained in the record;

1.5. arguments against the legal basis for the objection or request claimed by the requesting party;

1.6. arguments against the remedy being requested by the requesting party;

1.7. arguments against the legal basis for the remedy requested by the requesting party;

2. The reply to the objection or request must clearly identify the information which complies with paragraph 1 of the present Article.

3. The reply to the objection or request shall be filed with the basic court, which shall serve the reply upon the opposing party.

4. No reply to the objection or request shall be considered which does not comply with this Article.

**Article 378**
**Timing of Objection, Request for Legal Remedy and Reply**

1. The objection being adjudicated by the review panel must be filed within forty-eight (48) hours, unless otherwise specified under the law.

2. The request being adjudicated by the court of appeals must be filed within five (5) days of the final judgment or decision, unless otherwise specified under the law.

3. The request being adjudicated by the Supreme Court of Kosovo must be filed within ten (10) days, unless otherwise specified under the law

4. The reply to the objection must be filed within twenty-four (24) hours of an objection which is being adjudicated by the review panel.
5. The reply to the request must be filed within five (5) days of a request which is being adjudicated by the court of appeals.

6. The reply to the request must be filed within ten (10) days of a request which is being adjudicated by the Supreme Court of Kosovo.

**Article 379**
**All Objections, Requests for Legal Remedy and Replies Shall Comply**

No opinion, objection, request for legal remedy or reply shall be considered by a judge of the basic court, review panel, court of appeals or Supreme Court of Kosovo that does not comply with Articles 375 to 378 of the present Code.

## 3. Appeals against Judgment

**Article 380**
**Filing Appeals against Judgment**

1. Authorized persons may file an appeal against a judgment rendered by the single trial judge or trial panel of the Basic Court within fifteen (15) days of the day the copy of the judgment has been served.

2. An appeal filed in due time by an authorized person shall stay the execution of the judgment.

**Article 381**
**Persons authorized to file appeals against judgment**

1. An appeal may be filed by the state prosecutor, the defence counsel, the accused, the legal representative of the accused and the injured party.

2. The state prosecutor may file an appeal either to the detriment or to the benefit of the accused.

3. An injured party may challenge a judgment only with respect to the court's decision on the punitive sanctions for criminal offences committed against life or body, against sexual integrity or against the security of public traffic and on the costs of criminal proceedings.

4. An appeal may also be filed by a person whose property has been confiscated by a person from whom the material benefit acquired by the commission of a criminal offence has been confiscated, and by a legal person from whom the material benefit has been confiscated.

**Article 382**
**Content of the Appeal against Judgment**

1. The appeal against judgment shall comply with Article 376 of the present Code, but shall additionally include:

1.1. an indication of the judgment against which the appeal is filed;

1.2. the grounds for challenging the judgment under Article 383 of the present Code;

1.3. a motion to reverse the challenged judgment in whole or in part, or to modify it; and

1.4. the signature of the appellant.

2. If an appeal is filed by an accused or an injured party who are not represented by counsel, and the appeal is not drawn up in accordance with the provisions of paragraph 1 of the present Article, the single trial judge or presiding trial judge shall request the appellant to supplement it within a certain prescribed period of time by a written submission. If the appellant does not comply with the request and the appeal does not contain information under Article 376 of the present Code or paragraph 1 of the present Article, the single trial judge or presiding trial judge shall dismiss it if the information cannot be readily discovered.

3. New evidence and facts may be presented in the appeal but the appellant shall be bound to give reasons for failing to present them before. In referring to new facts the appellant shall indicate the evidence by which these facts may be proven, and in referring to new evidence he or she shall indicate the facts which he or she intends to prove by that evidence.

4. If the appellant asserts grounds for appeal but did not raise those grounds with the basic court during the initial hearing, second hearing or main trial, the appellant may not raise those grounds unless he or she can assert an extraordinary reason or new evidence or facts under paragraph 3 of the present Article.

**Article 383**
**Grounds for exercising an appeal against the judgment**

1. A judgment may be challenged:

1.1. on the ground of a substantial violation of the provisions of criminal procedure;

1.2. on the ground of a violation of the criminal law;

1.3.on the ground of an erroneous or incomplete determination of the factual situation; or

1.4. on account of a decision on criminal sanctions, confiscation of the material benefit acquired by the commission of a criminal offence, costs of criminal

proceedings, property claims as well as on account of an order to publish a judgment.

2. A judgment cannot be challenged on the ground of an erroneous or incomplete determination of the factual situation when there is a plea agreement or when the accused has pleaded guilty to all counts of the indictment and the trial panel has accepted such plea.

**Article 384**
**Substantial Violation of the Provisions of Criminal Procedure**

1. There is a substantial violation of the provisions of criminal procedure if:

1.1. the court was not properly constituted or the participants in the rendering of the judgment included a judge who did not attend the main trial or was excluded from adjudication under a final decision;

1.2. a judge who should be excluded from participation in the main trial participated therein;

1.3. the main trial was conducted in the absence of persons whose presence at the main trial is required by law or the accused or defence counsel was, notwithstanding his or her request, denied the right to use his or her own language in the main trial and to follow the course of the main trial in his or her language;

1.4. the public was excluded from the main trial in violation of the law;

1.5. the court violated the provisions of the criminal procedure relating to the issue of whether there exists a charge by an authorized state prosecutor, a motion of the injured party or the approval of the competent public entity;

1.6. the judgment was rendered by a court which lacked subject matter jurisdiction to hear the case;

1.7. the court in its judgment did not fully adjudicate the substance of the charge;
1.8. the judgment was based on inadmissible evidence;

1.9. the accused, when asked to enter his or her plea, pleaded not guilty on all or certain counts of the charge and was examined before the presentation of evidence was completed;

1.10. the judgment exceeded the scope of the charge;

1.11. the judgment was rendered in violation of Article 395 of the present Code; or

1.12. the judgment was not drawn up in accordance with Article 370 of the present Code.

2. Substantial violation of provisions of criminal procedure shall be considered if during the course of criminal proceedings, including pretrial proceedings, the court, the state prosecutor or the police:

2.1. omitted to apply a provision of the present Code or applied it incorrectly; or

2.2. violated the rights of the defense; and this influenced or might have influenced the rendering of a lawful and fair judgment.

## Article 385
## Violation of the Criminal Law

1. There is a violation of the criminal law:

1.1. the act for which the accused is prosecuted is not a criminal offence;

1.2. circumstances exist which preclude criminal liability;

1.3. circumstances exist which preclude criminal prosecution and, in particular, whether criminal prosecution is prohibited by the period of statutory limitation or precluded due to an amnesty or pardon, or prior adjudication by a final judgment;

1.4. an inapplicable law was applied to the criminal offence which is the subject-matter of the charge;

1.5. in rendering a decision on punishment, alternative punishment or judicial admonition, or in ordering a measure of mandatory rehabilitation treatment or the confiscation of material benefit acquired by the commission of a criminal offence, the court exceeded its authority under the law; or

1.6. provisions were violated in respect of crediting the period of detention on remand and an earlier served sentence.

## Article 386
## Erroneous or Incomplete Determination of the Factual Situation

1. A judgment may be challenged on grounds of an erroneous or incomplete determination of the factual situation.

2. There is an erroneous determination of the factual situation when the court determines a material fact incorrectly or when the contents of documents, records on evidence

examined or technical recordings seriously undermine the correctness or reliability of the determination of a material fact.

3. There is an incomplete determination of the factual situation if the court fails to establish a material fact.

**Article 387**
**Appeal against the judgment related to the decision on criminal sanction and other decisions**

1. A judgment may be challenged in respect of a decision on a punishment or a judicial admonition on the grounds that the court, while not exceeding its authority under the law, has nevertheless failed to determine the punishment or judicial admonition correctly, having regard to all the relevant.

2. The judgment may also be challenged on the grounds that the court has applied or failed to apply the provisions on the mitigation or waiver of punishment or on judicial admonition.

3. A decision on a measure of mandatory rehabilitation treatment of persons addicted to drugs or alcohol or on confiscation of the material benefit acquired by the commission of a criminal offence may be challenged on the grounds that the court, while not violating Article 385 subparagraph 1.5 of the present Code, has nevertheless rendered that decision incorrectly, or failed to impose the measure of mandatory rehabilitation treatment of persons addicted to drugs or alcohol or the measure of confiscation of the material benefit acquired by the commission of a criminal offence even though there were legal grounds for this.

4. A decision on the costs of criminal proceedings may be challenged if the court has determined these costs incorrectly or in violation of the provisions of the present Code.

5. A decision on a property claim or a decision on an order to publish a judgment may be challenged if the court has decided these issues in violation of the provisions of the law.

**Article 388**
**Procedure of Filing Appeals of Judgments**

1. The appeal against judgment shall be filed with the court which rendered it.

2. This court shall serve a copy of the appeal on the opposing sides, which may file a reply to the appeal within eight (8) days of service.

3. This court shall transmit the appeal, the reply, and related files to the court competent to hear the appeal.

4. Any appeal or request under this Article shall be filed with a sufficient number of copies for the court and for the opposing sides.

**Article 389**
**Procedure related to the appeal against a judgment at the Court of Appeals**

1. The Court of Appeals shall, upon receiving the files with the appeal, give the files to the presiding judge assigned in accordance with the court calendar.

2. The presiding judge of the appellate panel shall schedule the session of the panel.

3. If the case is returned, the state prosecutor may file a proposal or declare that he/she will file it at the appellate panel session.

4. The reporting judge may, when necessary, secure a report on violations of provisions of criminal procedure from the Basic Court, and he or she may also verify through that court, or in some other way, the allegations in the appeal relating to new evidence and new facts or he or she may secure the necessary reports or documents from other agencies or legal persons.

5. If the Accused is in detention on remand, the reporting judge shall examine *ex officio* whether reasons for detention on remand still exists within five (5) days upon receiving the case file.

**Article 390**
**Session before Appeal Panel**

1. When an imprisonment sentence was imposed on the accused, the notification of the session of the appeal panel shall be sent to the state prosecutor, to injured party, and to the accused and his/her defense counsel.

2. If an accused held in detention on remand or serving his or her sentence wishes to attend the session he or she shall be allowed to do so.

3. The session of the panel shall open with the report of the reporting judge on the facts. The panel may ask the parties and the defence counsel who are present at the session to provide necessary explanations concerning allegations in the appeal. The parties and the defence counsel may make motions that certain files be read as a supplement to the report and may provide the necessary explanations of their positions as contained in the appeal or in the reply to the appeal, without repeating the contents of the report.

4. If parties who were duly notified of the session fail to appear, the panel shall nevertheless hold the session. If the accused failed to report a change in address or current residence, the panel may hold the session even though the accused has not been advised thereof.

5. The public may be excluded from the session of the panel held in the presence of the parties only under conditions provided for by the present Code.

6. The record of the session shall be enclosed with the court file.

7. Rulings under Articles 399 and 400 of the present Code may be rendered without informing the parties about the session of the panel.

**Article 391**
**Decisions of Appeals Panel Made in Session or in Hearing**

1. The court of appeals shall take its decision in a session of the panel or in a hearing.

2. The court of appeals shall decide in a session of the panel whether to conduct a hearing.

**Article 392**
**Grounds for holding a session at the Court of Appeals**

1. A hearing before the court of appeals shall be conducted only when it is necessary to take new evidence or to repeat evidence already taken due to an erroneous or incomplete determination of the factual situation, and when there are valid grounds for not returning the case to the Basic Court for retrial.

2. A summons to appear at the hearing before the court of appeals shall be served on the accused and his or her defence counsel, the state prosecutor, the injured party, legal representatives and authorized representatives of the injured party, and those witnesses and expert witnesses whom the court decides to hear pursuant to the motion of the parties or *ex officio*.

3. If the accused is in detention on remand or is serving his or her sentence, the presiding judge of the Court of Appeals shall take the necessary steps for the accused to be brought to the hearing.

**Article 393**
**Hearing before Appeal Panel**

1. The hearing before the Court of Appeals shall start with the report of the reporting judge who shall present the factual situation without giving his or her opinion on whether the appeal is well-founded.

2. The judgment or the part of judgment to which the appeal relates, and, if necessary, also the record of the main trial, shall be read upon a motion or *ex officio*.

3. After that the appellant shall be called to set out his or her appeal and the opposing party to give his or her reply. The accused and his or her defence counsel shall always have the last word.

4. The parties may present new evidence and new facts during the hearing.

5. The state prosecutor may, having regard to the outcome of the hearing, withdraw the indictment completely or a part thereof or he or she may amend it in favour of the accused.

**Article 394**
**Scope of appeal review by the Court of Appeals**

1. The Court of Appeals shall examine the part of the judgment which is challenged by the appeal. In addition, when an appeal is filed, the court shall examine *ex officio*:

1.1. whether there exists a violation of the provisions of criminal procedure under Article 384 paragraph 1 subparagraphs 1.1, 1.2, 1.6 and 1.8 through 1.12 of the present Code;

1.2. whether the main trial was, contrary to the provisions of the present Code, conducted in the absence of the accused;

1.3. whether in a case of mandatory defence the main trial was conducted in the absence of defence counsel; and

1.4. whether the criminal law was violated to the detriment of the accused.

2. If an appeal filed in favour of the accused does not contain the information under Article 382 paragraph 1 subparagraphs 1.2 or 1.3 of the present Code, the Court of Appeals shall confine itself to inquiring into violations under paragraph 1 subparagraphs 1.1 through 1.4 of the present Article and to examining the decision on punishment, mandatory rehabilitation treatment and the confiscation of the material benefit acquired by the commission of a criminal offence.

**Article 395**
**The Restriction *Reformatio in Peius***

Where only an appeal in favour of the accused has been filed, the judgment may not be modified to the detriment of the accused with respect to the legal classification of the offence and the criminal sanction imposed.

**Article 396**
**Additional Effect of the Appeal Based on the Erroneous and Incomplete Determination or Violation of Criminal Law**

An appeal filed in favour of the accused on the ground of an erroneous and incomplete determination of the factual situation or on the ground of a violation of criminal law shall include an appeal against the decision on punishment, mandatory rehabilitation treatment and confiscation of the material benefit acquired by the commission of a criminal offence.

**Article 397**
**Beneficium Cohaesionis**

If upon an appeal the Court of Appeals finds that the reasons which governed its decision in favour of the accused, and which are not of a purely personal nature, are also to the advantage of a co-accused who has not filed an appeal or has not filed an appeal along the same lines, the court shall proceed *ex officio* as if such appeal was also filed by the co-accused.

**Article 398**
**Decision of the Court of Appeals on the appeal against basic court judgment**

1. The Court of Appeals may in a session of the panel or on the basis of a hearing:

1.1. dismiss an appeal as belated or inadmissible;

1.2. reject an appeal as unfounded and affirm the judgment of the Basic Court;

1.3. annul the judgment and return the case to the Basic Court for retrial and decision; or

1.4. modify the judgment of the Basic Court.

2. The Court of Appeals may direct the Basic Court to assign, based on an objective and transparent case allocation system, a new single trial judge, presiding trial judge or trial panel if the Court of Appeals determines that the assigned single trial judge, presiding trial judge or trial panel has consistently failed to apply the law correctly, grossly mischaracterized evidence or the failure to reassign the judge or panel would result in a miscarriage of justice or conflict of interest.

3. The Court of Appeals shall determine all appeals of the same judgment by a single decision.

4. A decision of the Court of Appeals shall be signed by all the judges in the panel, except for a decision issued under Article 399 or 400 of the present Code. A member of

the panel may submit a dissenting or concurring opinion on legal or factual questions regarding the appeal and such opinion will be attached to the main decision.

**Article 399**
**Dismissal of Late Appeals**

The Court of Appeals shall dismiss an appeal as belated by a ruling if it establishes that it was filed after the expiry of the period of time prescribed by law.

**Article 400**
**Dismissal of Impermissible Appeal**

The Court of Appeals shall dismiss an appeal as not permitted by a ruling if it is established that it was filed by a person not entitled to file an appeal or by a person who has renounced the appeal, or if withdrawal from the appeal is established or if it is established that after withdrawal the appeal was filed again or if the appeal was not permitted under the law.

**Article 401**
**Rejection of Unfounded Appeals and Affirmation of Judgment of Basic Court**

The Court of Appeals shall reject by a judgment an appeal as unfounded and affirm the judgment of the Basic Court if it establishes that there are no grounds to challenge the judgment and no violations of the law under Article 394 paragraph 1 of the present Code.

**Article 402**
**Annulment of Judgment of Basic Court**

1. The Court of Appeals shall, in certain cases, annul by a ruling the judgment of the Basic Court and return the case for retrial, if:

1.1. there exists a substantial violation of provisions of criminal procedure, and the Court of Appeals can not proceed under Article 403 of the present Code; or
1.2. a new main trial before the Basic Court is necessary because of an erroneous or incomplete determination of the factual situation and the Court of Appeals cannot proceed under Article 403 of the present Code.

2. The Court of Appeals shall annul by a ruling the judgment of the Basic Court and reject the indictment, if it is established that the circumstances under Article 358 paragraph 1 of the present Code apply. The Court of Appeals shall proceed in the same way if it finds that the Basic Court lacked subject matter jurisdiction to adjudicate the case, except where the appeal was filed only in favour of the accused.

3. The Court of Appeals may annul the judgment of the Basic Court partially if particular parts of the judgment can be addressed separately without prejudice to a correct adjudication.

4. If the Accused is in detention on remand, the Court of Appeals shall examine whether there are still grounds for detention on remand and shall extend or terminate detention on remand by a ruling. No appeal shall be permitted against this ruling.

**Article 403**
**Modification of Judgment of Basic Court**

1. The Court of Appeals shall modify by a judgment the judgment of the Basic Court if it determines that the Basic Court had made erroneous or incomplete determination of facts, and for this purpose:

1.1. upon the request of the parties or acting *ex officio*, may hold a hearing to take new evidence or to repeat evidence in order to properly determine and assess the material facts; or

1.2 may properly determine and assess the material facts without a hearing, if there is no need to take new evidence or to repeat new evidence.

2. If the Court of Appeals finds that there are legal grounds for a judicial admonition, it shall modify the judgment of the Basic Court by a judgment and render a judicial admonition.

3. Where due to a modification of the judgment of the Basic Court there are grounds for ordering or cancelling detention on remand, the Court of Appeals shall render a separate ruling thereon. No appeal against this ruling shall be permitted.

**Article 404**
**Reasoning of Appeals Court decisions**

1. In the statement of grounds for its judgment or ruling the Court of Appeals shall assess the contentions which are the subject of the appeal and indicate the violations of law which it has recognized *ex officio*.

2. If the judgment of the Basic Court is annulled on grounds of a substantial violation of provisions of criminal procedure the statement of grounds shall contain an indication of the provisions which were violated and the nature of the violation in accordance with Article 384 of the present Code.

3. If the judgment of the Basic Court is annulled on grounds of an erroneous or incomplete determination of the factual situation, the statement of grounds shall indicate

what the deficiencies in the factual determination are, or why new evidence and new facts are important for reaching a correct decision and why they influence that decision.

**Article 405**
**Decisions Returned to Basic Court for Service**

1. The Court of Appeals shall return all files to the Basic Court together with a sufficient number of certified copies of its decision to be served on the parties and other persons concerned.

2. If the accused is in detention on remand, the Court of Appeals shall send its decision and the files to the Basic Court no later than three (3) months from the day it has received the files from the court below.

**Article 406**
**Retrial proceedings at the Basic Court based on a ruling of the Court of Appeals**

1. The Basic Court to which a matter has been referred for adjudication shall proceed on the basis of the prior indictment. If the judgment of the Basic Court has been partly annulled the court shall take as its basis only that part of the indictment which refers to the annulled part of the judgment.

2. The parties shall be entitled to introduce new facts and present new evidence at the new main trial.

3. The Basic Court shall undertake all procedural actions and examine all contentious points indicated in the decision of the Court of Appeals.

4. In rendering a new judgment, the Basic Court shall be bound by the prohibition provided for by Article 395 of the present Code.
5. If the accused is in detention on remand the panel of the Basic Court shall proceed as provided for in Article 193 paragraph 2 of the present Code.

**Article 407**
**Appeal against Judgment from Court of Appeals to Supreme Court**

1. An appeal against a judgment of a Court of Appeals may be filed with the Supreme Court of Kosovo if the Court of Appeals has modified a judgment of acquittal by the Basic Court and rendered instead a judgment of conviction or when the judgment by the Basic Court or Court of Appeals has imposed a sentence of life-long imprisonment.

2. Articles 389 to 406 of the present Code shall apply mutatis mutandis to the procedure of appeal before the Supreme Court.

3. A judgment of the Supreme Court shall be signed by all judges on the panel. A member of the panel may submit a dissenting or concurring opinion on legal or factual questions regarding the appeal and such opinion will be attached to the judgment.

## 4. Appeal against Rulings

### Article 408
### Types of Rulings that can be Appealed

1. An appeal against a ruling or order of a pre-trial judge and against other rulings rendered in the Basic Court may be filed by the parties and persons whose rights have been violated in accordance with Article 411 of the present Code, unless an appeal is explicitly prohibited by the provisions of the present Code.

2. No appeal shall be permitted against a ruling rendered by the review panel of three (3) judges in the pre-trial stage of the proceedings, unless otherwise provided for by the present Code.

3. A ruling rendered in connection with the preparation of the main trial and judgment may only be challenged in an appeal against the judgment, unless otherwise provided for by the present Code.

4. No appeal shall be permitted against a ruling rendered by the Supreme Court of Kosovo.

### Article 409
### Deadline for appealing the ruling

1. An appeal shall be filed with the court which has rendered the ruling.

2. Unless otherwise provided for by the present Code, an appeal against a ruling shall be filed within three (3) days of the service of the ruling.

### Article 410
### Suspending effect of the appeal against the ruling

Unless otherwise provided for by the present Code, the filing of an appeal shall stay the execution of the ruling being challenged.

**Article 411**
**Procedure of Filing Appeals against the ruling**

1. An authorized party seeking an appeal shall comply with this Chapter.

2. An appeal that does not comply with this Chapter may be summarily dismissed by the Court of Appeals after ensuring that it does not raise an important issue of constitutionally protected rights.

3. An appeal to a decision of the Basic Court shall be filed by the appellant with the Basic Court.

4. The Basic Court shall serve a copy of the appeal on the opposing sides.

5. The Basic Court shall transmit the appeal, the reply and the related files to the Court of Appeals.

6. An appeal on the ruling of the Court of Appeals shall be filed by an authorized party with the Court of Appeals.

7. The Court of Appeals shall serve a copy of the appeal on the opposing sides.

8. The Court of Appeals shall transmit the appeal, the reply and the related files to the Supreme Court.

9. An appeal filed under paragraph 6 of the present Article that does not comply with this Chapter may be summarily dismissed by the Supreme Court after ensuring that it does not raise an important issue of constitutionally protected rights.

10. In instances under paragraph 2 or paragraph 9 of the present Article where an appeal raises an important issue of constitutionally protected rights, but does not comply with this Chapter, the appellant shall be given the opportunity to correct the appeal.

11. Any appeal or request under this Article shall be filed with a sufficient number of copies for the court and for the opposing sides.

**Article 412**
**The Procedure on the appeal against the ruling of the Court of Appeals**

1. The Court of Appeals shall, upon receiving the files with the appeal, shall send the files to the competent state prosecutor within the Appellate Prosecution Office who shall examine and return them to the court without delay.

2. The state prosecutor may file his or her motion in returning the files, or may declare that he or she will file it during the session of the appellate panel.

3. After the state prosecutor has returned the files, the presiding judge of the appellate panel shall schedule the session of the panel.

**Article 413**
**Rulings of Appeals Panel based on Filings or Made in Session**

1. The Court of Appeals shall take its ruling based on the appeal and motions filed or in a session of the panel.

2. The Court of Appeals shall make a ruling based on the appeal and motions filed only:

2.1. when there is no disputed legal or factual dispute, or

2.2. when the panel determines that a ruling is so clear that a session is unnecessary.

3. A ruling by a panel of the Court of Appeals in compliance with paragraph 2 of the present Article shall include reasoning that supports the ruling under paragraph 2 of the present Article.

**Article 414**
**Session before Appeal Panel**

1. When the Court of Appeals receives an appeal against the ruling, the panel may decide to hold a session and it shall notify: the competent state prosecutor, the injured parties, and the accused and his/her defense councils.
2. If an accused held in detention on remand or serving his or her sentence wishes to attend the session he or she shall be allowed to do so.

3. The panel may ask the parties and the defence counsel who are present at the session to provide necessary explanations concerning allegations in the appeal. The parties and the defence counsel may provide the necessary explanations of their positions as contained in the appeal or in the reply to the appeal.

4. If parties who were duly summoned to the session fail to appear, the panel shall nevertheless hold the session. If the accused failed to report a change in address or current residence, the panel may hold the session even though the accused has not been advised thereof.

5. The public may be excluded from the session of the panel held in the presence of the parties only under conditions provided for by the present Code.

6. The record of the session shall be enclosed with the court file.

7. Rulings under Articles 399 and 400 of the present Code may be rendered without informing the parties about the session of the panel.

**Article 415**
**Basis of Appeal on Ruling**

1. A ruling by the pretrial judge, single trial judge, presiding trial judge or trial panel may be appealed when that ruling violates:

1.1. a right provided to the party under the Constitution of the Republic of Kosovo,

1.2. a substantive right provided to the party under the present Code,

1.3. a substantive right provided to the party under another law of Kosovo,

1.4. a procedural right meant to guarantee a right under subparagraphs 1.1 to 1.3 of the present Article.

2. The party appealing the ruling by the Basic Court must demonstrate that the violation of the right causes an irreparable harm to the party.

3. If the basis of an appeal does not comply with paragraphs 1 and 2 of the present Article, the Court of Appeals may dismiss the appeal. An appeal subject to dismissal under this paragraph may be reasserted on an appeal against judgment under Article 380 of the present Code.

**Article 416**
**Decisions on Appeals against Rulings**

1. An appeal against a ruling of the Basic Court shall be decided by the Court of Appeals in a session of the panel, unless otherwise provided for by the present Code.

2. In deciding on an appeal the court may dismiss by a ruling the appeal as belated or inadmissible, reject it as unfounded or accept it and modify the ruling, or annul it and return it for reconsideration where necessary.

3. In deciding on an appeal against a ruling by which the indictment is dismissed, the court may reject the appeal by a judgment if it finds that there are grounds for such judgment.

4. In examining an appeal, the court shall inquire *ex officio* into whether the Basic Court had the subject matter jurisdiction to render the ruling and whether the ruling was rendered by the authority empowered to render it.

**Article 417**
**Review by Review Panel of Basic Court**

1. An objection against an order of the pre-trial judge shall be decided by the review panel of the same court if provided for by the present Code.

2. The president of the Basic Court shall appoint a review panel of three (3) judges. The three (3) judges shall be competent to review the objection. The pre-trial judge or any judge participating in a special investigative opportunity shall not be permitted to participate on the review panel.

3. Unless otherwise determined under the present Code, the review panel shall review the objection from the parties within three (3) days of the filing of the appeal.

4. Unless otherwise determined under the present Code, the review panel shall issue a ruling on the appeal from the parties within one (1) week of the filing of the objection.

5. Unless otherwise determined under the present Code, a ruling on the objection by the review panel shall be reviewed by the Court of Appeals only upon an appeal of the judgment of the Basic Court.

## 5. Extraordinary Legal Remedies

**Article 418**
**Extraordinary Legal Remedies**

1. A party may request the reopening of criminal proceedings within two (2) years of the final judgment or final ruling that terminated the criminal proceedings. The party shall file the request with the Basic Court where the final judgment was issued, which shall transmit all validated requests to the Supreme Court.

2. A party may request the extraordinary mitigation of punishment at any time during the period being served in imprisonment, but during the last six (6) months of imprisonment. The party shall file the request with the Basic Court where the final judgment was issued, which shall transmit all validated requests to the Supreme Court.

3. A party may request protection of legality within three (3) months of the final judgment or final ruling against which protection of legality is sought. The party shall file the request with the Basic Court where the final judgment was issued, which shall transmit all validated requests to the Supreme Court.

4. Articles 375, 376, 377, 378 and 379 of the present Code shall apply to all requests made under this Article.

## A. Reopening of Criminal Proceedings

### Article 419
### General provisions

Criminal proceedings terminated by a final ruling or a final judgment may be reopened upon the request of authorized persons only in instances and under conditions provided for by the present Code.

### Article 420
### Modification of a final judgment without reopening criminal proceedings

1. A final judgment may be modified even without reopening criminal proceedings:

1.1. when, in two or more judgments against the same convicted person, several punishments were imposed in a final form without applying the provisions on imposing an aggregate punishment for concurrent criminal offences;

1.2. when, in imposing an aggregate punishment by the application of provisions on concurrent criminal offences, a punishment already included in a punishment imposed under an earlier judgment in accordance with provisions on concurrent criminal offences was also taken into consideration; or

1.3. when a final judgment in which an aggregate punishment was imposed for several criminal offences is partly unenforceable due to an amnesty, pardon or other reasons.

2. In a case under paragraph 1 subparagraph 1.1 of the present Article, the court shall modify by a new judgment the earlier judgments in respect of the punishments imposed therein and shall impose an aggregate punishment. The rendering of a new judgment shall fall within the jurisdiction of the Basic Court which adjudicated the matter in which the most severe type of punishment was imposed. Where punishments of the same type were imposed, the new judgment shall be rendered by the court in which the most severe punishment was imposed, and where the punishments are equal it shall be passed by the court which imposed the punishment last.

3. In a case under paragraph 1 subparagraph 1.2 of the present Article, the court which in imposing an aggregate punishment erroneously included a punishment already comprised in an earlier judgment shall modify its judgment.

4. In a case under paragraph 1 subparagraph 1.3 of the present Article, the court which adjudicated in first instance shall modify the earlier judgment in respect of the punishment and impose a new punishment, or it shall determine what part of the punishment imposed in the earlier judgment should be enforced.

5. The new judgment shall be passed at a session of the panel upon a motion of the state prosecutor if the proceedings were initiated at his or her request or upon that of the accused, but after hearing the opposing party.

6. In a case under paragraph 1 subparagraph 1.1 or 1.2 of the present Article, if judgments of other courts were taken into consideration in imposing the punishment, a certified copy of the new final judgment shall be sent to those courts.

**Article 421**
**Resumption of Proceedings**

If the indictment was dismissed under Article 253 paragraph 1 subparagraph 1.2 or Article 358 of the present Code, proceedings shall be resumed upon the request of the state prosecutor as soon as the reasons for the rendering of such ruling cease to exist.

**Article 422**
**Reopening of criminal proceedings dismissed by a final ruling**

1. Criminal proceedings which were dismissed in a final form before the main trial can be reopened if the state prosecutor withdrew the indictment and it is proven that this withdrawal was a result of the criminal offence of the abuse of the official function of the state prosecutor. While proving this criminal offence, provisions of Article 423, paragraph 2 of the present Code shall be applied.

2. If the indictment was dismissed based on insufficient evidence to support a well-grounded suspicion that the defendant has committed the criminal offence as described in the indictment and if new facts and evidence are discovered and obtained, a new indictment can be filed if the review panel determines that new evidence and facts justify this.

**Article 423**
**Reopening Criminal Proceedings Terminated by Final Judgment**

1. Criminal proceedings terminated by a final judgment may only be reopened if:

1.1. it is proven that the judgment rests on a forged document or a false statement of a witness, expert witness or interpreter;

1.2. it is proven that the judgment ensued from a criminal offence committed by a judge or a person who undertook investigative actions;

1.3. new facts are discovered or new evidence is produced which, alone or in connection with previous evidence, appears likely to justify the acquittal of the convicted person or his or her conviction under a less severe criminal provision;

1.4. a person was tried more than once for the same offence or several persons were convicted of the same offence which could have been committed only by a single person or only by some of them; or

1.5. in the case of conviction for a continuous criminal offence, or some other criminal offence which under the law includes several acts of the same kind or different kinds, new facts are discovered or new evidence is produced which indicates that the convicted person did not commit an act included in the criminal offence, of which he or she was convicted and the existence of these facts would have critically influenced the determination of punishment.

2. Criminal proceedings terminated by a final judgment may be reopened only in favour of the defendant, except that if it is proven that the circumstances under paragraph 1 subparagraphs 1.1 and 1.2 of the present Article have been a result of a criminal offence committed by the defendant or a person acting on his/her behalf against a witness, expert witness, interpreter, state prosecutor, judge or those close to such persons, criminal proceedings terminated by a final judgment may be reopened against the defendant. The reopening of criminal proceedings against a defendant is only permissible within five (5) years of the time the final judgment was rendered.

3. In cases under paragraph 1 subparagraphs 1.1 and 1.2 or paragraph 2 of the present Article, it must be proven by a final judgment that the persons concerned have been found guilty of criminal offences in question. If proceedings against these persons cannot be conducted because they are dead or because other circumstances exist which preclude criminal prosecution, the facts under paragraph 1 subparagraphs 1.1 and 1.2 or paragraph 2 of the present Article may be proven by using other evidence.

## Article 424
## Persons Authorized to Request Reopening of Criminal Proceedings

1. The reopening of criminal proceedings may be requested by the parties and defence counsel. After the death of the convicted person, the reopening may be requested by the state prosecutor or by the spouse, the extramarital spouse, a blood relation person in a direct line to the first degree, an adoptive parent, an adopted child, a brother, a sister or a foster parent of the convicted person.

2. The reopening of criminal proceedings may be requested even after the convicted person has served his or her sentence and irrespective of the period of statutory limitation, an amnesty or a pardon.

3. The court which is competent to decide on the reopening of criminal proceedings shall, upon learning of the existence of grounds to reopen criminal proceedings, notify thereof the convicted person or another person authorized to file the request.

**Article 425**
**Content of the request for reopening criminal proceedings and the court deciding thereupon**

1. A request for reopening criminal proceedings shall be decided by the review panel of the Basic Court which adjudicated the previous proceedings.

2. The request shall specify the legal ground on which the reopening is requested and the evidence supporting the facts on which the request rests. If the request does not contain this information, the court shall ask the requesting party to supplement the request within a specified time.

3. A judge who participated in rendering the judgment in previous proceedings may not take part in the deliberations of the panel on the request for reopening.

**Article 426**
**Basis and procedure for dismissing the request to reopen criminal proceedings**

1. The court shall dismiss the request by a ruling on the basis of the request itself and the files of previous proceedings if it finds that:

1.1. the request has been filed by an unauthorized person;

1.2. there are no legal grounds for reopening of proceedings;

1.3. the facts and evidence on which the request rests were presented in an earlier request for reopening of proceedings which was rejected by a final ruling;

1.4. the facts and evidence obviously do not provide adequate grounds to grant the reopening of proceedings; or

1.5. the person who requests the reopening of proceedings did not abide by the provisions under Article 425, paragraph 2, of the present Code.

2. If the request is not dismissed, the court shall serve a copy of the request on the state prosecutor or opposing party who shall be entitled to reply within eight (8) days. After the court has received the reply to the request, or after the time limit for the reply has expired, the presiding judge of the review panel shall order that the facts and evidence indicated in the request and the reply thereto be produced and examined.

**Article 427**
**Decisions of the Panel on the request for reopening proceedings**

1. On the basis of the results of the inquiries the court shall either grant the request and allow the reopening of criminal proceedings or reject the request.

2. If the court finds that the grounds on which it has allowed the reopening of proceedings also benefit a co-accused who has not requested the reopening of proceedings, it shall proceed *ex officio* as if such request had also been filed by that person.

3. In the ruling by which the reopening of criminal proceedings is allowed the court shall order that a new main trial be scheduled immediately or that the case be returned to the stage of investigation or that an investigation be opened if none was conducted before.

4. The court shall order that the execution of the judgment shall be postponed or interrupted if, having regard to the evidence filed, the court considers that:

4.1. the convicted person may be given a sentence in the retrial as a result of which, allowing for the part of the sentence already served, he or she would have to be released;

4.2. he or she may be acquitted of the charge; or

4.3. the charge against him or her may be rejected.

5. When a ruling granting the reopening of criminal proceedings becomes final, the enforcement of punishment shall be stayed. However, if grounds provided for in Article 187 paragraph 1 of the present Code exist, the court shall order detention on remand.

**Article 428**
**Rules on new reopening proceedings**

1. New proceedings, held on the basis of a ruling which grants the reopening of criminal proceedings, shall be conducted in accordance with the provisions applying to the original proceedings. In the new proceedings, the court shall not be bound by the rulings rendered in the original proceedings.

2. If new proceedings are terminated prior to the opening of the main trial, the earlier judgment shall be annulled by a ruling on termination.

3. In rendering a new judgment, the court shall either annul the earlier judgment or a part thereof or affirm the earlier judgment. In the punishment imposed by the new judgment, the court shall give credit for a sentence already served and if reopening was granted only for some of the acts of which the accused was convicted or acquitted, it shall impose a new aggregate punishment in accordance with the provisions of criminal law.

4. In new proceedings, the prohibition under Article 395 of the present Code shall be binding on the court.

## B. Extraordinary Mitigation of Punishment

### Article 429
### Permission of extraordinary mitigation of punishment

An extraordinary mitigation of a finally imposed punishment is permissible where, after the judgment has become final, circumstances occur which did not exist when the judgment was rendered or, although they existed, were unknown to the court at that time, and such circumstances obviously would have led to a less severe punishment.

### Article 430
### Persons Authorized to Request Extraordinary Mitigation of Punishment and Consequences

1. An extraordinary mitigation of punishment may be requested by the state prosecutor, if proceedings were initiated at his or her request, by the convicted person or by his or her defence counsel.

2. A request for an extraordinary mitigation of punishment shall not stay the execution of the punishment.

### Article 431
### The procedure on the request for extraordinary mitigation of punishment and the Supreme Court Decisions

1. A request for an extraordinary mitigation of punishment shall be decided by the Supreme Court of Kosovo.

2. A request in compliance with Article 376 of the present Code for an extraordinary mitigation of punishment shall be filed at the Basic Court which pronounced the judgment.

3. The Basic Court shall serve the request upon the state prosecutor, who shall file a reply in accordance with Article 377 of the present Code.

4. The single trial judge or presiding trial judge of the Basic Court shall dismiss requests that are not compliant with Article 376 of the present Code.

5. The Basic Court shall examine whether there are grounds for an extraordinary mitigation of punishment, it shall refer the files together with its reasoned recommendation to the Supreme Court of Kosovo.

6. The Supreme Court of Kosovo shall reject the request if it finds that there are no legal grounds for an extraordinary mitigation of punishment. When approving the request, the

court shall modify by a ruling the final judgment in respect of the decision on punishment.

## C. Request for Protection of Legality

### Article 432
### Grounds for filing a request for protection of legality

1. A request for protection of legality against a final judicial decision or against judicial proceedings which preceded the rendering of that decision may, after the proceedings have been completed in a final form, be filed in the following instances:

1.1. on the ground of a violation of the criminal law;

1.2. on the ground of a substantial violation of the provisions of criminal procedure provided for in Article 384, paragraph 1, of the present Code; or

1.3. on the ground of another violation of the provisions of criminal procedure if such violation affected the lawfulness of a judicial decision.

2. A request for protection of legality may not be filed on the ground of an erroneous or incomplete determination of the factual situation, nor against a decision of the Supreme Court of Kosovo in which a request for the protection of legality was decided upon.

3. Notwithstanding the provisions under paragraph 1 of the present Article, the Chief State Prosecutor may file a request for protection of legality on the grounds of any violation of law.

4. Notwithstanding the provisions under paragraph 1 of the present Article, a request for protection of legality may be filed during criminal proceedings which have not been completed in a final form only against final decisions ordering or extending detention on remand.

### Article 433
### Persons Authorized to File Requests for Protection of Legality

1. A request for protection of legality may be filed by the Chief State Prosecutor, the defendant or his or her defence counsel. Upon the death of the defendant, such request may be filed on behalf of the defendant by the persons listed in the final sentence of Article 424, paragraph 1 of the present Code.

2. The Chief State Prosecutor, the defendant and his or her defence counsel and the persons listed in the final sentence of Article 424 paragraph 1 of the present Code may

file a request for protection of legality within three (3) months of the service of the final judicial decision on the defendant. If no appeal has been filed against the decision of the Basic Court, the time shall be counted from the day when that decision becomes final.

3. If a decision of the European Court of Human Rights establishes that a final judicial decision against the defendant violates human rights, the prescribed period of time for filing the request for protection of legality shall be counted from the day the decision of the European Court of Human Rights was served on the defendant.

4. Notwithstanding the provision under Article 432 paragraph 2 of the present Code, a request for protection of legality based on a decision under paragraph 3 of the present Article shall also be possible against a decision of the Supreme Court of Kosovo.

**Article 434**
**Filing the request for protection of legality at the basic court**

1. A request for protection of legality shall be filed with the Basic Court which rendered the decision.

2. The competent pretrial judge, single trial judge or presiding trial judge of the Basic Court shall dismiss a request for protection of legality by a ruling if:

2.1. the request was filed against a decision of the Supreme Court of Kosovo under Article 432, paragraph 2, of the present Code, except in cases referred to in Article 433 paragraph 4 of the present Code;

2.2. the request was filed by a person not entitled thereto under Article 433, paragraph 1, of the present Code; or

2.3. the request is belated under Article 433 paragraph 2 of the present Code.

3. This ruling may be appealed in the Court of Appeals.

4. Depending on the content of the request, the Basic Court may order that the enforcement of the final judicial decision be postponed or terminated.

**Article 435**
**Consideration of Request for Protection of Legality by Panel of Supreme Court**

1. A request for protection of legality shall be considered by the Supreme Court of Kosovo in a session of the panel.

2. The Supreme Court of Kosovo shall dismiss a request for protection of legality by a ruling if the request is prohibited or belated under Article 434, paragraph 2, of the present

Code, otherwise it shall send a copy of the request to the opposing party who may reply thereto within fifteen (15) days of receipt of the request.

3. Before a decision is taken on the request, the reporting judge may, if necessary, provide a report on the alleged violations of law.

4. Depending on the content of the request, the Supreme Court of Kosovo may order that the enforcement of the final judicial decision be postponed or terminated.

**Article 436**
**Benefits of the defendant regarding the request for protection of legality**

1. When deciding on a request for protection of legality the Supreme Court of Kosovo shall confine itself to examining those violations of law which the requesting party alleges in his or her request.

2. If the Supreme Court of Kosovo finds that reasons for deciding in favour of the defendant also exist in respect of another co-accused for whom a request for protection of legality has not been filed, it shall proceed *ex officio* as if such request has also been filed by that person.

3. In deciding on a request for protection of legality filed in favour of the defendant, the Supreme Court of Kosovo shall be bound by the prohibition under Article 395 of the present Code.

**Article 437**
**Rejection of Request for Protection of Legality**

The Supreme Court of Kosovo shall, by a judgment, reject a request for protection of legality as unfounded if it determines that the violation of law alleged by the requesting party does not exist or that a request for protection of legality is filed on grounds of an erroneous or incomplete determination of the factual situation under Article 386 and Article 432, paragraph 2, of the present Code.

**Article 438**
**Judgment on Request for Protection of Legality**

1. If the Supreme Court of Kosovo determines that a request for protection of legality is well-founded it shall render a judgment by which, depending on the nature of the violation, it shall:

1.1. modify the final decision;

1.2. annul in whole or in part the decision of both the Basic Court and the higher court or the decision of the higher court only, and return the case for a new decision or retrial to the Basic Court or the higher court; or

1.3. confine itself only to establishing the existence of a violation of law.

2. If the Supreme Court of Kosovo finds that a request for protection of legality filed to the disadvantage of the defendant is well-founded, it shall only determine that the law was violated but shall not interfere in the final decision.

3. If the Court of Appeals was not entitled under the present Code to annul a violation of law committed in a decision at first instance or in judicial proceedings which preceded it and the Supreme Court of Kosovo finds that the request filed in favour of the accused is well-founded and that the annulment of the committed violation requires that the decision at first instance be annulled or altered, the Supreme Court of Kosovo shall annul or alter the decision of the Court of Appeals as well, even though the law has not thereby been violated.

**Article 439**
**Consequences of Factual Doubt in Decision Challenged by Request**

If in proceedings on a request for protection of legality considerable doubt arises as to the accuracy of the factual determination in a decision challenged by the request, the Supreme Court of Kosovo shall in its judgment on the request for protection of legality annul that decision and order a new main trial to be held before the same or another Basic Court.

**Article 440**
**Annulment of Final Judgment of Basic Court**

1. If a final judgment is annulled and the case returned for retrial, proceedings shall be based on the earlier indictment or the part thereof which relates to the annulled part of the judgment.

2. The court shall be bound to undertake all procedural actions and determine all issues to which it has been alerted by the Supreme Court of Kosovo.

3. The parties shall be entitled to present new facts and evidence before the Basic Court or Court of Appeals.

4. In rendering a new decision, the court shall be bound by the prohibition under Article 395 of the present Code.

5. If the decision of the Court of Appeals is annulled as well as the decision of the Basic Court, the case shall be returned to the Basic Court through the Court of Appeals.

### Article 441
### Constitution of the Republic of Kosovo, European Convention on Human Rights and European Court of Human Rights

A request for an extraordinary legal remedy under the present Chapter may be filed on the basis of rights available under this Code which are protected under the Constitution of the Republic of Kosovo or the European Convention on Human Rights and its Protocols, as well as any decision of the European Court of Human Rights.

# PART THREE
# ADMINISTRATION OF PROCEDURE

## CHAPTER XXII
## SUBMISSIONS

### Article 442
### Method of filing submissions

1. Indictments, motions for prosecution, rulings by prosecutors, legal remedies and other statements and communications shall be filed in writing or given orally on the record.

2. A submission filed under paragraph 1 of the present Article may be filed electronically if the court registry is capable of administrating electronic submissions. The Kosovo Judicial Council shall determine the capacity of the courts to administer electronic submissions and shall issue a directive permitting such electronic submissions and providing regulations upon such submissions.

3. A submission filed under paragraph 1 of the present Article must be comprehensible and must contain everything necessary for it to be acted upon.

4. Unless otherwise provided for in the present Code, when a submission has been filed which is incomprehensible or does not contain everything necessary for it to be acted upon, the court shall summon the person making the submission to correct or supplement the submission; and if he or she does not do so within a specified period of time, the court shall reject the submission.

5. The summons to correct or supplement the submission shall warn the person making the submission of the consequences of his or her failure to do so.

### Article 443
### Filing submissions in sufficient copies

1. A submission which under the present Code is given to the opposing party in the proceedings shall be served on the court in a sufficient number of copies for the court and the other party.

2. If a submission has not been given to the court in a sufficient number of copies, the court shall order the person making the submissions to furnish a sufficient number of copies within a specified period of time. If the person making the submission does not carry out the order of the court, the court shall make the necessary number of copies at the expense of the person making the submission.

### Article 444
### Punishments for written submissions or verbal submissions that contain insults

The court shall impose a fine of up to two hundred and fifty (250) EUR on a defence counsel or an injured party who in a submission or in a verbal statement offends or insults the court or an individual participating in proceedings. The judge or the panel before which such statement has been made shall render a ruling on the punishment, and if it was made in a submission, the court which should rule on the submission shall decide. An appeal is permitted against this ruling. If the state prosecutor insults someone else, the competent supervising state prosecutor shall be so informed. The bar association shall be informed of the punishment imposed on a member of the bar or an attorney in training.

## CHAPTER XXIII
## PRESCRIBED PERIODS OF TIME

### Article 445
### Prescribed Periods of Time

1. The prescribed periods of time envisaged by the present Code may not be extended unless the law explicitly so permits. If a prescribed period of time has been defined by law for the realization of the right to defence and other procedural rights of the defendant, the prescribed period of time may be shortened at the request of the defendant in writing or orally in the record before the court.

2. When a statement must be given within a prescribed period of time, it shall be deemed to have been made in due time if it has been served on the authorized recipient before the lapse of the prescribed period of time.

3. When a statement is sent by post, registered mail or telegram, or by other means (telex, telefax or similar means), the date of mailing or sending it shall be considered as the date

of the service on the person to whom it has been sent. It is considered that the sender of the statement has not exceeded the prescribed period of time when the person who is intended to receive the statement has not received it on time because of mistakes in the means of service, of which the sender was unaware.

4. A defendant who is in detention on remand may also make a statement which must be filed within a prescribed period of time, by entering it into the record of the court conducting the proceedings or by serving it on the administration of the prison, and a person who is serving a prison sentence or who is an inmate in some other facility because of an order for mandatory rehabilitation treatment may serve such statement on the administration of the facility in which he or she is an inmate. The day when such record was compiled or when the statement was served on the administration of the facility shall be taken as the date of service on the authorized recipient.

5. If a submission which must be filed within a prescribed period of time has been served or sent because of ignorance or an obvious mistake of the sender before the expiry of the prescribed period of time to a court which is not competent, it shall be taken that it was filed on time though it reaches the competent court after the expiry of the prescribed period of time.

## Article 446
## Calculation of Prescribed Periods of Time

1. A prescribed period of time shall be calculated in hours, days, months and years.

2. The hour or day when a service or communication was made or when an event occurred, which serves as the commencement of a prescribed period of time, shall not be included in the prescribed period of time, but the next hour or next day shall be taken as commencement of the prescribed period of time. Twenty-four (24) hours shall be taken as a day, but a month shall be computed according to the calendar.

3. A prescribed period of time set in months or years shall expire on the last month or year at the end of the same day of the month on which the prescribed period of time began. If there is no such day in the last month, the prescribed period of time shall expire on the last day of that month.

4. If the last day of the prescribed period of time falls on an official holiday, on Saturday or Sunday or on any other day when the competent body does not work, the prescribed period of time shall expire at the end of the next working day.

## Article 447
## Petition to Return to *Status Quo Ante*

1. If the defendant for justified reasons does not within the prescribed period of time file an appeal against a judgment or against a ruling to confiscate material benefit, the court

shall allow a return to the *status quo ante* for filing the appeal if, within eight (8) days following the termination of the reasons for not acting within the prescribed period of time, the defendant files a petition for a return to the *status quo ante* and files the announcement of the appeal or the appeal itself simultaneously with the petition.

2. A petition for a return to the *status quo ante* may not be filed if three (3) months have passed from the date when the prescribed period of time expired.

### Article 448
### Ruling to Return to *Status Quo Ante*

1. The ruling on a return to the *status quo ante* shall be rendered by the presiding judge, who has rendered the judgment or ruling against which an appeal has been filed.

2. No appeal shall be permitted against a ruling allowing a return to the *status quo ante*.

3. If a defendant appeals a ruling refusing a return to the *status quo ante*, the court must serve that appeal, or the appeal of the judgment or ruling to confiscate material benefit, the response to the appeal and all other parts of the record to the higher court for a decision.

### Article 449
### Effect of Petition to Return to *Status Quo Ante*

As a rule, a petition for a return to the *status quo ante* shall not stay the execution of a judgment or the execution of a ruling to confiscate material benefit, but the court competent to rule on the petition may decide to halt execution until a decision is made on the petition.

## CHAPTER XXIV
## COSTS OF CRIMINAL PROCEEDINGS

### Article 450
### Type of criminal proceedings costs

1. The costs of criminal proceedings are the costs incurred during the criminal proceedings and because of those proceedings.

2. The costs of criminal proceedings include the following:

> 2.1. costs of witnesses, expert witnesses, interpreters, specialists, stenography and technical recordings as well as the cost of a site inspection;

2.2. costs of transporting the defendant;

2.3. costs of escorting the defendant or person in detention on remand;

2.4. transportation and travelling expenses of official persons;

2.5. costs of medical treatment of the defendant while in detention on remand or a medical institution in accordance with a court decision and the expenses of childbirth;

2.6. a scheduled amount;

2.7. remuneration and necessary expenses of defence counsel; and

2.8. necessary expenses of the injured party and his or her legal representative and remuneration and necessary expenses of his or her authorized representative.

3. The scheduled amount shall be within a range provided for in an Administrative Direction issued by the Kosovo Judicial Council which takes into consideration the duration and complexity of proceedings and the financial condition of the person required to pay the amount.

4. The expenses under subparagraphs 2.1 through 2.5 of paragraph 2 of the present Article and remuneration and the necessary expenses of an appointed defence counsel and an appointed authorized representative of an injured party shall be paid in advance from the funds of the police, the state prosecutor or the court conducting criminal proceedings and they shall later be collected from the individuals who are required to pay for them under the provisions of the present Code. The body conducting the criminal proceedings must enter all expenses which it has paid in advance in a list that shall be appended to the record.

5. The costs of interpretation into the languages of the defendant, witness and other persons participating in the criminal proceedings which are incurred during the application of the provisions of the present Code shall not be collected from individuals who under the provisions of the present Article are required to pay the costs of criminal proceedings.

6. The costs of interpretation shall not be paid by the defendant who does not know or speak the language in which the criminal proceedings are conducted.

7. The remuneration and necessary expenses of a defence counsel appointed under Article 57 paragraph 2 or 3 or Article 58 of the present Code shall be paid from budgetary resources and shall not be paid by the defendant.

**Article 451**
**Decision on Covering Costs of Criminal Proceedings**

1. Every judgment or ruling which terminates criminal proceedings shall contain a decision on who will cover the costs of the proceedings and the amount of the costs.

2. If the data on the amount of the costs is lacking, a separate ruling on the amount of the costs shall be rendered by the recording clerk of the court and approved by the single trial judge or the presiding judge when such data is obtained. The request with the data on the amount of costs may be filed within three (3) months of the day of the service of a legally effective judgment or ruling on the person who is entitled to make such request.

3. When the decision on costs of criminal proceedings is contained in a separate ruling, the appeal against that ruling shall be decided by a panel.

**Article 452**
**Payment of costs due to fault of a person that caused them**

1. The defendant, the injured party, the defence counsel, the legal representative, the authorized representative, the witness, the expert witness, the interpreter, and the specialist, regardless of the outcome of the criminal proceedings, shall meet the costs of their compulsory appearance, the postponement of an investigative action, and other costs of proceedings incurred through their own fault, as well as the corresponding share of the scheduled amount.

2. A separate ruling shall be rendered concerning the costs under paragraph 1 of the present Article, unless the matter of costs to be paid by the defendant is decided in a decision on the main issue.

**Article 453**
**Effect of Guilty Verdict on Reimbursement of Costs**

1. When the court finds the defendant guilty, it shall decide in the judgment that he or she must reimburse the costs of criminal proceedings.

2. A person who has been charged with several criminal offences shall not be ordered to reimburse costs related to a criminal offence of which he or she has been acquitted if those costs can be determined separately from the total costs.

3. In a judgment finding several defendants guilty, the court shall specify what portion of the costs shall be paid by each of them; but if this is not possible, it shall order that all the defendants be jointly and severally liable for the costs. Payment of the scheduled amount shall be specified for each defendant separately.

4. In a decision which settles the issue on costs, the court may relieve the defendant of the duty to reimburse entirely or partially the costs of criminal proceedings as provided for in Article 450, paragraph 2, subparagraphs 2.1 through 2.6, of the present Code, if their payment would jeopardize the support of the defendant or of the persons whom he or she is required to support. If these circumstances are ascertained after the decision on costs has been rendered, the single trial judge or presiding trial judge may render a separate ruling relieving the defendant of the duty to reimburse the costs of criminal proceedings or permitting payment of the costs by installment.

**Article 454**
**Effect of other decisions on reimbursement of costs**

1. When criminal proceedings are terminated or when a judgment is rendered which acquits the defendant or rejects the charge, the court shall state in the ruling or judgment that the costs of criminal proceedings under Article 450, paragraph 2, subparagraphs 2.1 through 2.5, of the present Code, the necessary expenses of the defendant and the remuneration and necessary expenditures of defence counsel shall be paid from budgetary resources, except in the cases specified in the following paragraphs of the present Article.

2. A person who has deliberately filed a false charge shall pay the costs of criminal proceedings.

3. An injured party who has withdrawn a motion for prosecution so that the proceedings are terminated shall bear the costs of the criminal proceedings if the defendant has not announced that he will pay for them.

**Article 455**
**Remuneration and the necessary costs for defense council or authorized representative**

1. The remuneration and necessary expenses of defence counsel or injured party must be paid by the person represented regardless of who is ordered to pay the costs of criminal proceedings in the decision of the court, unless either the defence counsel is appointed under Article 57 paragraph 2 or 3 or under Article 58 of the present Code.

2. A defence counsel or authorized representative shall not be entitled to remuneration if they are not members of the Bar. They are entitled to necessary expenses, and defence counsel is also entitled to income lost.

**Article 456**
**Final Decision on Duty to Pay Costs**

1. The final decision concerning the duty to pay costs which arise in the Basic Court shall be made by the competent judge or panel of the Basic Court in accordance with this Chapter.

2. The final decision concerning the duty to pay costs which arise in the court of appeals shall be made by the presiding judge of the court of appeals panel in accordance with this Chapter.

3. The final decision concerning the duty to pay costs which arise in the Supreme Court shall be made by the presiding judge of the Supreme Court panel in accordance with this Chapter.

4. The terms of this Chapter shall apply *mutatis mutandis* to the costs incurred during the proceedings related to extraordinary legal remedies.

**Article 457**
**Regulations on Costs**

More detailed regulations on reimbursement of the costs of criminal proceedings incurred before the courts shall be issued in an Administrative Direction issued by the Kosovo Judicial Council, which may be adjusted annually.

# CHAPTER XXV
# PROPERTY CLAIMS

**Article 458**
**Property Claims**

1. A property claim arising from the commission of a criminal offence shall be settled on the motion of the authorized persons in criminal proceedings if this would not considerably prolong those proceedings.

2. A property claim may pertain to compensation for damage, recovery of an object or annulment of a particular legal transaction.

**Article 459**
**Persons authorized to file a motion for realization of property claims**

1. The motion to realize a property claim in criminal proceedings may be filed by the person authorized to pursue that claim in civil litigation.

2. If a criminal offence has caused damage to publicly-owned, state-owned or socially owned property, the body or competent authority empowered by law to ensure the protection of that property may participate in criminal proceedings in accordance with the powers which it has on the basis of that law.

**Article 460**
**Filing of Motion to Realize Property Claims**

1. A motion to realize a property claim in criminal proceedings shall be filed with the competent body with which the criminal report is filed or the court before which proceedings are being conducted.

2. The motion may be filed no later than the end of the main trial before the Basic Court.

3. The person authorized to file the motion must state his or her claim specifically and submit evidence.

4. If the authorized person has not filed the motion to realize his or her property claim in criminal proceedings before the indictment is brought, he or she shall be informed that he or she may file that motion up to the end of the main trial. If a criminal offence has caused damage to publicly-owned, state-owned or socially-owned property and no motion has been filed, the court shall so inform the body or competent authority under Article 459 paragraph 2 of the present Code.

**Article 461**
**Withdrawal and Abandonment of Motion to Realize Property Claims**

1. Authorized persons may withdraw a motion to realize a property claim in criminal proceedings up to the end of the main trial and pursue it in civil litigation. Once a motion has been withdrawn, that same motion may not be filed again unless otherwise provided for by the present Code.

2. If after the motion was filed and before the end of the main trial the property claim has passed under the rules of property law to another person, that person shall be summoned to declare whether or not he or she stands by the motion. If he or she does not appear when duly summoned, it shall be taken that he or she has abandoned the motion.

**Article 462**
**Review of the motion to realize property claims**

1. The court conducting the criminal proceedings shall examine the defendant concerning the facts alleged in the motion and shall investigate the circumstances relevant to establishing the property claim. But even before such motion is filed, the court has a duty to collect evidence and conduct the investigation necessary to making a decision on the claim.

2. If the investigation of the property claim would considerably prolong criminal proceedings, the court shall restrict itself to collecting data which would be impossible or considerably more difficult to establish at a later stage.

**Article 463**
**Decision on Motion to Realize Property Claims**

1. The court shall decide on property claims.

2. In a judgment pronouncing the accused guilty the court may award the injured party the entire property claim or may award him or her part of the property claim and refer him or her to civil litigation for the remainder. If the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court shall instruct the injured party that he or she may pursue the entire property claim in civil litigation.

3. If the court renders a judgment acquitting the accused of the charge or rejecting the charge or if it renders a ruling to dismiss criminal proceedings, it shall instruct the injured party that he or she may pursue the property claim in civil litigation. When a court is declared not competent for the criminal proceedings, it shall instruct the injured party that he or she may present his or her property claim in the criminal proceedings commenced or continued by the competent court.

**Article 464**
**Recovery of Object**

If a property claim pertains to the recovery of an object, and the court finds that the object belongs to the injured party and is in the possession of the defendant or one of the participants in the criminal offence or in the possession of a person to whom they gave it for safekeeping, it shall order in the judgment that the object be handed over to the injured party.

**Article 465**
**Annulment of Legal Transactions**

If a property claim pertains to the annulment of a specific legal transaction and the court finds that the petition is well founded, it shall order in the judgment the complete or partial annulment of that legal transaction with the consequences that derive from it, without prejudice to the rights of third parties.

**Article 466**
**Amendment of the final judgment regarding the property claim**

1. The court conducting criminal proceedings may amend a final judgment which contains a decision on a property claim only in connection with the reopening of criminal proceedings or a request for protection of legality.

2. In all other cases the convicted person or his or her heirs may seek amendment of a final judgment of a criminal court which contains a decision on a property claim only in civil litigation and provided that there are grounds for a revision under the provisions applicable to civil litigation procedure.

**Article 467**
**Temporary Measures to Secure Property Claim**

1. Temporary measures securing a property claim arising out of the commission of a criminal offence may be ordered in criminal proceedings according to the provisions that apply to enforcement proceedings upon a motion from authorized persons under Article 459 of the present Code.

2. The ruling under paragraph 1 of the present Article shall be rendered during the pretrial proceedings by the pre-trial judge. After the indictment has been filed, the ruling shall be rendered by the single trial judge or presiding trial judge in cases outside the main trial, and it shall be rendered in the main trial by the entire trial panel.

3. No appeal shall be permitted against the ruling of the trial panel concerning temporary measures securing the claim. In other cases an appeal shall be ruled on by the three (3) judge panel. An appeal shall not suspend execution of the ruling.

**Article 468**
**Return of Property to Injured Party**

1. If a claim pertains to items that unquestionably belong to the injured party and they do not constitute evidence in criminal proceedings, such items shall be handed over to the injured party even before proceedings are completed.

2. If the ownership of items is disputed by several injured parties, they shall be referred to civil litigation and the court in criminal proceedings shall order only the safekeeping of the items as a temporary measure securing the claim.

3. Items that serve as evidence shall be sequestrated temporarily and at the end of proceedings shall be returned to the owner. If such item is urgently needed by the owner, it may be returned to him or her even before the end of the proceedings, if he or she undertakes to bring it in upon request.

### Article 469
### Measures for ensuring temporary realization of the motion for property claims against third persons

1. If an injured party has a claim against a third person because he or she is in possession of items obtained through the commission of a criminal offence or because he or she realized a material benefit because of a criminal offence, the court in criminal proceedings, upon the motion of authorized persons and according to the provisions which apply to enforcement proceedings, may order temporary measures securing the claim against that third party. The provisions of Article 467 paragraphs 2 and 3 of the present Code apply also in this case.

2. In a judgment pronouncing the accused guilty, the court shall either revoke the measures under paragraph 1 of the present Article if they have not already been revoked or shall refer the injured party to civil litigation, in which case those measures shall be revoked unless civil litigation is initiated within the period of time determined by the court.

## CHAPTER XXVI
## RENDERING AND PRONOUNCING DECISIONS

### Article 470
### Types and rendering decisions

1. Decisions are rendered in criminal proceedings in a form of judgments, rulings and orders.

2. A judgment may be rendered only by a court, while ruling may also be rendered by the state prosecutor, whereas the order may be rendered by other public bodies that participate in criminal proceedings.

3. An order may be rendered and pronounced in line with provisions of the present Code.

**Article 471**
**Procedure to render decisions at the deliberation and voting session of the trial panel**

1. A decision of a panel of judges shall be rendered after oral deliberation and voting. A decision is rendered when a majority of the members of the panel have voted for it.

2. The presiding trial judge shall direct the deliberation and the voting and shall vote last. It is his or her duty to see that all issues are fully examined from every point of view.

3. If, in regard to individual questions on which a vote is taken, the votes are divided in several different opinions so that no one of them is in a majority, the issues shall be separated and the voting shall be repeated until a majority is reached. If a majority is not reached in this manner, a decision shall be taken whereby the votes which are most unfavourable to the defendant shall be added to the votes which are less unfavourable than these until the necessary majority is reached.

4. The members of the panel may not refuse to vote on questions put by the presiding trial judge, but a member of the panel who has voted to acquit the accused or to revoke the verdict and who has remained in the minority shall not be obliged to vote on the penalty. If he or she does not vote, it shall be taken that he or she consented to the vote which was most favourable to the accused.

**Article 472**
**The sequence for reviewing maters which are subject to voting**

1. When rendering a decision, a vote shall first be taken on whether the court is competent, on whether it is necessary to complete the proceedings, and on other preliminary issues.

2. When rendering a decision on the main issue, a vote shall first be taken on whether the accused has committed the criminal offence and whether he or she is criminally liable, and thereafter a vote shall be taken on the punishment, other criminal sanctions or measures of mandatory treatment, the costs of criminal proceedings, property claims and other issues which are to be decided.

3. If an individual has been charged with several criminal offences, a vote shall be taken on criminal liability and punishments for each criminal offence, and thereafter a vote shall be taken on a single punishment for all the criminal offences.

**Article 473**
**Closed deliberation and voting session**

1. Deliberation and voting shall be conducted in a secret session.

2. Only members of the panel and the recording clerk may be present in the room where the court conducts its deliberation and voting.

### Article 474
### Communication of Decision

1. Unless otherwise provided for by the present Code, decisions shall be communicated to the interested parties orally if they are present and by service of a certified copy if they are absent.

2. If a decision has been orally communicated, this shall be indicated in the record or on the document and the person receiving the decision shall confirm this by his or her signature. If the person concerned declares that he or she will not appeal, the certified copy of an orally communicated decision shall not be served on him or her unless otherwise provided for by the present Code.

3. Copies of decisions against which an appeal is permitted shall be served along with instructions on the right of appeal.

## CHAPTER XXVII
## SERVICE OF DOCUMENTS

### Article 475
### Manner of service of documents

1. Documents shall as a rule be served by mail. Service may also be effected through the authorized municipal body, through an official of the body which rendered the decision or directly with that body.

2. A court may also serve orally a summons to a main trial or other summonses on a person who is before the court, accompanied by instructions as to the consequences of failure to appear. A summons issued in this manner shall be noted in the record which shall be signed by the person summoned, unless such summons has been recorded in the record of the main trial. It shall be taken that valid service has thereby been effected.

3. A court or prosecutor may direct the Kosovo Police to serve documents if, after the first attempt under paragraph 1 or 2 of the present Article, service is unsuccessful, it is unclear whether service was successful, or the person summoned does not appear as directed. The Court may also direct the Kosovo Police to serve a summons without resorting to paragraph 1 or 2 of the present Article if it believes that the person is unlikely to comply with service under paragraph 1 and 2 of the present Article.

**Article 476**
**Personal Service of Documents**

A document that under the present Code must be personally served shall be directly presented to the person to whom it is addressed. If the person on whom the document must be personally served is not found where the service is to be effected, the person effecting the service shall find out when and where that person may be found and shall leave with one of the persons referred to in Article 477 of the present Code a written notice directing the addressee of the document to be in his or her dwelling or workplace on a particular day and hour in order to receive the document. If even then the person effecting the service does not find the person on whom the service is to be effected, he or she shall proceed according to the provisions of Article 477 paragraph 1 of the present Code and it shall be assumed that the service has thereby been effected.

**Article 477**
**Alternatives to Personal Service**

1. A document for which the present Code does not specify obligatory personal service shall also be served in person but if the addressee is not found at home or at work, such document may be given to any adult member of his or her household, who must accept the document. If they are not found at home, the document shall be left with a guardian or a neighbour, if he or she consents to accept it. If service is effected at the workplace of a person on whom a document is to be served and that person is not found there, it may be served on a person authorized to receive the mail, who must accept the document, or a person employed at that same workplace, if he or she consents to accept the document.

2. If a document cannot be served on persons under paragraph 1 of the present Article, a note shall be left for the addressee with an indication of the post office at which the document can be collected and the time limit within which it may be collected. A document not collected within the time limit specified shall be returned.

3. If it is ascertained that the person on whom a document is to be served is absent and that the persons referred to in paragraph 1 of the present Article may not therefore present the document to him or her on time, the document shall be returned with an indication of where the absent person is located.

**Article 478**
**Documents to be Personally Served**

1. The summons to the first examination in pre-trial proceedings and to the main trial shall be personally served on the defendant.

2. The indictment, the judgment and other decisions in which the prescribed period of time for appeal commences on the date of service, including the appeal of an opposing party that is being served for an answer, shall be personally served on a defendant who

does not have defence counsel. At the request of the defendant, the judgment and other decisions shall be served on a person designated by him or her.

3. If a defendant who does not have a defence counsel is to be served a judgment in which a prison sentence has been imposed on him or her and the judgment may not be served at his or her previous address, the court shall automatically appoint defence counsel for the defendant, who shall perform that duty until the new address of the defendant is ascertained. The appointed defence counsel shall be given the necessary period of time to acquaint himself or herself with the files, whereupon the judgment shall be served on the appointed defence counsel and proceedings shall resume. In the case of another decision for which the date of service constitutes the commencement of the prescribed period of time for filing an appeal or in the case of an appeal of the opposing party which is being served for a reply, if the person effecting the service has been unable to ascertain the new address of the defendant, the decision or appeal shall be displayed on the bulletin board of the court and, at the expiry of eight (8) days from the date of display, it shall be assumed that valid service has been effected.

4. If the defendant has a defence counsel, a document under paragraph 2 of the present Article shall be served on the defence counsel and the defendant in accordance with the provisions of Article 477 of the present Code. In such case, the prescribed period of time for pursuing a legal remedy or answering an appeal shall commence on the date when the document is served on the defendant. If the decision or appeal cannot be served on the defendant because he or she has failed to report his or her address, it shall be displayed on the bulletin board of the court and, at the end of eight (8) days from the date of display, it shall be assumed that valid service has been effected.

5. If a document is to be served on defence counsel of the defendant, and the defendant has more than one defence counsel, it shall be sufficient to effect service on one of them.

**Article 479**
**Procedure of Service**

1. The recipient and the person effecting the service shall sign the receipt confirming that service has been effected. The recipient shall himself or herself indicate the date of acceptance of the service on the receipt.

2. If the recipient does not know how to write or is unable to sign his or her name, the person effecting the service shall sign for him or her, shall indicate the date of the service, and shall make a note as to why he or she signed for the recipient.

3. If the recipient refuses to sign the receipt, the person effecting the service shall make a note to that effect on the receipt and shall indicate the date of service is thereby effected.

**Article 480**
**Refusal to Accept Service**

If the addressee or an adult member of his or her family refuses to accept the document, the person effecting the service shall note on the receipt the date, hour and reason for refusal, and shall leave the document in the dwelling of the addressee or in his or her workplace and service is thereby effected.

**Article 481**
**Service of documents in special circumstances**

1. Police officers, guards in institutions where persons deprived of their liberty are held, and land and air transport employees (in land, maritime and air transportation) shall be served summonses through their command or immediate superior, and, if necessary, other documents may also be served on them in the same manner.

2. A summons shall be served on a prisoner through the court or through the institution where he or she is an inmate.

3. Persons who enjoy the right of immunity in Kosovo, unless otherwise specified by international agreement, shall be served summonses in accordance with the provisions of the present Chapter. No personal service of a summons may be made at the premises of an international organization protected by international law or agreement.

**Article 482**
**Service on State Prosecutor**

1. Decisions and other documents shall be served on the state prosecutor by being presented to the registry of the office of the state prosecutor.

2. In the case of service of decisions or other documents for which a prescribed period of time commences on the date of service, the date of presentation of the document to the registry of the office of the state prosecutor shall be taken as the date of service.

3. When the state prosecutor so requests, the court shall serve on him or her the file on a criminal case for examination. If a prescribed period of time for pursuing an ordinary legal remedy is running or if other procedural considerations so require, the court may determine a date by which the state prosecutor must return the file.

**Article 483**
**Reference to Civil Litigation Procedure**

In the cases which have not been specifically provided for in the present Code service shall be effected according to the provisions that apply to civil litigation procedure.

### Article 484
### Service of documents through other participants in the procedure

1. Summonses and decisions issued before the end of the main trial and addressed to a person other than the defendant who is participating in the proceedings may be served on a participant in the proceedings who consents to serve them on the addressee, if the body concerned considers that their receipt is ensured in this manner.

2. The persons referred to in paragraph 1 of the present Article may be informed of a summons to a main trial or other summonses and of a decision postponing a main trial or other scheduled actions by means of telecommunication if one can assume from the circumstances that notice given in that manner will be received by the addressee.

3. An official note shall be made in the record that a summons or decision has been served in the manner provided for in paragraphs 1 and 2 of the present Article.

4. A person who has been informed of or sent a decision pursuant to paragraph 1 or 2 of the present Article may suffer the harmful consequences of a failure to take action, only if it is ascertained that he or she received the summons or decision in good time and was made aware of the consequences of a failure to take action.

## CHAPTER XXVIII
## EXECUTION OF DECISIONS

### Article 485
### Finality and enforceability of Decisions

1. A judgment shall become final when it may no longer be contested by an appeal or when no appeal is permitted.

2. A final judgment shall be executed if its service has been effected and if there are no legal obstacles to its execution. If an appeal has not been filed, or if the parties have waived the right to appeal or abandoned the appeal filed, the judgment shall be considered executable upon the expiry of the period of time prescribed for appeal or upon the day of the waiver or abandonment of the appeal.

3. If the court which rendered the judgment at first instance is not competent to execute it, it shall serve a certified copy of the judgment on the body competent to execute it along with a certificate that execution is to be carried out.

4. The provisions applicable to the execution of criminal sanctions shall be set forth in separate legislation.

**Article 486**
**Enforcement of a punishment of fine**

If a fine imposed by the present Code cannot be collected even by compulsion, the court shall execute it by applying Article 46 of the Criminal Code.

**Article 487**
**Enforcement of judgment related to expenditures of criminal proceedings, confiscation of material benefits and property claims**

1. With respect to the costs of criminal proceedings, confiscation of material benefit and property claims the judgment shall be executed by the competent court under the provisions that apply to enforcement proceedings.

2. Collection by compulsion of the costs of criminal proceedings which are to be paid into the budget shall be carried out *ex officio*. The costs of collection by compulsion shall be paid first from the budgetary resources of the court.

3. If a judgment imposes the accessory punishment of confiscation of objects, such objects shall automatically become the property of the State. A certified copy of the final judgment shall immediately be sent to the Agency for Management of Sequestered and Confiscated Assets which may sell the objects or place them in the use of the Government. The monetary proceeds from sale of such objects shall be credited to the budget.

4. Paragraph 3 of the present Article shall also apply *mutatis mutandis* when a decision is made on the confiscation of objects on the basis of Chapter XVIII, Section 2 of the present Code.

5. Aside from the reopening of criminal proceedings or a petition for the protection of legality, a final order to confiscate an object may be amended in civil litigation if a dispute arises as to the ownership of the object confiscated.

**Article 488**
**Enforcement of decision and order**

1. Unless otherwise provided for in the present Code, a ruling shall be executed when it becomes final. An order shall be executed immediately unless the body issuing the order orders otherwise.

2. A ruling becomes final when it may no longer be contested by an appeal or when no appeal is permitted.

3. Unless otherwise provided for, rulings and orders shall be executed by the bodies that have rendered them. If in a ruling a court has decided on the costs of criminal

proceedings, those costs will be collected in accordance with the provisions of Article 487 paragraphs 1 and 2 of the present Code.

### Article 489
### Hesitation in enforcement of decision and its corrections

1. If a doubt arises as to whether the execution of a court decision is permissible or as to the calculation of a punishment, or if a final judgment fails to make a decision to credit pretrial detention or earlier served punishment, or the calculation has not been done correctly, a decision shall be made on those points in a separate ruling which shall be rendered by the presiding judge of the panel of the court which tried the case in the first instance. An appeal shall not stay execution of the ruling unless the court specifies otherwise.
2. If doubt arises as to the interpretation of a court decision, the court that rendered the final decision shall decide on it.

### Article 490
### Issuance of certified transcript of the decision regarding the property claim

When a decision in which a property claim is decided becomes final, the injured party may request the court which rendered the decision in the first instance to issue him or her a certified transcript of the decision, indicating that the decision can be executed.

### Article 491
### Record keeping on convicted persons

Criminal records and records of convicted persons shall be kept by the competent public entity in the field of judicial affairs. The manner of keeping the records shall be set forth in a bylaw.

## CHAPTER XXIX
## OTHER PROVISIONS

### Article 492
### Immunity under International Law

1. The rules of international law shall apply for exclusion from criminal prosecution of foreign persons, who enjoy immunity.

2. If there is a doubt as to the immunity enjoyed by a person, based on paragraph 1 of the present Article, the body that conducts the procedure shall address the issue to the Ministry Foreign Affairs for clarification.

# PART FOUR
# SPECIAL PROCEEDINGS

## CHAPTER XXX
## PROCEEDINGS FOR THE ISSUANCE OF A PUNITIVE ORDER

### Article 493
### Request for Punitive Order

1. For criminal offences which come to the knowledge of the state prosecutor on the basis of a credible criminal report and are punishable by imprisonment of up to three (3) years or a fine, the state prosecutor may request in an indictment that the court issue a punitive order imposing by it a certain punishment on the accused without holding a main trial.

2. The state prosecutor may request the imposition of one or more of the following measures: a fine, prohibition on driving a motor-vehicle, an order to publish a judgment, the confiscation of an object, a judicial admonition or the confiscation of the material benefit acquired by the commission of a criminal offence.

### Article 494
### Dismissal of Request for Punitive Order

1. A single judge shall dismiss a request to issue a punitive order if it concerns a criminal offence for which such request may not be filed or if the state prosecutor requests the imposition of a punishment which is not permitted under the law. The review panel shall decide within a prescribed period of forty-eight (48) hours on the state prosecutor's appeal from a ruling on dismissal.

2. If the single judge considers that the information in the indictment does not offer sufficient grounds to issue a punitive order or that according to such information the imposition of some other punishment than the one requested by the state prosecutor can be expected, he or she shall, upon receipt of an indictment, schedule a main trial.

**Article 495**
**Punitive Order Issued by Judgment**

1. If the single judge agrees with the request, he or she shall issue a punitive order by a judgment.

2. The punitive order shall state that the state prosecutor's request is satisfied and that the punishment in the request shall be imposed on the defendant whose personal data shall be clearly indicated. The enacting clause of the judgment on a punitive order shall contain the necessary information under Article 365, paragraph 1, of the present Code, including the decision on a property claim, if a motion for its realization was filed. A statement of grounds shall state the evidence which justifies the issuance of the punitive order.

3. The punitive order shall contain an instruction to the defendant in accordance with the provisions under Article 496, paragraph 2, of the present Code and stating that after the expiry of the term for submitting an objection, if no objection is submitted, the punitive order shall become final and the punishment imposed on the defendant shall be enforced.

**Article 496**
**Service of judgment for punitive order its objection**

1. The punitive order shall be served on the defendant and his or her defence counsel, if he or she has one, and the state prosecutor.

2. The defendant or his or her defence counsel may, within a term of eight (8) days of receipt, submit an objection against the punitive order in writing or orally on the record with the court. The objection need not contain a statement of reasons; it may propose evidence for the benefit of the defence. The defendant may waive his or her right to submit an objection, but he or she may not withdraw the submitted objection after the main trial has been scheduled. Payment of a fine before the expiry of the term for submitting an objection shall not be deemed to be a waiver of the right to an objection.

3. The judge shall grant a return to the *status quo ante* to the defendant who, for justifiable reasons, fails within the prescribed period of time to submit an objection. The provisions of Articles 447 and 448 of the present Code shall apply when deciding on a petition for a return to the *status quo ante*.
4. If the single judge does not dismiss the objection as belated or because it is submitted by an unauthorized person, he or she shall schedule the main trial on the state prosecutor's indictment.

5. A review panel of three (3) judges shall decide on an appeal from the ruling on the dismissal of the objection against the punitive order within the deadline set forth in paragraph 1 of Article 494 of the present Code.

### Article 497
### Single Trial Judge Not Bound by Request for Punitive Order

When rendering a judgment following an objection, a single judge is not bound by the state prosecutor's request under Article 493 paragraph 2 of the present Code, nor by the prohibition under Article 395 of the present Code.

## CHAPTER XXXI
## RENDERING OF A JUDICIAL ADMONITION

### Article 498
### Judicial Admonition

1. A judicial admonition shall be rendered by a judgment.

2. Unless otherwise provided for in the present Chapter, the provisions of the present Code relating to the judgment by which an accused is declared guilty shall apply *mutatis mutandis* to a judgment on judicial admonition.

### Article 499
### Announcement and content of enactment clause of the judgment for judicial admonition

1. The judgment on judicial admonition shall be announced immediately upon the conclusion of the main trial, together with the essential reasons.

2. The enacting clause of the judgment on judicial admonition shall contain the personal data of the accused, an indication that the judicial admonition against the accused has been rendered for the act alleged in the indictment and the legal name of the criminal offence. The enacting clause of the judgment on judicial admonition shall also contain the necessary data under Article 365, paragraph 1 subparagraphs 1.4 and 1.6 of the present Code.

3. In the statement of grounds for the judgment, the court shall state the reasons which guided it in rendering the judicial admonition.

### Article 500
### Grounds for appeal against the judgment on judicial admonition

1. The judgment on judicial admonition may be appealed on grounds provided for in Article 383 paragraph 1 subparagraphs 1.1, 1.2 and 1.3 of the present Code and on the ground that circumstances warranting the rendering of a judicial admonition do not exist.

2. Where a judgment on judicial admonition contains a decision on a measure of mandatory rehabilitation treatment, confiscation of the material benefit acquired by the commission of a criminal offence, costs of criminal proceedings or a property claim, such judgment may be challenged on the ground that the court has not applied correctly the measures of mandatory rehabilitation treatment or the confiscation of the material benefit acquired by the commission of a criminal offence or that its decision on the costs of criminal proceedings or on the property claim was rendered contrary to legal provisions.

**Article 501**
**Prohibition from exceeding judicial powers foreseen by the law**

Aside from the violations of criminal law referred to in Article 385 of the present Code, in a case in which a judicial admonition is rendered, there shall also be a violation of criminal law where the court exceeds the powers legally vested in it by its decision on a judicial admonition, a measure of mandatory rehabilitation treatment or the confiscation of the material benefit acquired by the commission of a criminal offence.

**Article 502**
**Effect of Appeal**

1. Where a judgment on judicial admonition is appealed by the state prosecutor to the detriment of the accused, the court of appeals may render a judgment by which the accused is found guilty and is punished or by which an alternative punishment is imposed on him or her, if it finds that the basic court has determined the material facts correctly but that correct application of the law requires that a punishment be imposed.

2. On the occasion of any appeal against a judgment on judicial admonition, the court of appeals may render a judgment dismissing the indictment, or acquitting the accused of the charge, if it finds that the basic court has determined the material facts correctly but that correct application of the law warrants the rendering of one of the aforesaid judgments.

3. When grounds specified in Article 401 of the present Code exist, the court of appeals shall render a judgment by which it rejects the appeal as unfounded and affirms the judgment on judicial admonition rendered by the basic court.

# CHAPTER XXXII
# PROCEEDINGS REGARDING PERSONS WHO HAVE COMMITTED CRIMINAL OFFENCES UNDER THE INFLUENCE OF ALCOHOL AND DRUG ADDICTION

## Article 503
## Imposition of measure for mandatory rehabilitation treatment

1. The court may impose a measure of mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs on the perpetrator who has committed a criminal offence under the influence of alcohol or drug addiction, by a judgment of conviction, in accordance with Articles 58 and 90 of the Criminal Code.

2. The measure under paragraph 1 of the present Article may be imposed by the court, regardless of the sanction imposed on the accused and its execution takes place regardless of whether the accused is at liberty or serving a punishment of imprisonment.

3. The court shall decide upon the application of a measure under paragraph 1 of the present Article after obtaining an expert analysis and hearing the state prosecutor and the defence. The expert analysis should explain the possibilities for the treatment of the defendant.

4. The time spent in a medical institution for a measure of mandatory rehabilitation treatment shall be included in the duration of the punishment of imprisonment.

## Article 504
## Oversight of Mandatory Rehabilitation Treatment by Court

1. The court which imposed the measure of mandatory rehabilitation treatment in a health care institution shall, *ex officio* or on the motion of the heath care institution and on the basis of the opinion of psychiatric experts, take all further decisions in respect of the duration and modification of the measure referred to in Article 90 of the Criminal Code.

2. The decisions under the previous paragraph shall be taken by a review panel after a hearing. Notification of the hearing shall be sent to the state prosecutor and defence counsel. Before taking the decision the court shall hear the opinions of an expert witness and of the perpetrator if his health condition permits this.

3. In proceedings to reconsider the duration or modification of a measure of mandatory rehabilitation treatment the perpetrator must have defence counsel.

4. Every two (2) months the court shall in accordance with paragraph 2 of the present Article *ex officio* determine whether conditions for the measure of mandatory rehabilitation treatment in a health care institution still exist. An expert witness who is

not working at the heath care institution where the perpetrator is receiving mandatory rehabilitation treatment, shall conduct an expert analysis and shall submit his or her findings in writing and, if necessary, he or she shall give testimony at the court.

5. The court shall discontinue the implementation of the measure under the paragraph 1 of the present Article if treatment or rehabilitation is not necessary any more or the period of time prescribed in Article 90 of the Criminal Code has expired.

### Article 505
### Mutatis Mutandis application of other provisions of the present Code

Unless otherwise provided for by the present Chapter, other provisions of the present Code shall apply *mutatis mutandis* to persons who have committed a criminal offence under the influence of alcohol and drug addiction.

## CHAPTER XXXIII
## PROCEEDINGS INVOLVING PERPETRATORS WITH A MENTAL DISORDER

### Article 506
### Definitions

For the purposes of this chapter:

1. **‘’Mental disorder”** means any disability or disorder of mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning;

2. **“Mental incompetence”** has the meaning set forth in paragraph 1 of Article 18 of the Criminal Code;

3. **“Diminished mental capacity”** has the meaning set forth in paragraph 2 of Article 18 of the Criminal Code; and

4. **“Measure of mandatory psychiatric treatment”** means a measure of mandatory psychiatric treatment and custody in a health care institution or a measure of mandatory psychiatric treatment at liberty.

## Article 507
## Measures of Mandatory Treatment under Criminal Code

A perpetrator with a mental disorder, or a person being treated as such, shall be accorded the rights and measures of mandatory treatment under Chapter V of the Criminal Code.

## Article 508
## Conduct of Psychiatric Examination

1. At any time during the proceedings including during the main trial, if there is a suspicion that the defendant was in a state of mental incompetence or diminished mental capacity at the time of the commission of the criminal offence or that he or she has a mental disorder, a court may, *ex officio* or upon the motion of a state prosecutor or defence counsel, appoint an expert under Article 146 of the present Code to conduct a psychiatric examination of a defendant in order to determine whether:

1.1. at the time of the commission of the criminal offence, the defendant was in a state of mental incompetence or diminished mental capacity; or

1.2. the defendant is incompetent to stand trial.

2. The order shall state the time by which the psychiatric examination is to be completed, which shall be within two (2) weeks of the issuance of the order. If the defendant does not already have a defence counsel the court shall issue an order appointing defence counsel at public expense for the defendant.

3. The defence counsel may attend a psychiatric examination conducted to determine the competence of the defendant to stand trial, unless the expert determines that such attendance would impede a fair assessment of the defendant.

4. If the expert determines that the psychiatric examination of the defendant requires observation at a health care institution or if the defendant refuses to comply with the psychiatric examination, the expert shall submit a reasoned request for a ruling on custody in a health care institution to the court. The court may, after hearing the state prosecutor and the defence counsel, issue a ruling to hold the defendant in the custody of a health care institution for up to two (2) weeks. An appeal against this ruling shall not stay its execution.

5. If the expert determines that the psychiatric examination of the defendant pursuant to paragraph 1 of the present Article or observation at a health care institution pursuant to paragraph 4 of the present Article requires more time, he or she shall submit a reasoned request for an extension to the court. The court may order the extension for up to two (2) weeks.

6. If observation at a health care institution pursuant to paragraph 4 of the present Article is imposed on a person already subject to detention on remand, the time spent in a health care institution shall be included in the period of detention on remand.

7. In the case of a psychiatric examination ordered pursuant to paragraph 1 subparagraph 1.1 of the present Article, the expert shall indicate in the opinion the following elements: the nature, type, degree and duration of the mental disorder of the defendant; the kind of influence this mental disorder has had and still does have on the comprehension and actions of the defendant, and whether and to what degree this mental disorder existed at the time when the criminal offence was committed.

8. In the case of a psychiatric examination ordered pursuant to paragraph 1, subparagraph 1.2 of the present Article, the expert shall indicate in the opinion the following elements: the nature, type, degree and duration of the mental disorder of the defendant and the kind of influence this mental disorder has on the comprehension and actions of the defendant, in particular, on his or her ability to defend him or herself, to consult with others including defence counsel and to understand the charge.

**Article 509**
**Detention on remand of persons with a mental disorder**

1. Apart from cases in Article 187 of the present Code where detention on remand may be ordered, the court may order detention on remand against a person if:

1.1. there is a grounded suspicion that such person has committed a criminal offence;

1.2. according to a psychiatric examination ordered under Article 508 of the present Code, the person was in a state of mental incompetence or diminished mental capacity at the time of the commission of the criminal offence; and

1.3. the person currently has a mental disorder and as a result, there are grounds to believe that he or she will endanger the life or health of another person.

2. Detention on remand pursuant to paragraph 1 of the present Article may be ordered only if the state prosecutor has submitted a motion referred to in Article 512 of the present Code. Such detention on remand shall be served in a heath care institution and may last for as long as the defendant is dangerous but shall not exceed the prescribed periods of time for detention on remand set forth in Article 190 of the present Code**.**

3. If the defendant is already in detention on remand and is subsequently determined to have been in a state of mental incompetence at the time of the commission of the criminal offence, the court shall order the defendant to serve the detention on remand in a health care institution if he or she currently has a mental disorder.

4. The court shall render a ruling pursuant to paragraph 1 or 3 of the present Article only after hearing the state prosecutor, the defence counsel and the defendant, if his or her condition permits, and after reviewing the opinion of an expert. Such ruling shall be served on the state prosecutor, defendant and his or her defence counsel, the health care institution and the detention facility. The appeal shall not stay the execution of the order.

5. The health care institution shall decide upon measures to ensure public safety and security and the security and safety of the defendant after consultation with the competent detaining authority, taking into account both security and therapeutic needs.

6. Provisions under the present Code on detention on remand shall apply *mutatis mutandis* to detention on remand served in a health care institution.

**Article 510**
**Ruling on competence to stand trial**

1. The court, *ex officio* or upon the motion of the defence counsel or state prosecutor, shall issue a ruling on the competence of the defendant to stand trial after reviewing the report of the expert issued pursuant to Article 508 of the present Code and hearing the state prosecutor, the defence counsel and the defendant.

2. The court shall rule that the defendant is incompetent to stand trial if he or she currently has a mental disorder and owing to such mental disorder, he or she is unable to defend himself or herself, to consult with defence counsel or to understand the proceedings.

3. A ruling on the competence of the defendant to stand trial may be appealed.

**Article 511**
**Dismissal or suspension of proceedings due to ruling on incompetence to stand trial**

1. If the court rules that a defendant is incompetent to stand trial during the course of proceedings due to a permanent mental disorder, it shall issue a decision to dismiss the proceedings.

2. If the court rules that a defendant is incompetent to stand trial during the course of proceedings because he or she has become afflicted by a temporary mental disorder after committing the criminal offence, the investigation shall be suspended or the main trial shall be adjourned, in accordance with the present Code.
3. If proceedings were dismissed pursuant to paragraph 1 of the present Article, proceedings shall be resumed upon the request of the state prosecutor as soon as the reasons for the rendering of such ruling cease to exist.

4. If the court rules that a defendant is incompetent to stand trial pursuant to the present Article, it may request the initiation of proceedings for his or her committal to a health

care institution pursuant to the applicable Law on Non-Contentious Proceedings. In such case, the court may rule that the defendant be detained in a health care institution for a maximum period of fourty-eight (48) hours pending the initiation of proceedings for committal to a health care institution under the applicable Law on Non-Contentious Proceedings, if as a result of the person's mental disorder there are grounds to believe that he or she will endanger the life or health of another person.

**Article 512**
**Motion by the prosecutor for a measure of mandatory psychiatric treatment**

1. Prior to the opening of the main trial, the state prosecutor shall file a motion that the court impose a measure of mandatory psychiatric treatment, if the defendant has committed a criminal offence in a state of mental incompetence and the grounds for imposing such a measure exist, as provided in Articles 88 and 89 of the Criminal Code.

2. During the main trial, the state prosecutor shall amend the indictment and file a motion that the court impose a measure of mandatory psychiatric treatment, if the evidence presented at the main trial suggests that the defendant has committed a criminal offence in a state of mental incompetence and if the grounds for imposing such a measure exist, as provided in Articles 88 and 89 of the Criminal Code.

3. The defendant must have defense counsel once the motion referred to in paragraph 1 or 2 of the present Article has been filed.

**Article 513**
**Conduct of proceedings to impose measure of mandatory psychiatric treatment**

1. A measure of mandatory psychiatric treatment shall be imposed after a main trial is held by the court which is competent to try the case in the first instance.

2. In addition to the persons who must be summoned to the main trial, experts and psychiatrists shall also be summoned from the health care institution entrusted with conducting the psychiatric examination of the mental capacity of the defendant. The spouse of the defendant and his or her parents or foster parent shall be notified of the main trial.

3. The decision to impose a measure of mandatory psychiatric treatment shall be based on the examination of the persons summoned and the findings and opinions of the expert. In making the decision as to which measure to impose, the court shall not be bound by the state prosecutor's motion.

**Article 514**
**Decisions of the court**

1. The court shall issue a ruling to dismiss the proceedings to impose a measure of mandatory psychiatric treatment if the grounds for imposing a measure of mandatory psychiatric treatment, as provided in Articles 88 and 89 of the Criminal Code, do not exist.

2. The court shall render a judgment to acquit the defendant, if the defendant was mentally incompetent at the time of the commission of the criminal offence and the state prosecutor did not file a motion to impose a measure of mandatory psychiatric treatment, pursuant to Article 512 of the present Code.

3. The court shall issue a ruling to impose a measure of mandatory psychiatric treatment, if the grounds for imposing a measure of mandatory psychiatric treatment, as provided in Articles 88 and 89 of the Criminal Code, exist and the state prosecutor filed a motion to impose a measure of mandatory psychiatric treatment, pursuant to Article 512 of the present Code. The ruling shall state:

3.1. the act which the defendant was determined to have committed, the legal designation of the act and the provisions of the criminal law applied;

3.2. the determination that the defendant committed the act in a state of mental incompetence; and

3.3. the measure of mandatory psychiatric treatment imposed on the defendant.

4. All persons who have the right to appeal a judgment, except the injured party, have the right to file an appeal against the decision of the court within eight (8) days of the receipt of the decision.

5. In cases where the court decided to dismiss proceedings pursuant to paragraph 1 of the present Article because it determined that the defendant was mentally competent at the time of committing the criminal offence, the state prosecutor may waive the right to appeal this ruling and may immediately file an indictment. The indictment shall be filed within eight (8) days from waiving the right to appeal.

6. In cases referred to in paragraph 5 of the present Article the main trial shall be reopened before the same panel and the proceedings shall continue on the basis of the new indictment subject to the following conditions:

6.1. the court may recess the main trial for the preparation of the defence; and

6.2. evidence presented earlier shall not be presented again except in cases provided under Article 311 of the present Code or if the panel finds that it is necessary for individual items of evidence to be presented again.

**Article 515**
**Imposition and calculation of measure of mandatory psychiatric treatment**

1. When a court renders a judgment on a person who has committed a criminal act in a state of diminished mental capacity, it shall also in that judgment impose a measure of mandatory psychiatric treatment if the grounds for imposing such a measure exist under Articles 88 and 89 of the Criminal Code.

2. The measures from paragraph 1 of the present Article may be imposed regardless of whether the defendant is at liberty or the punishment of imprisonment was imposed.

3. The time spent in a health care institution pursuant to Article 508 of the present Code, an order for detention on remand pursuant to Article 509 of the present Code or a measure of mandatory psychiatric treatment in custody shall be included in the imposed punishment.

**Article 516**
**Notification of decision imposing a measure of mandatory psychiatric treatment**

Once it has become final, the decision imposing a measure of mandatory psychiatric treatment in custody or a measure of mandatory psychiatric treatment at liberty shall be filed with the court which is competent to render a decision on the deprivation of the capacity to perform legal acts. The competent Centre for Social Welfare shall also be notified of the decision.

**Article 517**
**Right to defence counsel**

The perpetrator shall have defense counsel during proceedings to modify or terminate a measure of mandatory psychiatric treatment.

**Article 518**
**Execution of Psychiatric Treatment**

The execution of psychiatric treatment under this chapter shall be governed by Articles 181 to 187 of the Law on Execution of Criminal Sanctions.

# CHAPTER XXXIV
# PROCEEDINGS FOR THE REVOCATION OF ALTERNATIVE PUNISHMENTS

### Article 519
### Conditions for Revocation of Alternative Punishments

1. Where a suspended sentence is conditioned on the performance of one of the obligations provided for in Article 51 of the Criminal Code and the accused fails to perform that obligation within the period of time determined by the court, the basic court shall initiate proceedings to revoke the suspended sentence upon the motion of the authorized state prosecutor or the injured party or *ex officio*.

2. The judge assigned to the case shall examine the convicted person if he or she can be reached and shall conduct the necessary inquiries to determine facts and collect evidence material to adjudication, whereupon he or she shall send the files to the panel.

3. The presiding trial judge shall schedule a session of the panel, of which he or she shall notify the state prosecutor, the convicted person and the injured party. The panel shall hold a session, whether the duly summoned parties and the injured party appear or fail to comply with the summons.

4. If the court establishes that the convicted person has failed to comply with the obligation imposed on him or her by the judgment, it shall render a judgment in accordance with Article 55 of the Criminal Code.

# CHAPTER XXXV
# PROCEEDINGS FOR RENDERING A DECISION ON THE EXPUNGEMENT OF CONVICTION

### Article 520
### Expungement of Conviction

1. Where the law provides for a conviction to be expunged after the expiry of a specific period of time provided that the offender does not commit a new criminal offence within that time under Article 103 of the Criminal Code, the competent public entity in the field of judicial affairs shall render a ruling expunging the conviction *ex officio*.

2. Prior to rendering the ruling, the necessary inquiries shall be made and, in particular, information shall be gathered as to whether criminal proceedings are in progress against the convicted person for a criminal offence committed before the expiry of the period of time prescribed for the expungement of the sentence.

**Article 521**
**Procedure for expungement of conviction when the administrative body fails to act**

1. If the competent public entity in the field of judicial affairs fails to render the ruling, the convicted person may request a determination that the expungement of the sentence has accrued by force of law.

2. If the competent public entity in the field of judicial affairs fails to render the ruling expunging the sentence within thirty (30) days of the request being filed, the convicted person may request that a ruling expunging the sentence be rendered by the court which passed the judgment in first instance.

3. Such request shall be decided by the court after hearing the state prosecutor, if proceedings were initiated upon his or her request.

**Article 522**
**Expungement with Alternative Punishments**

If an alternative punishment is not revoked one (1) year after the expiry of the verification period the court which adjudicated in the first instance shall render a ruling expunging the sentence. The ruling shall be served on the convicted person, the state prosecutor, if proceedings were conducted upon his or her request, as well as the competent public entity in the field of judicial affairs.

**Article 523**
**Proceedings to expunge punishment based on a judicial decision**

1. Proceedings to expunge a punishment on the basis of a judicial decision under Article 104 of the Criminal Code shall be initiated upon the petition of the convicted person.

2. The petition shall be filed with the court which adjudicated in first instance.

3. The judge assigned to the case shall first establish whether the necessary period of time according to the law has elapsed, and then he or she shall make the necessary inquiries to determine the facts alleged by the petitioner and collect evidence on all circumstances relevant for the decision.

4. The court may request a report on the conduct of the petitioner from the police in whose territory he or she has resided after serving his or her punishment and may request a similar report from the administration of the institution in which he or she served the punishment.

5. After completing the inquiries and upon hearing the state prosecutor if proceedings were conducted upon his or her request, the judge shall send the files together with a motion supported by reasoning to the panel of the court which judged the case at first instance.

6. The decision of the court on expunging the punishment may be appealed by the petitioner or the state prosecutor.

7. If the court rejects the petition on the ground that the conduct of the petitioner does not warrant the expunging of the punishment, the petitioner may renew the petition two (2) years after the day the ruling rejecting the petition became final.

### Article 524
### Effect of Expungement on Criminal Records

An expunged punishment may not be mentioned in certificates issued on the basis of criminal records for the exercise of rights of individuals.

## CHAPTER XXXVI
## PROCEEDINGS FOR COMPENSATION, REHABILITATION AND THE EXERCISE OF OTHER RIGHTS OF PERSONS WHO HAVE BEEN CONVICTED OR ARRESTED WITHOUT JUSTIFICATION

### 1. Proceedings for Compensation of Persons who have been Convicted or Arrested without Justification

### Article 525
### Persons who have the right to compensation for unjustified trial

1. A person shall be entitled to compensation for damages caused by an unjustified conviction if a criminal sanction has been imposed in a final form on him or her or if he or she has been found guilty and punishment was waived, but later on the basis of an extraordinary legal remedy, the reopened proceedings were dismissed in a final form or he or she was acquitted of the charge by a final judgment or the charge against him or her was rejected, except in the following instances:

> 1.1. where the proceedings were terminated or a judgment rejecting the charge was rendered because in the new proceedings the injured party withdrew the motion and the act of withdrawal was effected in agreement with the defendant; or

1.2. where in the reopened proceedings the charge was rejected by a ruling because the court did not have competence and the authorized state prosecutor initiated prosecution before the competent court.

2. The convicted person shall not be entitled to compensation for damages caused if, by a false confession or in some other way, he or she deliberately brought about his or her conviction, except where he or she was compelled to do so.

3. In the case of conviction for concurrent offences, the right to compensation for damages may also refer to individual criminal offences in respect of which conditions for recognition of compensation have been fulfilled.

**Article 526**
**Petition for compensation from administrative body and its statutory limitations**

1. The right to compensation for damages shall expire three (3) years from the entry into force of the judgment in the first instance acquitting the accused of the charge or rejecting the charge, or three years from the entry into force of the first instance ruling dismissing the charge or terminating the proceedings. If the appeal was decided by a higher court, the right to seek compensation for damages shall expire three (3) years from the receipt of the decision of that court.

2. Before filing the claim for compensation for damages with the court, the injured party shall address a petition to the competent public entity in the field of judicial affairs to try and reach agreement on the existence of the damages and the type and extent of compensation.

3. In the instance referred to in subparagraph 1.2, paragraph 1 of Article 525 of the present Code the request may only be processed if the authorized state prosecutor fails to initiate prosecution at the competent court within three (3) months of receipt of the final ruling. If the authorized state prosecutor starts prosecution at the competent court after the expiry of that prescribed period of time, proceedings for compensation for damages shall be suspended until criminal proceedings have been concluded.

**Article 527**
**Claim for Compensation**

1. If the petition for compensation for damages is not granted or the competent public entity in the field of judicial affairs and the injured party do not reach agreement within three (3) months from the day of the filing of the petition, the injured party may file a claim for compensation for damages with the competent court. If agreement was reached regarding only a part of the petition, the injured party may bring a claim for the outstanding part.

2. The limitation period under Article 526, paragraph 1, of the present Code, shall not apply for as long as the proceedings under the first paragraph of the present Article are pending.

3. The claim for compensation for damages shall be filed against the competent public entity in the field of judicial affairs.

**Article 528**
**Compensation after Death of Claimant**

1. Heirs shall inherit the right of the injured party to recover compensation only for material damage. If the injured party has already filed the petition, the heirs may continue proceedings only within the limits of the petition already submitted for compensation for material damage.

2. After the death of the injured party, his or her heirs may continue proceedings for compensation for damages, or may initiate proceedings if the injured party had died before the expiry of the period of statutory limitation without waiving the right to file a petition.

**Article 529**
**Persons with right to compensation for ungrounded deprivation of liberty**

1. The right to compensation shall also be enjoyed by:

1.1. a person who was held in detention on remand and criminal proceedings against him or her were not initiated or the proceedings were dismissed by a final ruling or proceedings were terminated or he or she was acquitted of the charge by a final judgment or the charge was rejected;

1.2. a person who served a punishment of deprivation of liberty, if, by reason of the reopening of criminal proceedings or a request for protection of legality, he or she was sentenced to a punishment of the deprivation of liberty shorter than the one he or she has already served or to a criminal sanction not involving deprivation of liberty, or if he or she was found guilty but punishment was waived;

1.3. a person who by reason of an error or unlawful act of an authority was arrested without any grounds or held for some time in detention on remand or in an institution for serving a punishment or a measure; and

1.4. a person who was held in detention on remand for longer than the term of imprisonment imposed on him or her.

2. A person who without legal justification was arrested under Article 163 of the present Code shall be entitled to compensation if detention on remand was not ordered against him or her or the time he or she spent under arrest was not counted in the punishment imposed on him or her for a criminal offence or a minor offence.

3. The right to compensation shall not be enjoyed by a person whose arrest was caused by his or her own reprehensible conduct. In instances under paragraph 1 subparagraphs 1.1 and 1.2 of the present Article, the right to compensation shall be precluded if circumstances exist as provided for in Article 525, paragraph 1, subparagraphs 1.1 and 1.2, of the present Code.

4. In proceedings for compensation under paragraphs 1 and 2 of the present Article, the provisions of the present Chapter shall apply *mutatis mutandis*.

**2. Rehabilitation**

**Article 530**
**Announcement of the media release which indicates that the previous trial was ungrounded**

1. If a case of an unjustified conviction or a groundless arrest of a person was presented in the media and the reputation of that person was thereby harmed, the court shall, upon request of that person, announce in a newspaper or some other media a report on the decision clarifying that the conviction was unjustified or the arrest was groundless. If the case was not announced in the media the court shall upon request of that person send such report to his or her employer. After the death of the convicted person the right to file such request shall be held by his or her spouse, or his or her extramarital partner, and by his or her children, parents, brothers and sisters.

2. The request under paragraph 1 of the present Article may be submitted even if compensation for damages is not sought.

3. Aside from the conditions provided for in Article 525 of the present Code, a request under paragraph 1 of the present Article shall also be filed when in connection with an extraordinary legal remedy the legal qualification of the act was changed, if the reputation of the convicted person was seriously harmed due to the legal qualification in the previous judgment.

4. A request under paragraph 1, 2 or 3 of the present Article shall be filed within six (6) months under Article 526, paragraph 1, of the present Code with the court which adjudicated in criminal proceedings in the first instance. The request shall be determined by a panel of the court of appeals. In determining the request, Article 525, paragraphs 2 and 3, and Article 529, paragraph 3, of the present Code shall apply *mutatis mutandis*.

**Article 531**
**Ruling to Annul Unjustified Conviction**

The court which adjudicated in criminal proceedings in the first instance shall render a ruling *ex officio* annulling the entry of an unjustified conviction in criminal records. The ruling shall be sent to the competent public entity in the field of judicial affairs. Data from the annulled entry must not be communicated to anybody.

**Article 532**
**Restrictions to inspection and photocopying of the case files**

A person who is authorized to inspect and copy the files relating to an unjustified conviction or groundless arrest of a person may not use data from these files in a manner which would prejudice the rehabilitation of the person against whom criminal proceedings were conducted. The president of the court shall be bound to warn such person thereof, and a note to that effect shall be written on the file and signed by that person.

**3. Proceedings for the Realization of Other Rights**

**Article 533**
**Realization of Other Rights**

1. A person who by virtue of an unjustified conviction or groundless arrest has lost employment or status as an insured person under the social security system shall be entitled to have the length of work service or the period of time as an insured person lost in that way counted as if he or she were employed during the time lost through the unjustified conviction or groundless arrest. The time of unemployment resulting from an unjustified conviction or groundless arrest which did not occur through the fault of that person shall also be counted in the period of service.

2. In every decision on a right affected by the length of work service or of insurance contribution, the competent body shall take into account the length of time recognized in accordance with paragraph 1 of the present Article.

3. If the competent body under paragraph 2 of the present Article disregards the length of time recognized under paragraph 1 of the present Article, the injured party may request that the court referred to in Article 527, paragraph 1, of the present Code confirm that the recognition of this time is carried out in accordance with the law. The claim shall be filed against the competent body which disputes the period of service and the competent public entity in the field of judicial affairs.

4. On request of the body where the right under paragraph 2 of the present Article is exercised, the contribution prescribed for the period recognized under paragraph 1 of the present Article shall be paid out of budgetary resources.

5. The length of time of insurance coverage recognized under paragraph 1 of the present Article shall be included entirely as pensionable employment.

# CHAPTER XXXVII
# PROCEEDINGS FOR ISSUING WANTED NOTICES AND PUBLIC ANNOUNCEMENTS

## Article 534
## Search for the address of the defendant

If the permanent or current residence of a defendant is not known, the court shall, whenever so required by the provisions of the present Code, request the police to locate the defendant and inform the court of his or her address.

## Article 535
## Conditions for issuance of a wanted notice

1. Wanted notice may be ordered when the defendant against whom proceedings have been initiated for an offence prosecuted *ex officio* and punishable by imprisonment of at least two (2) years is in flight and when an order for his or her arrest or a ruling on the determination of his or her detention on remand has been issued.

2. Wanted notice shall be ordered by the court conducting criminal proceedings. During the pre-trial proceedings such notice shall be ordered by the pre-trial judge on the motion of the state prosecutor.

3. Wanted notice shall also be ordered where a defendant has escaped from the institution in which he or she is serving his or her punishment, irrespective of the amount of punishment, or when he or she escapes from the institution in which he or she is serving an institutional measure connected with the deprivation of liberty. In this case the order shall be issued by the director of the institution.

4. International wanted notice may be requested in any of the situations provided for by the present Article, by the respective authority when the wanted person is not in Kosovo or when there are evidence that such person resides outside of Kosovo.

5. The request of the court or director of the institution for issuing international wanted notice should be sent to the competent authority for issuing and dissemination thereof.

6. The order of the court or the director of the institution to issue a wanted notice shall be sent to the police for execution.

7. Police shall keep records of issued wanted notices. Data about the persons against whom a wanted notice is issued shall be deleted from the records as soon as the competent authority has revoked the wanted notice.

**Article 536**
**Public announcements**

1. Where information is needed about particular objects connected with a criminal offence or where it is necessary to find such objects and, in particular, where that is necessary for establishing the identity of an unidentified body, the competent authority conducting the proceedings shall order the issuance of an announcement with a request that information and reports be delivered to the competent authority conducting the proceedings.

2. The police may publish photographs of bodies and missing persons if there are grounds to suspect that the death or disappearance of these persons has been caused by the commission of a criminal offence.

**Article 537**
**Revocation of wanted notice or public announcement**

1. The authority which has ordered the issuance of a wanted notice, an international wanted notice or an announcement shall revoke it as soon as the person or the object sought is found, when the period of statutory limitation expires for criminal prosecution or the execution of a punishment, or when for other reasons the wanted notice or the announcement are no longer necessary.

2. The order for revocation of wanted notice, international wanted notice or public announcement shall be sent to the competent authority which should ensure their immediate annulment.

**Article 538**
**Announcement of the wanted notice or request for information from the public**

1. The wanted notice and public announcement shall be announced by the competent public entity in the field of internal affairs.

2. The news media may also be used to inform the public of the wanted notice or announcement.

3. The competent authority may also announce an international wanted notice through international channels.

4. Upon the request of a foreign authority, the competent entity in the field of internal affairs may distribute a wanted notice for a person suspected of being in Kosovo, provided the foreign authority states in the request that it will request the extradition of such person if he or she is found.

5. The provisions of the present Article shall apply *mutatis mutandis* to cases when police announce the search for persons or objects.

# PART SIX
# TRANSITIONAL AND FINAL PROVISIONS

## CHAPTER XXXVIII
## TRANSITIONAL AND FINAL PROVISIONS

### Article 539
### Code into Force for Criminal Proceedings Initiated after Entry into Force of the present Code

Any criminal proceeding initiated after the present Code enters into force shall be fully compliant with the terms of the present Code.

### Article 540
### Application of the present Code in criminal proceedings initiated prior to its entry into force

For any criminal proceeding initiated prior to the entry into force of the present Code, but without an indictment filed, the provisions of the present code shall be applied *mutatis mutandis*.

### Article 541
### Indictments or Summary Indictments Filed Prior to Entry into Force of the Present Code

1. Criminal proceedings in which indictment has been filed but was not confirmed before the entry into force of the present code, shall not be confirmed according to provisions of the code that was in force at the time when the indictment was filed, but will be processed based on provisions of the present Code.

2. Criminal proceedings in which the indictment has been confirmed with a final decision, before the entry into force of the present Code, and proceedings in which proposal indictment was filed, shall be concluded based on provisions of the present Code.

**Article 542**
**Application of Time Limits**

Upon the entry into force of the present Code, if any prescribed period of time is running, such period shall be counted pursuant to the provisions of the present Code, except if the previous period of time was longer or the provisions of the present Chapter provide otherwise.

**Article 543**
**Continuation of Private Prosecution**

1. For criminal offences for which the perpetrator is prosecuted by a private prosecutor or subsidiary prosecutor, such criminal proceedings shall be continued within the General Department of the competent Basic Court.

2. For criminal proceedings under paragraph 1 of the present Article, the prosecution shall be conducted under the Kosovo Code of Criminal Procedure, applied *mutatis mutandis*.

**Article 544**
**Application of Law upon Rehearing**

After the entry into force of the present Code, if on the occasion of an appeal or an extraordinary legal remedy the judgment is annulled, the main trial shall be conducted *mutatis mutandis* under the previous code.

**Article 545**
**Applicability of Transitional Provisions**

1. The determination of whether to use the present code of criminal procedure shall be based upon the date of the filing of indictment. Acts which took place prior to the entry of force of the present code shall be subject to the present Code if the criminal proceeding investigating and prosecuting that act was initiated after the entry into force of this code.

2. Provisions in the Kosovo Code of Criminal Procedure shall cease to have effect upon the entry into force of the present Code, except as applicable subject to the present Chapter.

**Article 546**
**Implementation of Present Code**

The Kosovo Judicial Counsel, Kosovo Prosecutorial Counsel, and Ministry of Justice may issue Administrative Regulations for the implementation of the present Code in the areas of their competencies.

**Article 547**
**Entry into Force**

The present Code shall enter into force on 1 January 2013.

**Code No. 04/L-123**
**13 December 2012**

**President of the Assembly of the Republic of Kosovo**

**Jakup KRASNIQI**