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Autori:

Codice di procedura penale della Repubblica di Bulgaria

Criminal Procedure Code

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PART ONE

GENERAL RULES

Chapter one - OBJECTIVES AND LIMITED SCOPE OF APPLICATION

Objectives of the Criminal Procedure Code

Article 1

(1) The Criminal Procedure Code shall determine the order for conducting criminal proceedings with a view to ensuring detection of crimes, denouncement of culpable persons and proper application of the law.

(2) While realising the objectives under para 1, the Criminal Procedure Code shall ensure that adequate protection is afforded from criminal offences against the Republic of Bulgaria, the life, freedom, honour, rights and legal interests of citizens, as well as against the rights and legal interests of legal persons, and it shall further contribute to the prevention of crime and the reinforcement of legality.

Ratione materiae

Article 2

(1) The Criminal Procedure Code shall be applied to all criminal cases initiated by the authorities of the Republic of Bulgaria.

(2) The Criminal Procedure Code shall also apply in the execution of commissions rogatory of another state transmitted by virtue of an agreement or through reciprocity.

Ratione temporis

Article 3

The provisions of the Criminal Procedure Code shall also be applied as from the time of their entry into force to procedural actions, which still have to be performed in pending criminal proceedings.

Ratione loci

Article 4

(1) Criminal proceedings instituted by the authorities of another state or a sentence in force issued by a court in another state, said proceedings or sentence not being recognised in pursuance of this Code, shall be no obstacle to the institution of criminal proceedings by the authorities in the Republic of Bulgaria in respect of the same criminal offence against the same individual.

(2) A sentence in force issued by a court in another state, which has not been recognised in pursuance of this Code, shall not be subject to enforcement by the authorities of the Republic of Bulgaria.

(3) The provisions of paras 1 and 2 shall not apply if otherwise provided for by an international

treaty to which the Republic of Bulgaria is a party where said treaty has been ratified, publicised and has entered in force.

Application with respect to persons enjoying immunity

Article 5

Procedural actions provided for by this Code may be applied with regard to persons who enjoy immunity from the criminal jurisdiction of the Republic of Bulgaria, only in compliance with the norms of international law.

Chapter two - FUNDAMENTAL PRINCIPLES

Administration of justice in criminal cases by the courts only

Article 6

(1) Justice in criminal cases shall be administered only by those courts which have been established by virtue of the Constitution of the Republic of Bulgaria .

(2) No extraordinary courts or tribunals for the trial of criminal cases shall be allowed.

Central role of court proceedings

Article 7

(1) Court proceedings shall have a central role within the criminal process.

(2) Pre-trial proceedings shall have a preparatory nature

Participation of court assessors in criminal proceedings

Article 8

(1) In the hypotheses and in accordance with the procedures herein provided for, court assessors shall take part in criminal proceedings.

(2) Court assessors shall have the same rights as judges.

Designation

Article 9

Only judges, court assessors, prosecutors and investigative bodies who have been designated in pursuance of the procedure established to this effect, shall take part in criminal proceedings.

Independence of the bodies entrusted with criminal proceedings

Article 10

In the discharge of their functions judges, court assessors, prosecutors and investigative bodies shall be independent and shall only obey the law.

Equality of citizens in criminal proceedings

Article 11

(1) All citizens who take part in criminal proceedings shall be equal before the law. Neither restriction on any rights, nor any privileges shall be allowed on the basis of race, nationality, ethnicity, sex, origin, religion, education, convictions, political affiliations, personal or social status or property.

(2) The court and pre-trial bodies shall proceed accurately in applying the law equally to all citizens.

Adversarial nature of proceedings. Equality of arms afforded to the parties

Article 12

(1) Court proceedings shall be adversarial.

(2) The parties in court proceedings shall have equal procedural rights, except in the cases specified by this Code.

Discovery of the objective truth

Article 13

(1) Within the limits of their competence, the court, the prosecutor and investigative bodies shall be obligated to apply all available measures in order to secure discovery of the objective truth.

(2) Objective truth shall be discovered in pursuance hereof, through the means herein specified.

Making decisions out of inner conviction

Article 14

(1) The court, the prosecutor and investigative bodies shall make their decisions by inner conviction, which shall be based on the objective, comprehensive and complete investigation of all circumstances relevant to the case, taking the law as guidance.

(2) Evidence and the objective forms used to establish their existence may not have any value set in advance.

Right of defence

Article 15

(1) The accused party shall enjoy the right of defence.

(2) The accused party and the other persons who take part in criminal proceedings shall be afforded all procedural means necessary for the defence of their rights and legal interests.

(3) The court, the prosecutor and investigative bodies shall explain the persons under para 2 their procedural rights and shall ensure the possibility to exercise them.

(4) The victim shall be provided with all means of procedural leverage required to fend for the defence of his/her rights and legal interests.

Presumption of innocence

Article 16

The accused party shall be presumed innocent until the reverse is established by virtue of an effective verdict.

Inviolability of the person

Article 17

(1) No measures of coercion shall be applied to citizens who take part in criminal proceedings, except for cases herein specified and in pursuance hereof.

(2) No citizen may be held for more than 24 hours in detention unauthorised by court. The prosecutor may issue a warrant for the detention of the accused party until he/she is brought before court.

(3) The respective body shall be obligated to immediately notify a person indicated by the detained individual of the detention.

(4) The Ministry of Foreign Affairs shall be immediately notified where the detained individual is a foreign national.

(5) The court, the prosecutor and investigative bodies shall be obligated to release any citizen who has been illegally deprived of his/her freedom.

Immediacy

Article 18

The court, the prosecutor and investigative bodies shall base their decisions on evidentiary materials which they shall collect and inspect in person, except for the cases herein specified.

Criminal proceedings shall be conducted orally

Article 19

Criminal proceedings shall be conducted orally, except in the cases specified by this Code.

Publicity of hearings in court

Article 20

Court hearings shall be public, except in cases specified by this Code.

Language of criminal proceedings

Article 21

(1) Criminal proceedings shall be conducted in the Bulgarian language.

(2) Persons who do not have command of the Bulgarian language can make use of their native or another language. An interpreter shall be appointed in this case.

Trial and disposal of cases within reasonable time

Article 22

(1) The court shall try and dispose of the cases within reasonable time

(2) The prosecutor and investigative bodies shall be obligated to secure the conduct of pre-trial proceedings within the time limits set forth in this code.

(3) Cases in which the accused party has been remanded in custody shall be investigated, examined and disposed of before other cases.

Chapter three - INSTITUTION, TERMINATION AND SUSPENSION OF CRIMINAL PROCEEDINGS

Obligation to institute criminal proceedings

Article 23

(1) In presence of the conditions herein specified, the competent public body shall be obligated to institute criminal proceedings.

(2) In the cases set forth in this code criminal proceedings shall be considered instituted by virtue of the first action marking the beginning of investigation.

Grounds which exclude the institution of criminal proceedings and grounds for their termination

Article 24

(1) Criminal proceedings shall not be instituted and, if instituted, they shall be terminated, where:

1. The act committed does not constitute a criminal offence;

2. The perpetrator is not criminally responsible due to amnesty;

3. Criminal responsibility has been extinguished following expiry of a statutory limitation period;

4. The perpetrator has passed away;

5. After committing the criminal offence, the perpetrator has fallen in a state of lasting mental derangement, which excludes his/her capacity to be liable.

6. Against the same individual and for the same criminal offence there are pending criminal proceedings, a verdict in force, a prosecutorial decree or a court ruling or order in force whereby the case is terminated;

7. In the hypotheses set out in the Special Part of the Criminal Code , in publicly actionable cases, where a complaint of the victim to the prosecutor is missing;

8. The perpetrator is exempted from criminal responsibility and interventions for his/her education are used;

9. In the hypotheses set out in the Special Part of the Criminal Code , the victim or the legal person suffering damage may extend a request for the termination of criminal proceedings until the commencement of judicial trial before the first-instance court;

10. A transfer of criminal proceedings was allowed in respect of the individual to another state

11. In respect of an individual who is acting as an under-cover agent, within the limits of competences conferred upon him/her.

(2) In cases falling under items 2, 3 and 9, para 1, criminal proceedings shall not be terminated, where the accused party or the trial defendant extend a request to carry on with proceedings.

Amnesty or statutory limitation shall not constitute obstacles to reopening a criminal case, where a convict extends a request to this effect or a prosecutor submits a proposal for acquittal.

(3) Proceedings in publicly actionable criminal cases shall also terminate, once the court has approved the plea bargain agreement reached on the disposal of the case.

(4) Besides cases listed in para 1, criminal proceedings shall not be instituted for a criminal offence actionable at the complaint of the victim and, where criminal proceedings were instituted, they shall also terminate, provided:

1. There is no complaint;

2. The complaint does not meet the requirements specified in Article 81;

3. The victim and the perpetrator have reconciled, lest the perpetrator has failed to abide by the terms of said conciliation in the absence of valid reasons;

4. The private complainant has withdrawn his/her complaint;

5. The Private complainant has not been found at the address he/she has indicated or fails to make appearance at the court hearing before the first-instance court in the absence of any valid reasons; this provision shall not apply where, instead of the private complainant, his/her counsel appears.

Suspension of criminal proceedings

Article 25

Criminal proceedings shall be suspended, where:

1. After committing the criminal offence, the accused party has fallen into a state of short-term mental derangement, which excludes his/her capacity to be liable, or where he/she suffers from another severe ailment, which hinders proceedings to be conducted;

2. Trying the case in the absence of the trial defendant would impede discovering the objective truth;

3. the perpetrator is an individual enjoying immunity.

Suspension of criminal proceedings for offences committed in complicity

Article 26

In the case of criminal offences committed in complicity, where the conditions for separation of criminal proceedings are not met, the latter may be suspended with respect to one or several of the accused parties, provided this will not prevent discovering the objective truth.

Chapter four - THE COURT

Section I - Functions and composition of the court in court proceedings. Types of judicial acts

Functions of the court in court proceedings

Article 27

(1) After the prosecutor files the indictment or the victim files a complaint, the court shall conduct proceedings and shall decide on all matters relevant to the case.

(2) In pre-trial proceedings the court shall discharge its powers as provided for in the special part of

this code.

Composition of the court

Article 28

(1) The court shall try criminal cases at first instance in a panel composed of:

1. A single judge, where the criminal offence entails up to five years of deprivation of liberty or a less heavy punishment;

2. A judge and two court assessors, where the criminal offence entails five to fifteen years of deprivation of liberty as punishment;

3. Two judges and three court assessors, where the criminal offence entails no less than 15 years of deprivation of liberty or another, more severe punishment.

(2) While examining cases as an intermediate appellate review instance, the court shall sit in a panel of three judges.

(3) While examining cases as a cassation instance, the Supreme Court of Cassation shall sit in a panel of three judges.

(4) The Chairman of the court, the judge reporting the case and the presiding judge of the panel of the court shall make sole pronouncements in the cases specified by this Code.

Grounds for disqualification of judges and court assessors

Article 29

(1) A judge or an assessor may not be part of the panel of the court who:

1. Was included in the composition of the court, which issued:

a) A sentence or judgement at the first, the appellate or the cassation instance or upon reopening of the criminal case,

b) A ruling endorsing the agreement to dispose of the case;

c) A ruling, whereby criminal proceedings are terminated;

d) A ruling, whereby a remand measure of custody was applied, confirmed, amended or repealed in the course of pre-trial proceedings,

2. He/she has been involved in investigating the case;

3. He/she has acted as prosecutor in the case;

4. He/she has had the capacity of an accused party, custodian or guardian of the accused party, of defence counsel or counsel in the case;

5. He/she has been involved or may join the criminal proceedings in the capacity of a private prosecutor, private complainant, a civil claimant or civil respondent;

6. He/she has had the capacity of witness, certifying witness, expert witness, translator, sign-language interpreter, or technical expert in the case;

7. He/she is a spouse or close relative to the individuals under item 1 - 6;

8. He/she is a spouse or close relative to another member of the judicial panel.

(2) A judge or assessor may not be part of the court composition due to some other circumstances on account of which he/she may be considered biased or interested, directly or indirectly, in the outcome of the case.

Grounds for disqualification of the secretary

Article 30

Persons under Article 29 may not take part at court hearings as secretaries.

Procedure for disqualification of judges, court assessors and secretaries

Article 31

(1) Judges, court assessors and secretaries shall be obligated to make a recusal in the hypotheses set forth in Articles 29 and 30.

(2) The parties may raise disqualification issues prior to the beginning of judicial trial, except where grounds therefore have arisen or come to their knowledge at a later stage.

(3) Recusals and disqualifications shall be reasoned.

(4) The court shall immediately rule on the well-foundedness of recusals and disqualifications, on the occasion of secret deliberations wherein all members of the panel shall take part.

Types of judicial acts

Article 32

(1) The court shall issue:

1. A sentence, where it resolves, acting as a first and intermediate appellate review instance, matters of guilt and responsibility of the trial defendant;

2. A judgement, where it rules on the well-foundedness of an appeal or a protest or of a request to reopen a criminal case;

3. A ruling - in all remaining cases.

(2) The chairperson of a court, the judge-rapporteur and the chair of a panel shall issue orders.

Procedure for the issuance of acts

Article 33

(1) The court shall issue its acts on the occasion of secret deliberations.

(2) Judges and courts assessors shall be bound to keep the secret of deliberations.

(3) Court assessors shall make statements and shall vote before the judges. The chair of the panel shall make statements and shall vote last.

(4) The court shall rule by simple majority, all panel members having an equal right to vote.

(5) Each member of the panel shall have the right to state his/her special opinion, which must be reasoned. Where the judge-rapporteur has to state his/her special opinion, reasoning shall be drafted by another panel member.

(6) At the hearing, rulings of the court and orders of the chair shall be pronounced orally and entered on the record.

Content of the acts

Article 34

Each act of the court must contain the following: information about the time and location of issuance; denomination of the issuing court, the case-file number in which it is issued; the names of panel members, of the prosecutor and the secretary; reasoning; an operative part and signatures of panel members.

Section II - Jurisdiction

Criminal cases within the jurisdiction of the regional and the district court as first instance

Article 35

(1) All criminal cases shall fall within the jurisdiction of the regional court, with the exception of those in respect of which the district shall have jurisdiction.

(2) the cases for crimes under the following provisions shall fall in the jurisdiction of the regional court as first instance: Articles 95-110 , 115 , 116, 118, 119, 123, 124, 131 , paragraph (2), items 1 and 2, Article 142 , 149 , paragraph (5), 152, paragraph (4), 196a, 199, 203 , 206 , paragraph (4), 212 , paragraph (5), 213a, paragraphs (3) and (4), 214, paragraph (2), 219 , 224 , 225b, 225c, 242 , 243-246, 248-250, 252-260, 278-278c , 282-283b, 287a, 301-307a , 319a - 319f, 321, 321a, 330 , paragraphs (2) and (3), 333, 334, 340-342 , 343 , paragraph (1), item (c) and paragraph (3), item (b), and paragraph (4), 349 , paragraphs (2) and (3), 350, paragraph (2), 354a, paragraphs (1) and (2) , 354b, 354c, paragraphs 2 - 4, 356f-356i, 357-360 and 407-419 of the Criminal Code

(3) Cases for publicly actionable criminal offences committed by individuals covered by immunity or by members of the Council of Ministers shall fall within the jurisdiction of Sofia City Court at first instance.

(4) Where criminal responsibility is reduced on account of subsequent circumstances, it shall not be taken into account in determining jurisdiction.

Jurisdiction at the location of occurrence of the criminal offence

Article 36

(1) The case shall fall within the jurisdiction of the court in the area of which the criminal offence has been committed.

(2) Where the criminal offence has started within the area of one court and has continued in the area of another, the case shall fall within the jurisdiction of the court in the area of which the offence was completed.

(3) Where the location in which the criminal offence has been committed cannot be determined, or where the indictment refers to several offences committed in the areas of different courts, the case shall fall within the jurisdiction of the court in the area of which pre-trial proceedings were completed.

Jurisdiction for criminal offences committed abroad

Article 37

(1) Cases for criminal offences committed abroad shall fall within the jurisdiction of:

1. The court at the place of residence of the individual, where he/she is a Bulgarian citizen or where

he/she has no residence in this country - of the court, in the area of which pre-trial proceedings were completed;

2. The courts in Sofia, where the individual is a foreign national.

(2) Where the criminal offence has been committed on a Bulgarian vessel or aircraft, outside the limits of the country, the case shall fall within the jurisdiction of the court in the area of the seaport or airport, to which said vessel or aircraft belongs.

(3) Cases for criminal offences committed by military service officers with the Armed Forces and by officers of the Ministry of the Interior who have taken part in international military or police missions abroad shall fall within the jurisdiction of Sofia Military Court.

Jurisdiction in the event of several criminal offences committed by one and the same individual

Article 38

Where charges have been pressed against one and the same person for commission of several crimes, under the jurisdiction of courts different in rank, the case for all the crimes shall be under the jurisdiction of the higher standing court, and where the courts are of equal rank - under the jurisdiction of the court under which falls the case for the gravest crime.

Jurisdiction for setting one total punishment under several sentences

Article 39

(1) Where an aggregate punishment is to be determined for several crimes, for which there are sentences that have entered into force, issued by different courts, competent shall be that court which has issued the last sentence.

(2) Where under one or more of the sentences, the trial defendant has been exempted from serving the punishment pursuant to Article 64, para 1 or Article 66 Criminal Code , the court which sets the total punishment shall also decide on its service.

(3) In the hypotheses of paras 1 and 2 the court shall also set the initial regime for the service of punishment.

Jurisdiction in the event of complicity

Article 40

Where several persons are accused of having perpetrated in complicity one or several crimes and one of the accomplices is subject to trial by a higher court, the case shall be under the jurisdiction of that higher court.

Jurisdiction in the event of related cases

Article 41

(1) Where two or more cases for different criminal offences against different individuals have a certain relationship to each other, they shall be joined if the proper elucidation thereof so requires.

(2) Where one of the cases is triable by a higher standing court, the resulting joint case shall be tried by it, and where the cases are triable by courts of equal degree - by the court, which should try the case concerned with the most serious criminal offence.

(3) The court may join two or more cases for different criminal offences against one and the same defendant, where judicial trial has not started in respect of any of them. Where one of the cases is triable by a higher court, the case shall be examined by it.

Decision on jurisdiction and referral of a criminal case to the competent authority

Article 42

(1) The court shall rule on the issue of jurisdiction, based on the statement of facts contained in the indictment.

(2) Should the court ascertain that the case is triable by another court of equal degree, it shall terminate court proceedings and shall refer the case to that court, and should it ascertain that the case is triable by a higher standing or a military court, it shall terminate court proceedings and refer the case to the respective prosecutor.

(3) Where the court finds that the case is not triable by a court, but falls within the jurisdiction of another body, it shall terminate criminal proceedings and refer the case to said body.

Trial of criminal cases by another court of equal degree

Article 43

The Supreme Court of Cassation may decide to refer the case for trial to another court of equal standing, where:

1. Many of the accused parties or witnesses live in the area of said other court;

2. The trial defendant or the victim is a judge, prosecutor or investigator within the area of the court that shall try the case;

3. The court which shall try the case is unable to duly form a panel out of its staff.

Jurisdiction disputes

Article 44

(1) Jurisdiction disputes between courts shall be decided by the Supreme Court of Cassation.

(2) For the duration of a jurisdiction dispute, the authorities before which the case is pending shall only take actions that may not be delayed.

Jurisdiction before the appellate and cassation review instances

Article 45

(1) Criminal cases disposed of by the regional court shall be tried by the district court, acting as an intermediate appellate review instance, and criminal cases disposed of by the district court, acting as first instance - by the appellate court, acting as an intermediate appellate review instance.

(2) Criminal cases shall be reviewed within cassation proceedings by the Supreme Court of Cassation.

Chapter five - PROSECUTOR

Functions of the prosecutor in criminal proceedings

Article 46

(1) The prosecutor shall press charges of and maintain the indictment for publicly actionable

criminal offences.

(2) In discharge of his/her assignments under para 1, the prosecutor shall:

1. Direct the investigation and exercise constant supervision for its lawful and timely conduct in his/her capacity of a supervising prosecutor;

2. may perform investigation or separate investigative or other procedural action;

3. Participate in court proceedings as accuser on behalf of the state;

4. Take measures for the elimination of infringements on the laws pursuant to the procedures herein set forth, and exercise supervision for legality in the enforcement of coercive measures.

(3) A prosecutor at a higher position and a prosecutor with a higher prosecution office may revoke in writing or amend the decrees of prosecutors directly reporting to him/her. His/her written instructions shall be binding on them. In such cases he/she may take the necessary investigative or other procedural action alone.

(4) The Prosecutor-General of the Republic of Bulgaria shall exercise supervision for legality of and provide methodological guidance for the operation of all prosecutors.

Grounds and procedure for disqualification of the prosecutor

Article 47

(1) Interested individuals may request disqualification of a prosecutor in the hypotheses of Article 29, Paragraph 1, items 1, 4 - 8, and Paragraph 2.

(2) In the hypotheses of para 1, the prosecutor shall be obligated to recuse him/herself;

(3) Disqualifications and recusals must be reasoned.

(4) In the course of pre-trial proceedings a prosecutor with a higher standing prosecution office, and in the course of court proceedings - the court, hearing the case, shall rule on the well-foundedness of disqualifications and recusals.

Joinder of the prosecutor to proceedings for criminal offences prosecuted following complaint of the victim

Article 48

(1) Where the victim, due to helpless state or dependency upon the perpetrator of the crime, cannot defend his or her rights and lawful interests, the prosecutor may join the proceedings initiated after a complaint by the victim, at any stage of the case, and may take up the accusation. In such cases the criminal proceedings may not be terminated on the grounds of Article 24, paragraph (4), items 3 - 5, but the victim may uphold the accusation together with the prosecutor as a private prosecutor.

(2) Where the prosecutor withdraws from proceedings, the victim may proceed with maintaining the accusation, acting as private complainant.

Institution of the criminal proceedings by the prosecutor in the event of criminal offences actionable by private complaint of the victim

Article 49

(1) In exceptional cases of crimes prosecuted on the grounds of complaint by the victim, where the latter cannot defend his or her rights and legal interests due to a state of helplessness or dependency upon the perpetrator of the crime, the prosecutor may institute criminal proceedings ex officio, provided the time limit under Article 81, paragraph (3), has not expired and there are no obstacles to institution of criminal proceedings pursuant to Article 24, paragraph (1), Items 1- 8, 10 and 11.

(2) Criminal proceedings that have been instituted shall follow the general procedure and shall not be susceptible of termination on grounds listed in Article 24, para 4.

(3) A victim may take part in criminal proceedings as a private prosecutor and a civil claimant.

(4) Where the prosecutor withdraws from proceedings, the victim may proceed with maintaining the accusation, acting as private complainant.

Resumption of proceedings for criminal offences prosecuted following complaint of the victim

Article 50

Where in the course of pre-trial proceedings it is found that the offence is prosecuted upon complaint of the victim, criminal proceedings shall not be terminated, provided the prosecutor finds that grounds under Article 49 are present.

Civil action by the prosecutor

Article 51

Where the victim, on account of being underage or of a physical or mental deficiency, is unable to defend his/her rights and legal interests, the prosecutor may bring a civil action to his/her benefit.

Chapter six - INVESTIGATIVE BODIES

Investigative bodies

Article 52

(1) Investigators and police investigators shall be the investigative bodies.

(2) Ministry of Interior officers appointed at the position of `police investigators' shall be police investigators.

(3) The investigative bodies shall operate under the guidance and supervision of a prosecutor.

Grounds and procedure for disqualification of the investigative bodies

Article 53

(1) The provisions of Articles 47, 1-3 shall also apply to the investigative bodies, mutatis mutandis.

(2) The prosecutor shall make a pronouncement on the validity of disqualification and recusal.

(3) Pending a decision on disqualification, the challenged body shall only perform those actions which could suffer no delay.

Chapter seven - THE ACCUSED PARTY

Section I: General provisions

Individual who has the capacity of accused party

Article 54

An accused party shall be the individual, who has been constituted as party to the proceedings in this particular capacity, pursuant to the terms hereof and to the procedure herein specified.

Rights of the accused party

Article 55

(1) The accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal from acts infringing on his/her rights and legal interests, and have a defence counsel. The accused party shall have the right his/her defence counsel to take part when

investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he has expressively made waiver of this particular right.

(2) The accused party shall also have the right of speaking last.

Section II: Measure of remand and other measures of procedural coercion

Measure of remand

Article 56

(1) A measure of remand may be applied to the accused party in a publicly actionable case where a reasonable assumption can be made on the basis of evidence case material that he/she has committed the criminal offence and where one of the grounds under Article 57 is present.

(2) Where charges are pressed in pursuance of Article 269, para 3, items 2 and 3, a remand measure shall be imposed once the accused party is found.

(3) In setting the type of remand measure, the degree of social risk inherent to the criminal offence, the evidence against the accused party, the health condition, family status, occupation, age and other personal data about the accused party shall be taken into consideration.

Purpose of remand measures

Article 57

Remand measures shall be applied for the purpose of preventing the accused party from absconding, from committing crime or from frustrating the execution of a sentence that has entered into force.

Types of remand measures

Article 58

Remand measures

1. Signed promise for appearance;

2. Bail;

3. House arrest;

4. Remand in custody.

Act setting the type of remand measure

Article 59

(1) The act setting the type of remand measure shall indicate: the time and place of issuance thereof; the issuing body; the case in which it is issued; the full name of the accused party; the criminal offence for which he/she has been constituted as party to the proceedings in this particular capacity and the reasons for choice of the set measure.

(2) The act shall be served on the accused party, who shall undertake not to change his/her place of residence without notifying in writing the respective body of his/her new address.

Signed promise for appearance

Article 60

The signed promise shall constitute an obligation undertaken by the accused party not to leave his/her place of residence without authorisation by the respective authority.

Bail

Article 61

(1) The amount of bail may be settled in cash or securities.

(2) The property status of the accused party shall also be taken into consideration when setting the amount of bail.

(3) Bail ordered by the pre-trial authorities may be appealed by the accused party or his/her defence counsel before the competent first-instance court within the period set for its payment. The court shall immediately hear the case in camera and issue a ruling, which shall be final.

(4) The bail may be deposited by the accused party or by another person. Where a remand measure of bail has been initially applied or a signed promise for appearance imposed as a remand measure has been subsequently transformed into bail, the respective body shall set a term for its deposition, which may not be lesser than three days and longer than fifteen days.

(5) When bail is not deposited within the time limit afforded, the court may impose on the defendant a heavier remand measure, while in pre-trial proceedings the prosecutor may file a request under Article 62, para 2 or Article 64, para 1.

(6) In the event a remand measure is transformed from a heavier one into bail, the accused party shall be released following its deposition.

(7) Withdrawal of the bail shall not be allowed.

(8) Bail shall be released where the accused party is exempted from criminal liability or from serving the imposed punishment, acquitted, sentenced to a non-custodial punishment or detained for the purpose of serving his/her punishment.

House arrest

Article 62

(1) House arrest shall constitute a prohibition on the accused party to leave from his/her dwelling without authorisation of the respective body.

(2) House arrest, as a remand measure in pre-trial proceedings, shall be taken and controlled by the court pursuant to Articles 64 and 65.

Remand in custody

Article 63

(1) The measure of remand in custody shall be applied where a reasonable assumption can be made that the accused party has committed a criminal offence punishable by deprivation of liberty or another, severer punishment, and evidence case materials indicate that he/she poses a real risk of absconding or committing another criminal offence.

(2) If the contrary is not established by evidence case materials, in the event of initial application of the measure of remand in custody, a real risk within the meaning of para 1 shall be present, where:

1. The accused party has been constituted in this capacity because of a criminal offence committed under the conditions of dangerous recidivism or repeated offending;

2. The accused party has been constituted in this capacity because of a serious intentional criminal offence and he/she has been sentenced for another serious intentional publicly actionable criminal offence to deprivation of liberty of no less than one year or to another severer punishment whose execution has not been deferred on grounds of Article 66 Criminal Code ;

3. The accused party has been constituted in this capacity because of a crime punishable by not less than ten years of deprivation of liberty or another heavier punishment.

(3) Where there is no more danger for the accused party to abscond or to commit crime, the measure of remand in custody shall be replaced with a less severe measure or shall be repealed

(4) The measure of remand in custody may not last more than one year in the course of pre-trial proceedings, where the accused party has been constituted in this capacity because of a serious

intentional criminal offence, and more than two years, where the accused party has been constituted in this capacity because of a criminal offence punishable by no less than fifteen years of deprivation of liberty or a heavier punishment. In all other cases remand in custody in the course of pre-trial proceedings may not last more than two months.

(5) After expiry of the time limits under paragraph (4), the detained shall be released forthwith by order of the prosecutor.

(6) Where in the course of pre-trial proceedings the presence of grounds under para 3 is found, upon his/her own motion the prosecutor shall transform the measure of remand in custody into a less restrictive one or shall revoke it.

(7) The following shall be immediately notified of a remand in custody:

1. The family of the accused party;

2. The employer of the accused party, unless he/she states he does not wish so;

3. The Ministry of Foreign Affairs where the detained individual is a foreign national.

(8) If the children of the detained individual have no relatives to take care of them, they shall be placed, through the respective municipality or mayoralty, in a child nursery, kindergarten or boarding school.

Taking the measure of remand in custody in pre-trial proceedings

Article 64

(1) At the request of the prosecutor, the competent court of first instance shall apply the measure of remand in custody in the context of pre-trial proceedings.

(2) The prosecutor shall immediately ensure for the accused party to appear before court and, if needed, he/she may rule the detention of the accused party for up to 72 hours until the latter is brought before court.

(3) The Court, sitting in a panel of one, in a public hearing, at which the prosecutor, the accused party and his/her defence counsel are present, shall immediately proceed to hear the case.

(4) The court shall apply a measure of remand in custody where the grounds of Article 63, para 1 are present, and where said grounds are not present, it may refrain from applying a measure of remand or apply a less restrictive one.

(5) The court shall issue a ruling which shall be notified to the parties at the court hearing and shall be implemented immediately. Upon notifying its ruling, the court shall schedule the case for hearing before the intermediate appeallate review court within up to seven days, in case an accessory appeal or protest is filed.

(6) The ruling shall be subject to appeal and protest before the respective intermediate appellate review instance court within three days by accessory appeal or protest.

(7) The intermediate appellate review instance court shall hear the case in a panel of three judges at an open hearing in attendance of the prosecutor, the accused party and his/her defence counsel. Failure of the accused party to appear shall not be an obstacle to the examination of the case.

(8) The intermediate appellate review instance court shall make pronouncement by a ruling that is to be announced to the parties at the court hearing. The ruling shall not be subject to appeal by accessory appeal or protest.

(9) Where by virtue of a ruling in force bail has been applied as a measure of remand, the accused party who is held in custody shall be released following its deposition.

Judicial control over remand in custody in the course of pre-trial proceedings

Article 65

(1) The accused party or his/her defence counsel may request transformation of the measure of remand in custody at any time in the course of pre-trial proceedings.

(2) The request of the accused party or his/her defence counsel shall be made through the prosecutor who shall be obligated to forthwith refer the case to the court.

(3) The hearing of the case shall be scheduled within three days after the file has been received in court on the occasion of a public court hearing attended by the prosecutor, the accused party and his/her defence counsel. The case shall be heard in the absence of the accused party, where he/she does not wish to appear, having made a statement to this effect, or his/her bringing is impracticable due to his/her health condition.

(4) The court shall assess all circumstances pertaining to the lawfulness of detention and shall make pronouncement by a ruling which is to be announced to the parties at the court hearing. Upon announcing the ruling, the court shall schedule the case before the intermediate appellate review court within seven days in case an accessory appeal or protest has been filed.

(5) The ruling shall be executed forthwith after the expiry of the time limits for appeal, unless accessory protest has been filed which is not in the interest of the accused party.

(6) Where the request has been made by the accused party or his/her defence counsel and the ruling under paragraph (4) confirms the measure of remand, the court may set a time limit within which a new request from the same persons shall not be admissible. This time limit may not exceed two months after the ruling comes into force, and shall not apply where the request is based on a deterioration of the health condition of the accused party.

(7) The ruling shall be subject to appeal and protest before the respective intermediate appellate review instance court within three days.

(8) The intermediate appellate review instance court shall consider the case in a panel of three, in an open hearing, in attendance of the prosecutor, the accused party and his/her defence counsel. The case shall be examined in the absence of the accused party, where the latter declares that he or she does not wish to appear or where it is impossible to bring him/her before the court for health reasons.

(9) The intermediate appellate review instance court shall make pronouncement by a ruling that is to be announced to the parties at the court hearing. The ruling shall not be subject to appeal by accessory appeal or protest.

(10) Where by virtue of a ruling in force bail has been applied as a measure of remand, the accused party who is held in custody shall be released following its deposition.

(11) Paragraphs 1 - 10 shall also apply, mutatis mutandis, to cases where the accused party is detained due to his/her failure of depositing the amount of bail set by the court.

Consequences of the failure to discharge obligations arising in relation to measures of remand

Article 66

(1) Where the accused party fails to appear before the respective body without valid reasons or changes his/her then current place of residence without notifying said body thereof, or breaches the remand measure imposed, a measure of remand shall be applied or, if so has already been done, it shall be substituted for a more restrictive one pursuant to the procedure herein set forth.

(2) Where the measure of remand is bail, money or securities deposited shall be forfeited to the benefit of the state. In these hypotheses bail at a larger amount may be set.

Prohibition to approach the victim

Article 67

(1) At the proposal of the prosecutor with consent of the victim or at the request of the victim, the

competent first-instance court may prohibit the accused party from directly approaching the victim.

(2) The court shall immediately hear the proposal or request at an open hearing, at which the prosecutor, the accused party and the victim shall be heard. The ruling of the court shall be final.

(3) The prohibition shall extinguish after termination of the case by virtue of a sentence in force or where proceedings are terminated on any other ground.

(4) At any time the victim may request from the court to repeal the prohibition. The court shall make pronouncement, applying the procedure under para 2.

Prohibition from leaving the boundaries of the Republic of Bulgaria

Article 68

(1) In pre-trial proceedings, in the event where the accused party has been constituted in this capacity because of a serious intentional criminal offence punishable by deprivation of liberty or a heavier punishment, the prosecutor may prohibit the accused party from leaving the boundaries of the Republic of Bulgaria, unless he/she has given authorisation to this effect. Border control points shall immediately be notified of the imposed prohibition.

(2) The prosecutor shall rule within three days on the request for authorisation under para 1 of the accused party or his/her defence counsel.

(3) The refusal of the prosecutor shall be subject to appeal before the competent court of first instance.

(4) The court shall consider forthwith the appeal in a single-judge panel, deliberating privately, and shall make pronouncement by a ruling, thus confirming the refusal of the prosecutor or allowing the accused party to leave the boundaries of the Republic of Bulgaria for a set period. The ruling shall be final.

(5) At the request of the accused party or his/her defence counsel, the court may repeal the prohibition under para 1 in pursuance of the procedure under para 4, where there is no risk for the accused party to abscond outside this country.

(6) In court proceedings the powers pursuant to paragraphs (1) and (5) shall be exercised by the court examining the case. The ruling of the court shall be subject to appeal by accessory appeal or protest.

Removal of the accused party from office

Article 69

(1) Where the accused party has been constituted in this particular capacity on account of a publicly actionable criminal offence of intent committed in relation to his/her work and there are sufficient reasons to believe that the official position of the accused party shall set obstacles to the objective, comprehensive and thorough elucidation of the circumstances in the case, the court may remove the accused party from office.

(2) In pre-trial proceedings, the respective first instance court shall make pronouncement in a single-judge panel at an open hearing in attendance of the prosecutor, the accused party and his/her defence counsel.

(3) The ruling shall be subject to appeal by accessory appeal and protest before the respective intermediate appellate review instance court within three days.

(4) The intermediate appellate review instance court shall make pronouncement in a three-judge panel at an open hearing in attendance of the prosecutor, the accused party and his/her defence counsel. Failure of the accused party to appear without valid reasons shall not be an obstacle to the examination of the case.

(5) Where further need for the measure that was taken ceases to exist, in pre-trial proceedings removal from office shall be revoked by the prosecutor, or by the court - at the request of the accused party or his/her defence counsel pursuant to the procedure under paras 1 and 2.

(6) In court proceedings the powers pursuant to paragraph (1) shall be exercised by the court examining the case.

Placement for examination purposes in a mental health institution

Article 70

(1) In pre-trial proceedings, the competent court of first instance, sitting in a panel of one judge and two court assessors, upon request of the prosecutor, and, in court proceedings, the court trying the case, upon request of the parties or of its own motion, may place the accused party for examination purposes in a mental health institution for a period that shall not exceed thirty days.

(2) The court shall immediately make pronouncement by a ruling at an open hearing, where it shall hear an expert psychiatrist witness and the person whose placement is requested. The participation of a prosecutor and a defence counsel shall be mandatory.

(3) The ruling issued in pre-trial proceedings shall be subject to appeal by accessory appeal and protest before the respective intermediate appellate review instance court within a time limit of three days.

(4) The intermediate appellate review instance court shall make pronouncement in a three-judge panel at an open hearing in attendance of the prosecutor, the accused party and his defence counsel. Failure of the accused party without valid reasons shall not be an obstacle to examining the case.

(5) If the time limit for examination set by the court is found to be insufficient, it can be extended once by not more than thirty days as provided for in paragraph 1 - 4.

(6) The period of time where the person was lodged in a mental health institution shall be recognized as a period of remand in custody.

Bringing individuals by compulsion before court

Article 71

(1) Where the accused party fails to appear for interrogation without valid reasons, he/she shall be brought in by compulsion where his/her appearance is mandatory, or where the competent body finds this to be necessary.

(2) The accused party may be brought in by compulsion without prior summonsing where he/she has absconded or has no permanent residence.

(3) Compulsory bringing in of the accused party shall be effected in daytime, unless no delay could be suffered.

(4) Services of the Ministry of Justice shall effect the act of bringing by compulsion and, where the latter has been ruled by a police investigator in his/her capacity of an investigative body, it shall be effected by the services of the Ministry of Interior.

(5) For compulsory bringing in of prisoners, request shall be made to the administration of the respective prison or correctional institution.

(6) Military service officers shall be brought in by the respective military bodies.

(7) The decision for compulsory bringing in shall be served on the person who must be brought in.

Measures for securing fine, confiscation, and forfeiture of objects to the benefit of the state

Article 72

(1) Upon request of the prosecutor, the competent court of first instance, sitting in a panel of one, in

camera, shall apply measures to secure the fine, confiscation, and forfeiture of objects to the benefit of the state, in pursuance of the procedure set forth in the Civil Procedure Code .

(2) In the course of court proceedings the court shall take the measures under para 1 upon request of the prosecutor.

Measures for securing the civil claim

Article 73

(1) The court and the bodies entrusted with pre-trial proceedings shall be obligated to explain to the victim that he/she has the right to bring, in the course of court proceedings, a civil claim for the damages caused by the offence.

(2) Upon request of the victim or his/her heirs or of the prejudiced legal person filed in the course of pre-trial proceedings, the competent court of first instance, sitting in a panel of one, in camera, shall apply measures to secure a forthcoming claim pursuant to the procedure set forth in the Civil Procedure Code .

(3) In the hypotheses under Article 51, the measures under para 2 shall be applied upon request of the prosecutor.

(4) In court proceedings the requests under paragraphs 2 and 3 shall be examined by the court hearing the case.

Chapter eight - THE VICTIM

Section I: General provisions

Individual who has the capacity of victim

Article 74

(1) The person who has suffered material or immaterial damages from the criminal offence shall be a victim.

(2) After the death of such persons, this right shall pass on to their heirs.

(3) The accused party shall not exercise the rights of a victim within one and the same proceedings.

Rights of the victim

Article 75

(1) In addition to the rights he/she acquires in the event of being constituted as private prosecutor, private complainant or civil claimant, the victim shall also have the following rights: be informed of his/her rights within the criminal proceedings; obtain protection with regard to his/her personal safety and the safety of its close relatives and acquaintances; be informed of the progress of criminal proceedings, where he/she has expressly requested so and has provided an address for the service of process in this country; take part in the proceedings in accordance with the provisions herein made; file appeal from the acts resulting in the termination or suspension of criminal proceedings.

(2) The court and pre-trial authorities shall be obligated to explain to the victim what his/her rights are and allow him/her the opportunity to exercise these in compliance with the stipulations herein set forth.

Section II: Private prosecutor

Individuals who may rake part in the proceedings in the capacity of private prosecutors

Article 76

The victim, who has sustained material or immaterial damages from a publicly actionable criminal offence shall have the right to take part in court proceedings as private prosecutor. Following the

death of this person, said right shall pass on to his/her heirs.

Request for participation as private prosecutor

Article 77

(1) A request for participation in court proceedings as private prosecutor can be submitted orally or in writing.

(2) The request must contain information about the individual who files it and about the circumstances on which it is based.

(3) A request must be filed until the beginning of judicial trial before the court of first instance at the latest.

Functions of the private prosecutor

Article 78

(1) The private prosecutor shall maintain the accusation in court along with the prosecutor.

(2) The private prosecutor may continue maintaining the accusation also after the prosecutor has made a statement that he/she will not maintain it any further.

Rights of the private prosecutor

Article 79

The private prosecutor shall have the following rights: to examine the case-file and obtain the excerpts he/she needs; to produce evidence; to take part in court proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court where his or her rights and legal interests have been infringed upon.

Section III: Private Complainant

Individuals who may rake part in the proceedings in the capacity of private complainant

Article 80

An individual who has suffered from a criminal offence prosecuted following a complaint of the victim may bring charges and maintain the accusation before court as a private complainant. After the death of the individual, said rights shall pass on to his/her heirs.

Complaint

Article 81

(1) The complaint must be in writing and contain information about the author, the individual against whom it is filed, and about the circumstances surrounding the criminal offence. A document evidencing the payment of a state fee shall be enclosed with it.

(2) The complaint must be signed by the author.

(3) The complaint must be filed within six months from the date when the victim became aware that a criminal offence has been committed or from the day on which the victim received notice for termination of pre-trial proceedings on grounds that the offence is actionable following a complaint of the victim.

Rights of the private complainant

Article 82

(1) The private complainant shall have the following rights: to examine the case-file and obtain the excerpts he/she needs; to produce evidence; to take part in court proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests, and to withdraw his/her complaint.

(2) The private complainant may also be constituted in the course of court proceedings as a civil claimant in the hypotheses and pursuant to the procedure herein specified.

Assistance from the bodies of the Ministry of Interior

Article 83

The victim and the accused party shall have the right to request cooperation by the bodies of the Ministry of Interior for the collection of information which they themselves cannot collect.

Section IV: Civil claimant

Individuals who may take part in the proceedings as civil claimants

Article 84

(1) The victim or his or her heirs and the legal persons, which have sustained damages from the criminal offence, may file in the course of court proceedings a civil claim for compensation of the damages and be constituted as civil claimants.

(2) A civil claim may not be lodged in the course of court proceedings where it has already been lodged pursuant to the Civil Procedure Code .

Application for a civil claim

Article 85

(1) The application for a civil claim shall indicate: the full name of the author and of the individual against whom the claim is filed; the criminal case in which it is filed; the criminal offence which has caused the damages, as well as the nature and amount of damages for which compensation is claimed.

(2) The application can be made orally or in writing.

(3) A civil claim may be filed until the beginning of judicial trial before the court of first instance at the latest.

Individuals against whom a civil claim may be filed

Article 86

Civil claims in court proceedings may be filed both against the defendant in court and against other persons who incur civil liability for the damages caused by the crime.

Rights of the civil claimant

Article 87

(1) The civil claimant shall have the following rights: take part in court proceedings; demand security for the civil claim; examine the case-file and obtain excerpts that he/she needs; produce evidence; make requests, comments and raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests.

(2) The civil claimant shall be allowed to exercise the rights under para 1 inasmuch as he/she needs to substantiate his/her civil claim, in terms of grounding and amount.

Procedure for examination of a civil claim

Article 88

(1) In the course of court proceedings, the civil claim shall be examined pursuant to the rules of this Code, and Code of Civil procedure shall apply insofar as no relevant rules are herein contained.

(2) The examination of a civil claim shall not make grounds for the continuation of a criminal case.

(3) Where court proceedings are terminated, the civil claim shall not be examined; however it may

be filed before a civil court.

Chapter nine - CIVIL RESPONDENT

Individuals who take part in the proceedings as civil respondents

Article 89

Persons against whom a civil claim has been filed shall, with the exception of the defendant in court, take part in the court proceedings as civil respondents.

Rights of the civil respondent

Article 90

(1) The civil respondent shall have the following rights: take part in the court proceedings; examine the case-file and obtain the excerpts he/she needs; produce evidence; make requests, comments and raise objections, as well as file appeal from acts of the court which infringe upon his or her rights and legal interests.

(2) The civil respondent shall be allowed to exercise the rights under para 1, inasmuch as he/she needs to substantiate his/her civil claim, in terms of grounding and amount.

Chapter ten - LEGAL ASSISTANCE

Section I: Defence counsel

Individuals who may take part in the proceedings as defence counsels

Article 91

(1) The defence counsel for the accused party may be an individual who practices the legal profession.

(2) The defence counsel may also be the spouse, an ascendant or descendant of the accused party.

(3) The following may not be defence counsels:

1. Any individual who has also been or is defence counsel to another accused party, where the defence of the one is contradictory to the defence of the other;

2. Any individual who has represented or has given advice to another accused party, where the defence which is to be assigned to him/her stands in contradiction to the defence of the other accused party;

3. Any individual who has represented or has given advice to the adverse party;

4. Any individual who has participated in the proceedings in another procedural capacity;

5. Any individual who is the spouse, relative of direct descent, without limitation in degree, or of collateral descent up to the fourth degree or by marriage - up to the third degree, of a judge, court assessor, prosecutor or an investigative body involved in the case.

Disqualification of the defence counsel

Article 92

Individuals who may not be defence counsels, shall be obligated to recuse themselves. Should they fail to do so, the appropriate body shall remove them from participation in the criminal proceedings ex officio or at the request of the party concerned.

Authorisation given to defence counsel

Article 93

(1) The defence counsel shall be chosen and authorised by the accused party, except in the hypotheses herein provided for.

(2) The power of attorney shall be made out in writing and shall be signed by the accused party and the defence counsel.

(3) The defence counsel may certify copies of the power of attorney granted to him/her and may sub-authorise, with consent of the accused party, another individual to act as defence counsel.

(4) Before court, authorisation may be given orally, at the court hearing. On this occasion authorisation shall be entered in the record from the hearing, which shall also be signed by the accused party.

(5)The power of attorney shall be valid in the entire course of criminal proceedings, unless otherwise agreed.

Mandatory participation of defence counsel

Article 94

(1) Participation of the defence counsel in criminal proceedings shall be mandatory in cases where:

1. The accused party is underage;

2. The accused party suffers from physical or mental deficiencies, which prevent him/her from proceeding at his/her own defence;

3. the case is concerned with a criminal offence punishable by deprivation of liberty of no less than ten years or another heavier punishment;

4. The accused party does not have command of the Bulgarian language;

5. The interests of the accused parties are contradictory and one of the parties has his/her own defence counsel;

6. Where a request under Article 64 has been made or the accused party is remanded in custody;

7. Proceedings are conducted before the Supreme Court of Cassation;

8. The case is tried in the absence of the accused party;

9. The accused party cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require.

(2) In cases falling under para 1, items 4 and 5, the participation of a defence counsel shall not be mandatory, provided the accused party makes a statement he/she wishes to dispense with having a defence counsel.

(3) Where participation of a defence counsel is mandatory, the respective body shall appoint a lawyer as a defence counsel.

(4) The appointed defence counsel shall be removed from the criminal proceedings if the accused party authorises another defence counsel.

Withdrawal of defence counsel from a case accepted for defence

Article 95

The defence counsel may not withdraw from the accepted defence, except where it becomes impossible for him/her to carry out his or her obligations for reasons beyond his or her control. In the latter case the defence counsel shall be obligated to notify the accused party and the relevant authorities.

Waiver of counsel by the accused party and replacement of defence counsel

Article 96

(1) The accused party may, at any time during the proceedings, make waiver of having a defence counsel, except in cases under Article 94, paragraph (1), items 1 - 3 and 6 .

(2) The replacement of a defence counsel by another may take place at the request or with consent of the accused party.

Joinder of defence counsel to criminal proceedings

Article 97

(1) The defence counsel may join criminal proceedings from the moment an individual is detained or has been constituted in the capacity of accused party.

(2) The body entrusted with the pre-trial proceedings shall be obligated to explain to the accused party that he/she has the right to defence counsel, as well as to immediately allow him/her to contact one. Said body shall be prevented from taking any action within the context of investigation, as well as any other procedural action involving the accused party until it has been acquitted of this obligation.

Obligations of the defence counsel

Article 98

(1) The defence counsel shall be obligated to render legal assistance to the accused party and to contribute by all his/her actions to elucidate all factual and legal circumstances in favour of the accused party, guided by inner conviction, which shall be based on evidence in the case and the law.

(2) The defence counsel shall be obligated to agree the basic lines of defence with the accused party. Where the defence counsel is of the opinion that the basic lines of defence suggested by the accused party are incompatible with his or her duties, he or she shall inform the accused party in due course and shall proceed with the defence, provided he or she is not removed from the criminal proceedings pursuant to the procedure specified to this effect.

(3) A defence counsel shall not be allowed to refuse the provision of legal assistance to the accused party on specific matters of the indictment under the pretext that the latter has yet another lawyer.

Rights of the defence counsel

Article 99

(1) The defence counsel shall have the following rights: meet the accused party in private; to examine the case-file and obtain excerpts he/she needs; produce evidence; take part in the criminal proceedings; make requests, comments and raise objections, as well as to file appeal from acts of the court and of the bodies entrusted with the pre-trial proceedings which infringe upon the rights and legal interests of the accused party. The defence counsel shall have the right to take part in all investigative actions involving the accused party, his failure to appear not being an obstacle to their progress.

(2) Participation of a defence counsel shall not be an obstacle for the accused party to exercise his/her rights under Article 55 in person.

Section II: Counsel and special representative

Counsel

Article 100

(1) The private prosecutor, the private complainant, the civil claimant and the civil defendant may each authorise their own counsel.

(2) Where the private prosecutor, private complainant, civil claimant or civil respondent submits evidence of not having sufficient funds to hire a lawyer and wishes to have a counsel and the interests of justice so require, the court hearing the case at first instance shall appoint counsel for him/her.

(3) The provisions of Articles 91, 92 and 93 shall apply also to the counsel, mutatis mutandis.

Special representative

Article 101

(1) Where the interests of the child or young person victim and his/her parent, custodian or guardian are contradictory, the respective body shall appoint for him/her a special representative who is a lawyer.

(2) A special representative who is a lawyer shall also be appointed for the victim, where he/she is incapacitated or has limited capacity and his/her interests stand in contradiction to those of his/her custodian or guardian.

(3) The special representative shall participate as attorney in the criminal proceedings.

(4) The provisions of Articles 91, paragraph 3 and 92 shall also apply to the special representative mutatis mutandis.

PART TWO: ON THE ESTABLISHMENT OF EVIDENCE

Chapter eleven - GENERAL PROVISIONS

Matters that have to be proved

Article 102

Subject of proof in the criminal proceedings shall be the following:

1. the fact that a criminal offence has been committed and the involvement of the accused party therein;

2. the nature and amount of damages caused by the act;

3. Other circumstances of relevance to the responsibility of the accused party, also including his/her family or financial status.

Burden of proof

Article 103

(1) The burden of proving the accusation in publicly actionable cases shall lie with the prosecutor and the investigative bodies, and in cases actionable by complaint of the victim - with the private complainant.

(2) The accused party shall not be obligated to prove that he or she is not guilty.

(3) No inferences may be made to the detriment of the accused party on account of the fact that he or she has not provided, or refuses to provide explanations, or has not proved his/her objections.

Evidence

Article 104

Evidence in the criminal proceedings may be factual data related to the circumstances in the case, such that contribute to their elucidation and are ascertained by the procedure provided for by this Code.

Objective forms of evidence

Article 105

(1) Objective forms of evidence shall serve for the reproduction of evidence and of other objective forms of evidence in the context of criminal proceedings.

(2) No objective forms of evidence shall be admitted, unless they have been collected or prepared in compliance with the terms and pursuant to the procedure herein specified.

Techniques for establishing evidence

Article 106

Evidence in the criminal proceedings shall be established with the techniques herein provided for.

Collection and verification of evidence

Article 107

(1) The bodies entrusted with pre-trial proceedings shall collect evidence ex officio or at the request of the interested individuals.

(2) The court shall collect evidence following requests made by the parties, and of its own motion, whenever this is necessary to the discovery of the objective truth.

(3) The court and the bodies entrusted with pre-trial proceedings shall collect and verify both evidence which exposes the accused party or aggravate his or her responsibility, and evidence which exonerates the accused party or attenuates his or her responsibility.

(4) Collection of evidence may not be refused only because a request has not been made within the time limit set to this effect.

(5) All collected evidence shall be subject to careful verification.

Investigative action and judicial trial action taken by letters rogatory or in another area

Article 108

(1) Investigative action and judicial trial action by letters rogatory shall be allowed where it has to be performed outside the area of the body which is in charge of the case and where its performance by said body gives rise to serious difficulties.

(2) Where decreed by court, a procedure by letters rogatory shall be performed by the respective regional judge, and where decreed by a body entrusted with pre-trial proceedings - by the respective body entrusted with the pre-trial proceedings.

(3) The body who is in charge of the case may, where necessary, also take individual actions under para 1 in the area covered by another body.

Chapter twelve - MATERIAL EVIDENCE

Types of material evidence

Article 109

The following shall be collected and checked as material evidence: objects intended or used for the perpetration of the crime, upon which there are traces of the crime or which were subject of the crime, as well as all other objects which may serve to elucidate the circumstances in the case.

Description, taking photographs and enclosure of material evidence with the case

Article 110

(1) Material evidence must be carefully examined, described in detail in the respective record, and photographed, if possible.

(2) Material evidence shall be enclosed with the case file while measures are taken to avoid damaging or changing such evidence.

(3) Where a case file is transferred from one body to another, material evidence shall be transferred together with the case-file.

(4) Material evidence which, on account of size or other reasons, cannot be enclosed with the case-file, must be sealed, if possible, and left for safekeeping at the places indicated by the respective authority.

(5) Money and other valuables must be deposited for safekeeping with a commercial bank servicing

the National budget or with the Bulgarian National Bank.

Safekeeping of material evidence

Article 111

(1) Material evidence shall be kept until the completion of criminal proceedings.

(2) Objects seized as material evidence, may be returned to rights holders from whom they had been taken with authorisation of the prosecutor before the end of criminal proceedings only where this will not obstruct the discovery of the objective truth and they do not make the object of administrative violations.

(3) A refusal of the prosecutor under para 2 shall be subject to appeal by the rights holder before the competent court of first instance. The court shall rule on the appeal within three days of the submission thereof, sitting in a panel of one and in camera, by a ruling which shall be final.

(4) Perishable objects seized as material evidence which cannot be returned to the rights holders from which they had been taken shall be delivered to the respective institutions and legal entities with the authorisation of the prosecutor to be used in accordance with their designation or shall be sold and the proceeds shall be deposited with a commercial bank, servicing the National budget.

(5) Drugs, precursors and drug containing plants may be destroyed prior to the completion of criminal proceedings under the terms and in pursuance of the procedure specified in the Drugs and Precursors Control Act . In this hypothesis only representative samples seized shall be kept until the completion of proceedings.

Disposal of material evidence

Article 112

(1) Except in the hypotheses specified in Article 53 Criminal Code , the objects seized as material evidence shall be forfeited to the benefit of the state where the ownership thereof has not been established and within one year following the completion of criminal proceedings they have not been claimed.

(2) Objects seized as material evidence, the possession of which is forbidden, shall be delivered to the respective institutions or destroyed.

(3) Letters, papers or other written instruments seized as material evidence, shall remain enclosed to the case file or shall be delivered to the interested institutions, legal and natural persons.

Disputes over rights to objects seized as material evidence

Article 113

In the case of a dispute over rights to objects seized as material evidence, which is subject to examination pursuant to the Civil Procedure Code , they shall be kept pending a decision of the civil court coming into force.

Chapter thirteen - OBJECTIVE FORMS OF EVIDENCE

Section I: General provisions

Types of objectives forms of evidence

Article 114

Evidence shall be established through oral, material and written objective forms of evidence.

Section II: Oral objective forms of evidence

Explanations of the accused party

Article 115

(1) The accused party shall give explanations orally and directly before the respective body.

(2) The accused party shall not be interrogated by letter rogatory or through a video conference, except where he or she is outside the territory of the country and the interrogation will not obstruct the discovery of the objective truth.

(3) The accused party may provide explanations at any moment during the investigation and the judicial trial.

(4) The accused party shall have the right to refuse providing explanations.

Probative value of confessions by the accused party

Article 116

(1) The accusation and the sentence may not be solely based on the confessions of the accused party.

(2) A confession of the accused party shall not exempt the respective bodies from their obligation to collect other evidence in the case as well.

Witness testimony

Article 117

Witnesses testimony may be used to establish all facts perceived by a witness, which contribute to elucidating the objective truth.

Individuals who may not have the capacity of witnesses

Article 118

(1) Individuals who have taken part in the same criminal proceedings in another procedural capacity may not have the capacity of witnesses, except for:

1. The accused party, once proceedings have terminated or been disposed of by a sentence in force with regard to him/her.

2. The victim, the private prosecutor, the civil claimant, the civil defendant;

3. The certifying witnesses, as well as officers of the Ministry of Interior or the Military Police who attended during observation and related searches and seizures.

(2) Individuals who have taken investigative or judicial trial action may not have the capacity of witnesses, even where records of action taken by them have not been drafted in accordance with the terms and in pursuance of the procedure herein provided for.

(3) Individuals, who on account of physical or mental deficiencies are unable to properly perceive the facts of significance in the case, or give reliable testimonies about them, may not have the capacity of witnesses, either.

Individuals who may refuse to testify

Article 119

The spouse, ascendants, descendants, brothers, sisters of the accused party and the individuals with whom he/she lives together may refuse to testify.

Obligations of the witness

Article 120

(1) Witnesses shall be obligated to appear before the respective body where summonsed; to state everything they know about the case and answer the questions put thereto, as well as to remain at the disposal of the body who has summonsed them as long as this may be necessary.

(2) Witnesses who cannot appear because of illness or disability, may be interrogated at the place they are located.

(3) A witness who fails to appear at the specified place and time and to testify shall be punished by fine of up to BGN one hundred, and shall be brought in by compulsion for the purposes of interrogation pursuant to the procedure set forth in Article 71. Where a witness can show some valid reasons for his/her failure to appear, the fine and compulsory bringing shall be repealed.

(4) A witness who refuses to testify outside the hypotheses of Article 119 and Article 121 shall be punished by fine of up to BGN five hundred.

Circumstances of which witnesses shall not be obligated to testify

Article 121

(1) Witnesses shall not be obligated to testify on questions, the answers to which might incriminate them, their relatives of ascending and descending line, brothers, sisters, spouses or individuals with whom they live together, in the commission of crime.

(2) Witnesses may not be interrogated on circumstances which were confided thereto as defence counsel or attorney.

Rights of witnesses

Article 122

(1) Witnesses shall have the following rights: to use notes about figures, dates etc., available with them and which refer to their testimony; to receive remuneration for the lost workday and to be reimbursed for any expenses incurred, as well as to request revocation of acts that infringe upon their rights and lawful interests.

(2) The witness shall have the right to consult a lawyer, where he/she believes that by answering the question his/her fundamental rights under Article 121 are infringed upon. Where a request to this effect has been made, the investigative body or the court shall allow for this possibility.

Witness protection

Article 123

(1) The prosecutor, the judge-rapporteur or the court shall, upon request or with consent of the witness, take measures for his/her immediate protection, should there be sufficient grounds to assume that, as a result of testimony, a real threat has arisen or may arise to the life, health or property of the witness, his/her ascending and descending relatives, brothers, sisters, spouse or individuals with whom he is in a particularly close relationship.

(2) Witness protection shall be of a temporary nature and be provided by means of:

1. Personal physical protection by the authorities of the Ministry of Interior;

2. Keeping his/her identity secret;

(3) Personal physical protection may also be provided to ascending or descending relatives, brothers, sisters, the spouse or individuals with whom the witness is in a particularly close relationship, with their consent or with consent from their statutory representatives.

(4) The act of the respective body on the provision of witness protection shall indicate:

1. The issuing body;

2. The date, hour and place of issuance;

3. The circumstances warranting that protection be provided;

4. The type of measure applied;

5. Information about the identity of the individual for whose protection arrangements are made;

6. The identification code given to the individual whose identity is kept secret;

7. Signature of the respective body and the individual concerned.

(5) The respective bodies of pre-trial proceedings and the court shall have direct access to the protected witness, while the defence counsel and the counsel may have such access only if the witness has been summonsed upon their request.

(6) The measures for protection under paragraph 2 shall be withdrawn upon request of the person, in respect of whom they have been taken, or in the event of elimination of the need for application of such measures, through an act of the body under paragraph (1).

(7) In order to ensure the protection of the life, health or property of individuals under para 1, who have given their written consent, special intelligence means may be used.

(8) Within up to thirty days of taking a measure under para 2, the prosecutor or judge-rapporteur may propose the inclusion of the witness or his/her ascending or descending relatives, siblings, spouse or of the persons with whom he/she is in particularly close relationships into the protection programme subject to the conditions and procedure of the Protection of Individuals under Threat in Relation to Criminal Proceedings Act .

Evidentiary force of testimony provided by a secret identity witness

Article 124

The indictment and the sentence may not be based only on testimony of witnesses, made pursuant to Article 141.

Section III: Types of objectives forms of evidence

Preparation and attachment to the case file of material evidence

Article 125

(1) Where material evidence cannot be separated from the place, where it was found, and also in other cases specified by this Code, the following shall be prepared: photographs, slides, films, video tapes, sound-recordings, recordings on carriers of computerized data, layouts, schemes, casts or prints thereof.

(2) The court and the authorities entrusted with pre-trial proceedings shall also collect and inspect the objective forms of evidence prepared with the use of special intelligence means in the hypotheses herein set forth.

(3) The materials under the paragraphs 1 and 2 shall be enclosed with the case file.

Persons who shall prepare objective forms of material evidence

Article 126

(1) Objective forms of material evidence shall be prepared, where possible, by the persons conducting investigative actions and judicial trial actions.

(2) Where special knowledge and training are needed for that purpose, a specialist - technical assistant shall be appointed.

(3) The persons indicated under Article 148, paragraph (1), may not be specialists - technical assistants.

(4) The specialist - technical assistant shall carry out the task assigned thereto under the direct supervision and guidance of the body who appointed him/her.

(5) For failure to appear or refusal, without good reasons, to carry out the task assigned thereto, the specialist - technical assistant shall be held responsible pursuant to Article 149, paragraph (5).

Section IV: Written objective forms of evidence

Types of written objectives forms of evidence

Article 127

Records of action taken for investigation at judicial trial and of other procedural action, as well as records for the preparation of material objective forms of evidence and other documents shall constitute written objective forms of evidence.

Drawing up record

Article 128

For every investigative action and judicial trial action a record shall be drawn up at the place where it is performed.

Content of the record

Article 129

(1) Records shall include: the date and place of the investigative actions and judicial trial actions; the time of their commencement and completion; persons who took part in them; any requests, comments, and objections made; the actions performed in their order of succession and the evidence collected.

(2) The record shall be signed by the authority which has taken the respective action, as well as by the other participants in criminal proceedings in the hypotheses herein set forth.

Corrections, amendments and supplements to the records

Article 130

All corrections, amendments and supplements to the records must be certified by signature of the persons undersigned.

Records as objective forms of evidence

Article 131

Records drawn up in compliance with the conditions and procedure specified by this Code, shall be objective forms of evidence for the performance of the respective actions, the procedure used for their performance and of the evidence collected.

Records for preparation of material objective forms of evidence

Article 132

(1) The preparation of material objective forms of evidence shall be registered in the record for the respective action or in a separate record which shall be signed by the body conducting the actions and by the specialist - technical assistant.

(2) The preparation of material objective forms of evidence obtained through the use of special intelligence means shall be reflected in a record of proceedings signed by the head of service which has prepared the material objective form of evidence, wherein the following shall be specified:

1. The time and location where a special intelligence means has been applied and the respective material objective forms of evidence have been prepared;

2. The identity of the controlled person;

3. The operational techniques and technical equipment used;

4. A textual reproduction of the content of the material objective form of evidence.

(3) The following shall be enclosed with records under para 2: the request for use of a special

intelligence means, the written consent of the persons under Article 123, para 7, the authorisation for use thereof and an order of the Minister of Interior or of a Deputy Minister thereby authorised in pursuance of the Special Intelligence Means Act .

(4) Material objective forms of evidence shall be an integral part of the record under para 2 and they shall be enclosed with the case.

Procurement of documents

Article 133

(1) Upon request by the interested person, the court or the body entrusted with pre-trial proceedings shall issue a certificate thereto, by virtue of which the state and public bodies shall be obligated to supply such person with the necessary documents within their competence.

(2) For failure to discharge his/her obligation under para 1 without any valid reasons, the respective official shall be imposed a fine between BGN one hundred to one thousand.

Documents in foreign language

Article 134

Where a document has been drawn up in a foreign language, it shall be accompanied by translation in Bulgarian, duly certified under the established procedure, or a translator shall be appointed.

Computerized data on paper carriers

Article 135

Computerized data shall have to also be stored on paper carriers following the procedure set out in Article 163, paragraph 7

Chapter fourteen - TECHNIQUES FOR ESTABLISHING EVIDENCE

Section I: General provisions

Techniques for establishing evidence

Article 136

(1) Evidence shall be collected and verified within criminal proceedings through interrogation, expert assessment, seizure, re-enactment of the crime and identification of persons and objects, as well as through special intelligence means.

(2) When applying the techniques under para 1 in respect to lawyers and Notaries-Public, the provisions of the Attorney Act and the Notaries-Public and Notarial Operations Act shall apply.

Certifying witnesses

Article 137

(1) In pre-trial proceedings the observation, search, seizure, re-enactment of crime and identification of individuals and objects shall be conducted in presence of certifying witnesses.

(2) Certifying witnesses shall be selected by the body performing the respective investigative action from among persons without any other procedural capacity who are not interested in the outcome of the case.

(3) Certifying witnesses shall be obligated to appear once they have been invited and remain available as long as needed. For failure to comply with their obligations, certifying witnesses shall be liable as witnesses.

(4) Certifying witnesses shall have the following rights: make comments about and raise objections against omissions and violations of the law that have been allowed; request corrections, changes and supplements to the record; sign the record with a separate opinion, submitting their arguments

in writing to this effect; request rescission of the acts infringing upon their rights and legal interests; receive adequate remuneration and have the expenses incurred by them reimbursed.

(5) The authority in charge of performing an investigative action shall explain to certifying witnesses their rights under para 4.

Section II: Interrogation

Interrogation of the accused party

Article 138

(1) The interrogation of the accused party shall take place in daytime, except where it may suffer no delay.

(2) Before interrogation, the respective body shall establish the identity of the accused party.

(3) The interrogation of the accused shall begin with the question whether he or she understands the charges pressed against him/her, after which the accused party shall be asked to tell in the form of free narration, if he or she wishes, everything that he or she knows in relation to the case.

(4) Questions may be put to the accused party for supplementing his/her explanations or for removing any omissions, ambiguities or contradictions.

(5) The questions must be clear, concrete and relevant to the circumstances of the case. They should not suggest answers or lead to a particular answer.

(6) Where several persons have been constituted as accused parties, the investigative body shall interrogate them separately.

(7)The accused party shall not be interrogated by letter rogatory or through a video conference, except where he or she is outside the territory of the country and the interrogation will not obstruct discovery of the objective truth.

Interrogation of witnesses

Article 139

(1) Prior to interrogation of the witness his or her identity shall be established, and the relations thereof with the accused party and with the other participants in the proceedings. In cases under Article 123, para (2), item 2, the identification code of the witness shall be entered in the record to substitute for his/her identity data.

(2) The body conducting the interrogation shall invite the witness to testify in good faith and warn him or her of the responsibility under the law if he or she refuses to do so, gives false testimony or withholds certain circumstances, also explaining him/her the right under Article 121.

(3) The witness shall promise to tell in good faith and exactly everything to his or her knowledge about the case.

(4) The persons under Article 119 shall be explained their right to refuse to testify.

(5) Witnesses shall state in the form of free narration all that may be known to them about the case.

(6) The provisions of Article 115, paragraph (1), Article 138, paragraphs (4) and (5) shall also apply to the interrogation of witnesses, mutatis mutandis.

(7) The interrogation of a witness outside the territory of the country may also be carried out through a video or phone conference, in compliance with the provisions of this Code and with the stipulations of an international treaty to which the Republic of Bulgaria is a party.

Interrogation of children and young persons as witnesses

Article 140

(1) Children shall be interrogated as witnesses in the presence of a pedagogue or psychologist, and where necessary, also in the presence of their parent or guardian.

(2) Young persons shall be interrogated as witnesses in the presence of the persons under paragraph 1, if the respective body finds this necessary.

(3) With authorisation of the body conducting the interrogation, the persons under paragraph (1) may put questions to the witness.

(4)The body conducting the interrogation shall explain to the witness who is a child the necessity of giving true testimony, without warning him/her about any responsibility.

Interrogation of a witness with a secret identity

Article 141

(1) Pre-trial bodies and the court shall interrogate the witness with a secret identity and undertake all possible measures to keep his or her identity secret, also in cases where witnesses are interrogated outside the territory of the country, through a video or phone conference.

(2) Transcripts of the records for interrogation of the witness that do not bear his/her signature should be submitted forthwith to the accused party and to the defence counsel thereof, and in court proceedings - to the parties who may put questions to the witness in writing.

(3) The interrogation of an under cover officer, as well as of persons in respect to whom a measure for protection under Article 6, para 1, items 3, 4 and 5 of the Protection of Individuals under Threat in Relation to Criminal Proceedings Act shall be conducted in pursuance of paragraphs 1 and 2.

Interrogation of the accused party through a translator or interpreter

Article 142

(1) Where the accused party does not speak the Bulgarian language, a translator shall be appointed.

(2) Persons indicated under Article 148, paragraph (1), items 1 - 3, may not be translators.

(3) For failure to appear or refusal to fulfil the work assigned, translators shall be held liable pursuant to Article 149, paragraph (5).

(4) Where the accused party is deaf or dumb, an interpreter shall be appointed.

(5) The provisions of paragraphs (2) and (3) shall also apply to interpreters.

Confrontation

Article 143

(1) Where there is substantial contradiction between the explanations of the accused party or between the explanations of the accused party and the testimony of witnesses, a confrontation between them may be arranged, except in cases under Article 123, paragraph 2, item 2.

(2) The confronted persons shall be asked before interrogation whether they know each other and what are their relations.

(3) By authorisation of the respective body, confronted persons made may put questions to each another.

(4) Where there is substantial contradiction between the testimony of witnesses, paragraphs 1-3 shall apply, except in cases under Article 123, paragraph 2, item 2.

Section III: EXPERT ASSESSMENT

Cases in which expert assessment shall be appointed

Article 144

(1) Where special knowledge is necessary in the field of science, art or technology, for the purpose of elucidating some circumstances of the case, the court or the body of pre-trial proceedings shall appoint an expert assessment.

(2) The expert assessment shall be mandatory where there is doubt about:

1. the cause of death;

2. the nature of the bodily injury;

3. the capacity of the accused party to be responsible for his/her actions;

4. the capability of the accused party to correctly perceive facts of significance to the case, in view of his/her physical or mental status, and to give reliable explanations in relation to them.

5. the capability of the witness to correctly perceive facts of significance to the case, in view of his/her physical or mental status, and to give reliable testimony on them.

Content of the act for appointment of an expert assessment

Article 145

(1) The act for appointment of an expert assessment shall set forth: the grounds which necessitate expert assessment; the object and purpose of the expert assessment; the materials placed at the disposal of the expert; the full name, education, specialty, academic degree, academic title and position of the expert or name of the institution at which the expert works, the name of the medical institution at which hospital observations shall be made.

(2) Where the expert assessment has been appointed at pre-trial proceedings, the act under para 1 shall also specify the period for presentation of conclusions.

Taking samples for comparative study

Article 146

(1) The authority which appoints the expert assessment may require from the accused party samples for comparative study, where these may not be otherwise obtained.

(2) Para (1) shall also apply to witnesses, should it be necessary to check whether they have left traces at the scene of crime or on pieces of material evidence.

(3) Individuals under para 1 and 2 shall be obligated to present the samples required for comparative study and in the event of refusal samples shall be taken by coercion with authorisation of the respective first-instance court.

(4) Where samples for a comparative study are concerned with taking blood samples or other similar interventions requiring penetration of the human body, sample taking shall be performed by a person with medical competency under the observation of a physician following medical practice rules and without threatening the health of the individual.

Persons who shall be charged with the expert assessment

Article 147

The expert assessment shall be assigned to specialists in the respective area of science, art or technology.

Persons who may not be experts

Article 148

(1) The following may not be experts:

1. persons with regard to whom the grounds under Article 29, para (1), items 1 - 5 and 7 - 8 and para (2) are at hand;

2. witnesses in the case;

3. persons of official or other dependence upon the accused or the defence counsel thereof, upon the victim, the private complainant, the civil claimant, the civil defendant or upon their counsels;

4. the persons who have conducted an audit, of which the materials have served as grounds for the institution of investigation;

5. persons who do not possess the required professional competency, if such competency is required.

(2) In the hypotheses of para 1, the expert witness shall be obligated to recuse him/herself;

(3) The interested parties shall file applications for disqualification before the body which has appointed the expert assessment.

Obligations of the expert witness

Article 149

(1) The expert witness shall be obligated to appear before the respective body where summonsed and to submit a conclusion on the issues of expert assessment.

(2) An expert may refuse to submit a conclusion only where the questions asked fall beyond the framework of his/her specialty or where the available materials are not sufficient for him/her to form an informed view on the matters at stake.

(3) The expert witness shall submit his/her conclusion at pre-trial proceedings within the time limit set by the authority in charge of pre-trial proceedings, whereas during court proceedings - no later than five days from the date of the court hearing.

(4) The expert witness shall submit his/her conclusion in court with copies for the parties.

(5) For failure to appear or refusal to submit a report without valid reasons, the expert shall be punished by fine of up to BGN two hundred. If the expert witness indicates valid reasons for his/her failure to appear, the fine shall be withdrawn.

(6)An expert who is outside the territory of the country may be interrogated through a video or phone conference, where so required in view of the circumstances of the case.

Rights of the expert witness

Article 150

(1) The expert shall have the following rights: to familiarize himself with the materials in the case file which refer to the issues of the expert assessment; to require additional materials and to take part in conducting individual investigative actions, if necessary, in order to fulfil the task assigned thereto; to receive remuneration for the work done, and reimbursement for the expenses incurred, as well as to demand reversal of acts which infringe upon his/her rights and lawful interests.

(2) Where there is more than one expert witness, they shall have the right to deliberate prior to submitting a conclusion. Should they be of unanimous opinion, the experts may appoint one of them to present before the respective body a joint conclusion, and where they are of different opinions each one shall submit a separate conclusion.

Inspection of the eligibility requirements in respect to the expert witness and service of the act for his/her appointment

Article 151

(1) The body who has appointed the expert assessment shall summon the expert witnesses, verify their identity, specialty and competence, their relations with the accused party and the victim, as well as whether there are grounds for disqualification.

(2) The act for appointment of expert assessment shall be served on the expert witness, whereupon the rights and obligations shall be explained thereto, as well as the responsibility should he/she submit a false conclusion.

Expert conclusion

Article 152

(1) After performing the necessary studies, the expert witness shall draw up a conclusion in writing indicating the following: full name and grounds for conducting the expert assessment; place of conducting the expert assessment; the task that was set; materials which were used; studies made and research and technical means applied; findings and inferences of the expert assessment.

(2) The report shall be signed by the expert witness.

(3) Where in the course of conducting the expert assessment new materials are found of significance for the case, but in connection with which no task has been set to the expert, the expert witness shall be obligated to point them out in the conclusion.

Additional and second expert assessment

Article 153

An additional expert assessment shall be appointed where the conclusion of the expert is not sufficiently comprehensive and clear, and a second expert assessment shall be appointed if the conclusion is not well justified and gives rise to doubts about its correctness.

Evidential force of an expert conclusion

Article 154

(1) The conclusion of an expert shall not be binding upon the court and the bodies of pre-trial proceedings.

(2) Where a body disagrees with the conclusion of an expert, it shall be obligated to provide reasons thereof.

Section IV: Observation on site

Purpose of the observation

Article 155

(1) The court and the bodies of pre-trial proceedings shall make observations of locations, premises, objects and persons in order to reveal, to examine directly and to preserve in compliance with the procedure established by this Code, traces of the crime and other data necessary for the elucidation of circumstances in the case.

(2) Measures shall be taken prior to the observation to prevent deletion of traces from the crime.

Conducting observation on site

Article 156

(1) The observation shall be effected in the presence of certifying witnesses, except where it takes place at a court hearing.

(2) Where necessary, observation on site shall be performed in the presence of an expert witness or specialist - technical assistant.

(3) In the course of observation on site everything shall be examined as found, and any dislocations necessary shall be made after that.

(4) Observations on site shall be carried out in daytime, except in cases which may suffer no delay.

Observation of a body

Article 157

(1) The observation of a body shall be conducted, if possible, at the location where it was discovered, in the presence of a forensic expert witness, and where no such expert is available - in the presence of another physician.

(2) The burial of the body subject of the observation shall be carried out with authorisation of the prosecutor.

(3) Exhumation of a body shall be allowed by order of the court or of the prosecutor, in the presence of a forensic expert.

(4) Reinterment of a body shall be allowed with authorisation of the body which has ordered the exhumation.

Physical examination

Article 158

(1) The physical examination of a person should not allow actions which may offend the person's dignity or such that are hazardous to the person's health.

(2) Where the examined person must be undressed, the certifying witnesses must be of the same gender. If the official who must perform the physical examination is of another gender, the examination shall be made by a physician.

(3) The physical examination of a person in pre-trial proceedings shall be performed with his/her written consent, and without such a consent - with a authorisation by a judge from the respective first instance court, in the area of which the action is taken, upon request of the prosecutor.

(4) In urgent cases, where this is the only possible way to collect and keep evidence, the bodies of pre-trial proceedings may perform physical examination without prior authorisation, and the record of the examination shall be submitted for approval by the prosecutor to the judge forthwith, and no later than 24 hours.

Section V: Searches and seizures

Obligation to hand over objects, papers, computerised data, data about subscribers to computer information service and traffic data

Article 159

Upon request of the court or the bodies of pre-trial proceedings, all institutions, legal persons, officials and citizens shall be obligated to preserve and hand over all objects, papers, computerized data, including traffic data, that may be of significance to the case.

Grounds for and purpose of the search

Article 160

(1) Should there be sufficient reasons to assume that in certain premises or on certain persons objects, papers or computerized information systems containing computerized data may be found, which may be of significance to the ease, searches shall be conducted for their discovery and seizure.

(2) A search may also be conducted for the purpose of finding a person or a body.

Bodies making decisions on searches and seizures

Article 161

(1) In pre-trial proceedings search and seizure shall be performed with a authorisation by a judge from the respective first instance court or a judge from the first-instance court in the area of which the action is taken, upon request of the prosecutor.

(2) In cases of urgency, where this is the only possible way to collect and keep evidence, the bodies of pre-trial proceedings may perform physical examination without authorisation under paragraph 1, the record of the investigative action being submitted for approval by the supervising prosecutor to the judge forthwith, but not later than 24 hours thereafter.

(3) In court proceedings a search and seizure shall be performed following a decision of the court which is trying the case.

Persons present in the course of searches and seizures

Article 162

(1) Searches and seizures shall be conducted in the presence of certifying witnesses and of the person who uses the premises, or of an adult member of the person's family.

(2) Where the person who uses the premises or a member of his/her family cannot attend, the search and seizure shall be effected in the presence of the house manager or of representative of the municipality or mayor's office.

(3) Searches and seizures in premises used by state and/or municipal services shall be effected in the presence of a representative of the service.

(4) Searches and seizures in premises used by a legal person shall be performed in the presence of a representative thereof. Where no representative of the legal person may be present, the search and seizure shall be carried out in the presence of a representative of the municipality or mayoralty.

(5) Searches and seizures in premises of foreign missions and of missions of international organizations or in dwellings of their employees who enjoy immunity with respect to the criminal jurisdiction of the Republic of Bulgaria, shall be conducted with the consent of the head of mission and in the presence of a prosecutor and a representative of the Ministry of Foreign Affairs.

(6) Where searches and seizures concern computerized information systems and software applications, these shall be conducted in presence of an expert- technical assistant.

Conducting searches and seizures

Article 163

(1) Searches and seizures shall be performed in daytime, except where they can suffer no delay.

(2) Before proceeding with a search and seizure, the respective body shall submit the authorisation therefore, and shall ask the objects, papers, and computerized information systems containing computerized data sought to be shown to him/her.

(3) The body performing the search shall have the right to forbid those present to contact other persons or each other, as well as to leave the premises until completion of the search.

(4) No actions may be undertaken during searches and seizures, which are not necessitated by their purposes. Premises and storerooms shall only be forcefully opened in the case of refusal to be opened, unnecessary damage being avoided.

(5) Where in the course of searches and seizures circumstances of the intimate life of citizens are revealed, measures shall be taken as necessary so that they are not be made public.

(6) The objects, papers and computerized information systems containing computerized data seized shall be shown to the certifying witnesses and the other attending persons. Where necessary, these shall be wrapped and sealed at the location where they had been seized.

(7) Seizure of computerized data shall be operated through record on paper or another carrier. In case of a paper carrier, each page shall be signed by the persons under Article 132, para 1. In other cases the carrier shall be sealed with a note stating: the case, the body performing the seizure, the location, date, and names of all individuals present under Article 132, para 1 who shall sign it.

(8) Carriers prepared in pursuance of para 7 will only be unsealed with the authorisation of the prosecutor for the needs of the investigation, which shall be carried out in presence of certifying witnesses and an expert- technical assistant. In court proceedings carriers shall be unsealed upon decision of the court by an expert technical assistant.

Search of a person

Article 164

(1) The search of a person in pre-trial proceedings without authorisation by a judge from the respective first instance court or a judge from the first-instance court in the area of which the action is taken shall be allowed:

1. at detention;

2. should there be sufficient grounds to believe that persons who are present at the search have concealed objects or papers of significance to the case.

(2) The search of a person shall be performed by an individual of the same gender in the presence of certifying witnesses of the same gender.

(3) The record of the performed investigative action shall be submitted for approval to the judge forthwith, but not later than 24 hours thereafter.

Interception and seizure of correspondence

Article 165

(1) Interception and seizure of correspondence shall be allowed only where this is necessary for disclosure or prevention of serious crime.

(2) Interception and seizure of correspondence in pre-trial proceedings shall be performed upon request of the prosecutor with the authorisation of a judge from the respective first instance court or a judge from the court in the area of which the action is taken.

(3) In court proceedings search and seizure of correspondence shall be performed by a decision of the court which is trying the case.

(4) The interception and seizure of correspondence shall be carried out in pursuance of Article 162, paras 1 - 4.

(5)The provisions of paragraphs 1 - 4 shall also apply to searches and seizures of electronic mail.

Section VI: Re-enactment of crime

Purpose of the re-enactment of crime

Article 166

The court and the bodies of pre-trial proceedings may perform re-enactment of the crime, in order to check and elucidate data, obtained from the interrogation of the accused, the witnesses, or from another investigative actions or judicial trial action.

Conditions for the admission of a re-enactment of crime

Article 167

The re-enactment of crime shall be allowed provided the dignity of the participating persons shall not be offended, and provided their health shall not be exposed to any danger.

Procedure for conducting a re-enactment of the crime

Article 168

(1) The re-enactment of crime shall be carried out in the presence of certifying witnesses, except where it is carried out at a court hearing.

(2) Where necessary, the re-enactment of crime shall also be attended by an expert or specialist - technical assistant.

Section VII: Identification of persons and objects

Legal grounds and purpose of the identification

Article 169

(1) Identification shall be performed where, in order to elucidate the circumstances of the case, it is necessary to confirm the identity of persons and objects.

(2) Pre-trial bodies and during court proceedings - the court trying the case shall propose to the accused party or the witness to identify certain persons or objects.

Interrogation prior to the identification

Article 170

Immediately prior to the identification, the accused party and the witnesses shall be interrogated whether they know the person or the object they are to identify; about the peculiarities by which they may be identified; about the circumstances under which the have observed the persons or objects; as well as about their status at the time they have apprehended the person or object to be identified.

Procedure for identification

Article 171

(1) The identification shall be effected in the presence of certifying witnesses, except where it takes place at a court hearing.

(2) A person shall be presented for identification together with three or more persons, similar in appearance to that person and measures shall be taken to avoid direct contact of that person with the identifying person.

(3) Based on a decision of the body carrying out the identification, it may be so conducted that the identifying person will avoid direct contact with the identified person. A witness with a secret identity may only take part in an identification as an identifying person.

(4) Where it is not possible to present the real person, a photograph thereof shall be shown, together with photographs of three or more persons, similar in appearance.

(5) Objects shall be presented for identification together with the objects of the same kind.

(6) Where several accused parties or witnesses have to proceed with the identification of persons or objects, they shall be shown separately to each of the identifying persons, measures being taken for the identifying persons not to make direct contact with each other. A simultaneous identification by several individuals shall be inadmissible.

(7) The accused or the witness shall be asked to point out the person or object referred to in their explanations or testimonies, and to explain how they identified them.

Section VIII: Special intelligence means

Material objective forms of evidence prepared with the use of special intelligence means

Article 172

(1) Pre-trial bodies may use the following special intelligence means: technical means - electronic and mechanical devices and substances that serve to document operations of the controlled persons and sites, as well as operational techniques - observation, interception, shadowing, penetration, marking and verification of correspondence and computerised information, controlled delivery, trusted transaction and investigation through an officer under cover.

(2) Special intelligence means shall be used where this is required for the investigation of serious criminal offences of intent under Chapter one , Chapter two , Sections I, II, IV, V, VIII, and IX, Chapter five , Sections I - VII, Chapter six , Section II - IV, Chapter eight , Chapter nine "a" , Chapter eleven , Sections I - IV, Chapter twelve , Chapter thirteen , and Chapter fourteen , as well as with regard to criminal offences under Article 219 , para 4, proposal 2, Article 220 , para 2, Article 253 , Article 308, paras 2, 3 , and 5, sentence two, Article 321 , Article 321a, Article 356k . and 393 of the Special Part of the Criminal Code, where the irrelevant circumstances cannot be established in any other way or this would be accompanied by exceptional difficulties.

(3) Computer information service providers shall be under the obligation to provide assistance to the court and pre-trial authorities in the collection and recording of computerized data through the use of special technical devices only where this is required for the purposes of detecting crimes under paragraph 2

(4) The special intelligence means of controlled delivery and trusted transaction may be used to collect material evidence, whereas under cover officers shall be interrogated as witnesses.

(5) The materials under paragraphs 1-4 shall be enclosed with the case file.

Request for use of special intelligence means

Article 173

(1) A written reasoned request for the use of special intelligence means in a specific case at pre-trial proceedings shall be filed by the prosecutor supervising the investigation to the court.

(2) The request must set out:

1. Information about the criminal offence for the investigation of which the use of special intelligence means is required;

2. A description of the action taken so far and its outcomes;

3. Information about the persons or sites in respect to which special intelligence means are to be applied;

4. Operational techniques to be applied;

5. The duration of use.

(3) Where the request is for investigation through an officer under cover, a written declaration by the officer shall be enclosed with it, stating that he/she has been informed of his duties and the objectives of the specific investigation.

(4) In urgent cases where this is the only possible way to conduct investigation, an officer under cover may also be used following an order of the prosecutor supervising the investigation. The activity of the officer under cover shall terminate where within 24 hours no authorisation is given by the respective court, which shall also rule with respect to the storage or destruction of the information collected.

(5) In cases under Article 123, para 7 written consent from the person in respect to whom special intelligence means are to be used shall also be enclosed with the request.

Authorisation to use special intelligence means

Article 174

(1) The authorisation for use of special intelligence means shall be given in advance by the Chairperson of the respective District Court or by a Deputy Chairperson explicitly authorized thereby.

(2) The authorisation for use of special intelligence means in respect of the military shall be given in advance by the Chairperson of the respective military court or by a Deputy Chairperson explicitly

authorised thereby.

(3) The body under para 1 and 2 shall rule immediately following receipt of a request in a written reasoned order.

(4) Under the conditions and procedure of paras 1 and 2, authorisation for use of special intelligence means may be given as well by the Chairperson of the respective Appellate Court or by a Deputy Chairperson explicitly authorised thereby, should the body pursuant to paragraphs (1) and (2) refuse to grant the requested authorisation.

(5) An order for investigation through an officer under cover must specify the criminal offence in respect to which investigation is authorised, officer identity data, cover identity data and an identification number.

(6) A special register shall be kept in the respective court for the requests made and the authorisations issued under paras 1 and 2, which shall not be public.

Procedure and term for the application of special intelligence means for the needs of criminal proceedings

Article 175

(1) The special intelligence means shall be applied in pursuance of the Special Intelligence Means Act only by the respective services of the Ministry of Interior.

(2) The Minister of Interior shall issue an order in writing for the application of special intelligence means by the services under paragraph (1), on the grounds of the authorisation under Article 174.

(3) The term for application of special intelligence means may not exceed two months.

(4) Where needed, the term under para 3 may be extended in pursuance of Article 174, by no more than four months.

(5) The application of special intelligence means shall be discontinued when:

1. the objective that has been set, is achieved;

2. the use of such means bears no results;

3. the term for their use has expired.

(6) In the event of discontinuing the use of special intelligence means the body that has issued the authorisation should be notified immediately in writing, with indication of the reasons thereof. In cases under para 5, item 2, it shall order the destruction of the primary material carrier containing the information collected.

Preparation of material objective forms of evidence obtained through the use of special intelligence means

Article 176

When using special intelligence means, material objective forms of evidence shall be prepared in two copies and within 24 hours of their preparation they shall be sealed and handed over to the prosecutor who has requested the authorisation or, respectively, the court, which has given it.

Evidentiary force of data obtained through the use of special intelligence means

Article 177

(1) The indictment and the sentence may not be based only on data from special intelligence means or on these only and on testimony of witnesses with a secret identity.

(2) No results obtained outside the request made under Article 173 can be used in criminal proceedings, unless they contain information about another serious crime of intent under Article 172, para 2.

Chapter fifteen - SERVING OF SUMMONSES, SUBPOENAS AND PAPERS. TERMS AND COSTS

Section I: SERVING OF SUMMONSES, SUBPOENAS AND PAPERS

Bodies and persons through whom summonses, subpoenas and papers shall be served

Article 178

(1) Summonses, subpoenas and papers shall be served by officials with the respective court, the bodies of pre-trial proceedings, municipality or mayor's offices.

(2) Where service cannot be implemented pursuant to the paragraph (1), it shall be effected through the services of the Ministry of the Interior or of the Ministry of Justice.

(3) Serving on servicemen shall be effected through the respective unit or military institution.

(4) Service on employees and workers may be effected through the employer or officer thereof entrusted with receiving papers.

(5) Service on minors shall be effected through their legal representatives.

(6) Service on persons deprived of liberty and on those remanded in custody shall be effected through the respective institutions.

(7) Service on natural and legal persons, as well as on institutions located abroad shall be effected in compliance with the legal assistance agreement with the respective country, and where there is no such agreement - through the Ministry of Foreign Affairs.

(8) In urgent cases summonsing may be effected by telephone, telex, or telefax. Summonsing by telephone or telefax shall be certified in writing by the officer who has carried it out, and by telex - with the written confirmation that the message has been received. This procedure for summonsing shall not apply to the accused party.

(9) The presence of witnesses under Article 141 shall be ensured by the prosecutor.

Content of summonses and subpoenas

Article 179

(1) The following shall be indicated in the summons: name of the issuing institution, case file number and year of its institution; name and address of the person summonsed; capacity in which such person is summonsed; location, date and time for which the person is summonsed and the consequences of non-appearance.

(2) The summons that is sent to the accused party shall read his/her right to appear with a defence counsel.

(3) The summons that is sent to the private complainant or the persons who may be constituted as private prosecutor, civil claimant or respondent, shall read their right to appear with a counsel.

(4) The subpoena shall indicate the procedural action performed or such that the person should perform.

(5) Summonses and subpoenas shall be signed by the appropriate official.

Serving of summonses, subpoenas and papers

Article 180

(1) Summonses, subpoenas and papers shall be served against receipt signed by the person for whom they are intended.

(2) Where the person is absent, they shall be served on an adult member of the person's family, and if there is no adult member of the family - on the house steward or janitor, as well as on a room-

mate or neighbour, where the latter assume the obligation to deliver them.

(3) Where summonses, subpoenas, and papers are addressed to the attention of the accused party, a private prosecutor, a private complainant, the plaintiff or respondent, who is absent and their service on individuals under paragraph 2 is impossible, service may be effected upon their counsel or lawyer, should the latter agree to receive them.

(4) If the recipient or person under paras 2 and 3 cannot sign or refuses to sign, the serving person shall make a note thereof in the presence of at least one person who shall sign.

(5) Service on an institution or a legal person shall be effected against signature of the official charged with the reception of papers.

(6) The person through whom service is effected shall sign a receipt with the obligation to deliver the summons, subpoena or papers to the person they are intended for.

(7) The serving person shall note on the receipt the name and address of the person through whom service is effected and his/her relation to the person on whom the summons, subpoena or papers have to be served.

Receipt for effected service

Article 181

(1) The official who has effected the service, shall return a receipt in due course and it shall be enclosed with the case file.

(2) The following shall be indicated in the receipt: the date of service and the name and position of the person who has effected the service.

Responsibility for non-fulfilment of duties related to service

Article 182

(1) Officials who fail to discharge their duties related to service shall be punished by fine of up to BGN five hundred..

(2) The same punishment shall also be imposed on persons under Article 180, paras (2), (3) and (5), who fail to fulfil their duties related to service.

Section II: Terms

Calculation of terms

Article 183

(1) Terms shall be calculated in days, weeks, months and years.

(2) A term calculated in days shall start running on the following day and shall expire at the end of the last day.

(3) A term calculated in weeks and months shall expire on the respective day of the last week or on the respective date of the last month. Where the last month has no respective date, the term shall expire on the last day of such month.

(4) Where the last day of the month is a holiday, the term shall expire on the first forthcoming business day.

Observance of term

Article 184

A term shall be considered as observed provided until expiry the application, complaint, appeal or other papers have been received by the respective body, the post office, another court, the prosecution office or an investigative body, the institution where the person is serving a punishment

or has been remanded in custody, the unit in which a serviceman is doing his military service or the diplomatic or consular mission, if the person is abroad.

Extension of the term

Article 185

(1) The term set by the court or by the bodies of pre-trial proceedings may be extended, provided there are good reasons therefore and the request has been filed prior to its expiry.

(2) If the term under para (1) has been missed due to valid reasons, the respective body may set a new term.

Restoration of a term

Article 186

(1) The term set by law may be restored, provided it has been missed for valid reasons.

(2) Applications for restoration of term shall be filed with the court or the body of pre-trial proceedings within seven days following the date on which the reasons for missing the term have ceased to be effective.

(3) Concurrently with filing an application for the restoration of a term, the action the term for which has been missed shall also be performed.

(4) Upon request of the interested party, the implementation of the action the term for which has been missed, may be stayed.

(5) An application for the restoration of a term shall be examined within seven days following receipt.

(6) The restoration of a term by the court shall be decided at a court hearing to which the parties shall be summonsed.

Section III: Costs and remunerations

Covering costs

Article 187

(1) Costs for criminal proceedings shall be covered from amounts specified in the budget of the respective institution, except in cases specified by law.

(2) In cases of crime actioned on the basis of a complaint by the victim filed with the court, costs shall be deposited in advance by the private complainant, and if they are not deposited, the private complainant shall be given a term of seven days to deposit them.

(3) In cases actioned by complaint of the victim filed with the court, costs in relation to the evidentiary claims made by the defendant in court shall be covered by the court's budget.

Determination of costs

Article 188

(1) The amount of costs shall be determined by the court or the body of pre-trial proceedings.

(2) The remuneration of witnesses - workers or employees, shall be determined by the court.

Decision on costs

Article 189

(1) The court shall decide on the issue of costs with the sentence or with a ruling.

(2) Costs for translation during pre-trial proceedings shall be at the expense of the respective body, and those during court proceedings shall be at the expense of the court.

(3) Where the accused party is found guilty, the court shall sentence him/her to pay the costs for the trial including attorney fees and other expenses for the defence counsel appointed ex officio, as well as the expenses incurred by the private prosecutor and the civil claimant, where the latter have made a request to this effect. In presence of several sentenced persons, the court shall apportion the costs payable by each of them.

(4) Where the accused party is found not guilty on some charges, the court shall sentence the accused to pay only the costs incurred in connection with the charge under which he/she has been found guilty.

Award of costs

Article 190

(1) Where the accused party is acquitted or criminal proceedings are terminated, all costs in publicly actionable cases shall remain at the expense of the state, and those in cases actionable following a complaint of the victim shall be at the expense of the private complainant.

(2) For the costs awarded a writ of execution shall be issued by the first instance court.

PART THREE: PRE-TRIAL PROCEEDINGS

Chapter sixteen: GENERAL PROVISIONS

Cases in which pre-trial proceedings shall be carried out

Article 191

Pre-trial proceedings shall be carried out in publicly actionable criminal cases.

Stages in pre-trial proceedings;

Article 192

Pre-trial proceedings shall comprise the investigation and action taken by the prosecutor following completion of the investigation.

Bodies of pre-trial proceedings

Article 193

The prosecutor and the investigative bodies shall be the pre-trial bodies.

Distribution of cases during pre-trial proceedings among the investigative bodies

Article 194

(1) Investigation shall be carried out by investigators in cases of

1. publicly actionable criminal offences under Article 95 - 110 , 357 - 360 and Article 407 - 419 Criminal Code ;

2. criminal offences committed by individuals enjoying immunity, members of the Council of Ministers or civil servants with the Ministry of Interior;

3. criminal offences committed abroad.

(2) In cases other than those specified in paragraph (1), investigation shall be carried out by police investigators.

Area in which pre-trial proceedings are carried out

Article 195

(1) Pre-trial proceedings shall be carried out in the area corresponding to the area of the court competent to try the case.

(2) Pre-trial proceedings may be carried out in the area where the crime was discovered or at the

location of the domicile of the accused party, or at the domiciles of most of the accused parties or most of the witnesses is located, where:

1. the accused party has been constituted in this particular capacity on account of several offences committed in the areas of different courts;

2. this is necessitated with a view to securing expeditiousness, objectivity, comprehensiveness and completeness of the investigation;

(3) Issues under the para 2 shall be decided by the prosecutor in the area where pre-trial proceeding were initiated. Until pronouncement of the public prosecutor, only investigative actions which may suffer no delay shall be performed.

(4) Outside the cases under paragraph (2), following authorisation of the Prosecutor General pre-trial proceedings may also be carried out in another area with a view to completer investigation of the offence.

Guidance and supervision of the prosecutor over the investigation

Article 196

(1) When exercising guidance and supervision, the prosecutor may:

1. constantly control the progress of investigation, studying and inspecting all case materials;

2. give instructions in relation to the investigation;

3. take part or perform investigative actions;

4. remove the investigative body, where he has committed a violation of the law or is not capable of ensuring the correct conduct of the investigation;

5. withdraw a case from an investigative body and transfer it to another;

6. assign to the respective bodies of the Ministry of Interior the implementation of individual actions related to the discovery of the crime;

7. revoke on his own motion or on the basis of a complaint by the interested individuals decrees of investigative bodies.

(2) Apart from para 1 powers, the supervising prosecutor shall directly monitor the lawfulness of the investigation and its completion within the set period.

Binding instructions of the prosecutor

Article 197

Written instructions of the prosecutor to the investigative body shall be binding and shall not be subject to objections.

Publicity of investigation material

Article 198

(1) Investigation materials may not be made public without authorisation by the prosecutor.

(2) Should it be necessary, the pre-trial body shall warn, against signature, the persons attending at investigative actions that they may not make public, without authorisation, any case materials, and that otherwise they shall be held responsible pursuant to Article 360 of the Criminal Code .

Acts of the bodies entrusted with pre-trial proceedings

Article 199

(1) In pre-trial proceedings the prosecutor and the investigative bodies shall make pronouncement by decrees.

(2) Each decree shall comprise: information about the time and place of its issuance, the issuing body, the case in which it is issued; reasons; operative part and signature of the issuing body.

Appeal process against decrees

Article 200

Decrees of investigative bodies shall be appealed before the prosecutor. Decrees of the prosecutor, that are not subject to judicial review, shall be appealed before a prosecutor with a higher-standing prosecution office whose decree shall not be subject to further appeal.

Appeals against decrees

Article 201

(1) Appeals against decrees of pre-trial bodies may be oral or in writing. Appeals in writing must be signed by the appellant, and for oral appeals record shall be drawn up, which shall be signed by the appellant and by the person who receives it.

(2) Appeals shall be filed through the body which has issued the decree, or directly to the prosecutor competent to examine it. In the former case the appeals shall be forwarded immediately to the respective prosecutor accompanied with written observations.

Effect of appeals and term for pronouncement thereon

Article 202

(1) Appeals shall not stay the execution of the appealed decree, unless the respective prosecutor has ruled otherwise.

(2) The prosecutor shall be obligated to make a pronouncement on any appeal within three days following its receipt.

Duty to secure lawful and timely investigation

Article 203

(1) The investigative body shall take all measures to ensure the timely, lawful and successful completion of investigation.

(2) The investigative body shall be obligated within the shortest possible period to collect the necessary evidence required for the discovery of the objective truth, being guided by the law, his/her inner conviction and the instructions of the prosecutor.

(3) The investigative body shall report systematically to the prosecutor on the progress of investigation, discussing therewith the possible versions and all other matters of relevance to the lawful and successful completion of investigation.

(4) The investigative body shall also take investigative and other procedural action during times where the case has been sent to court in relation to a measure of procedural coercion.

Cooperation by the public

Article 204

Pre-trial bodies shall widely use the assistance of the public in order to discover the criminal offence and to elucidate the circumstances of the case.

Obligation of the citizens and officials to notify

Article 205

(1) Where they come to know about a perpetrated publicly actionable criminal offence the citizens shall be publicly obligated to notify forthwith a body of pre-trial proceedings or another state body.

(2) Where they come to know about a perpetrated publicly actionable criminal offence the officials

must notify forthwith the body of pre-trial proceedings and take the necessary measures for the preservation of the general setup and data about the crime.

(3) In cases under paras 1 and 2 pre-trial bodies shall immediately exercise their powers to institute criminal proceedings.

Investigation in the absence of the accused party

Article 206

The investigation may be carried out in the absence of the accused party pursuant to the provisions of Article 269, paragraph (3), provided this will not hinder the discovery of the objective truth.

Chapter seventeen: INVESTIGATION

Section I: Institution of pre-trial proceedings and conduct of the investigation

Conditions for the institution of pre-trial proceedings

Article 207

(1) Pre-trial proceedings shall be instituted where there is a statutory occasion and sufficient information about the perpetration of a crime.

(2) In the hypotheses set out in the Special Part of the Criminal Code , publicly actionable proceedings shall be instituted following complaint of the victim addressed to the prosecution office and these shall not be susceptible of termination on grounds of Article 24, para 1, item 9.

(3) The complaint shall be required to contain information about the author and to be signed by him/her.

(4) No state fees shall be due at the moment the complaint is filed.

Statutory occasions

Article 208

The following shall be considered statutory occasions for the commencement of investigation:

1. a notice sent to the pre-trial bodies of the perpetration of a criminal offence;

2. information about a perpetrated criminal offence, distributed by the mass media;

3. appearance of the perpetrator in person before the pre-trial bodies with a confession about a perpetrated crime;

4. direct discovery by pre-trial bodies of signs of a perpetrated crime.

Notice of a perpetrated crime

Article 209

(1) The notice of a perpetrated crime must contain data about the person who is the author thereof. Anonymous notices shall not be statutory occasions for the commencement of investigation.

(2) Notices may be oral or written. Written notices may be legal occasions for the commencement of investigation only where signed. Oral notices shall be put down in a record to be signed by the individual making the statement and the body taking it.

Appearance of the perpetrator in person

Article 210

Where the perpetrator appears in person pre-trial bodies shall establish the identity of the person and shall draw up a record with detailed statement of the confession. The record shall be signed by the appearing person and the body before which confession was made.

Sufficient data for the institution of pre-trial proceedings

Article 211

(1) Sufficient data for institution of pre-trial proceedings shall be considered to be at hand, where a reasonable assumption can be made that a crime has been committed.

(2) No data shall be necessary, from which inferences can be made about the persons who have perpetrated a crime, or about the applicable criminal law in order to institute pre-trial proceedings.

Institution of pre-trial proceedings

Article 212

(1) Pre-trial proceedings shall be instituted by a decree of the prosecutor.

(2) Pre-trial proceedings shall be considered instituted upon drafting the act for the first investigative action, when observation of the crime scene and related searches, seizures and interrogation of eye witnesses are conducted, provided their immediate performance is the only possible way to collect and preserve evidence.

(3) The investigative body that has performed such action under para 2 shall immediately notify the prosecutor, and in any event shall do so no later than 24 hours thereof.

Refusal of the prosecutor to institute pre-trial proceedings

Article 213

(1) The prosecutor may refuse to institute pre-trial proceedings, of which the victim or his/her heirs, the prejudiced legal person and the person who has given a notice, shall be notified.

(2) Of his/her own motion or following appeal of the persons under para 1 a prosecutor with a higher-standing prosecution office may repeal the decree under para 1 and order the institution of pre-trial proceedings and the commencement of investigation.

Content of the decree for institution of pre-trial proceedings

Article 214

(1) The following shall be indicated in the decree for institution of pre-trial proceedings: date and place of its issuance; the issuing body; statutory occasion and data on the basis of which pre-trial proceedings are instituted, and the investigative body, which has drafted the decree.

(2) Where pre-trial proceedings are instituted in pursuance of the procedure under Article 212, para 2, in addition to the circumstances under Article 129, the record for the first investigative action shall also specify the statutory occasion and the data indicating that a criminal offence has been perpetrated.

Action in presence of an unknown perpetrator

Article 215

(1) Where the perpetrator of a criminal offence is unknown, in addition to the investigative action the prosecutor shall assign the respective Ministry of Interior bodies with establishing the identity of and tracing down the perpetrator.

(2) In cases under paragraph 1, where the respective bodies of the Ministry of Interior consider they have collected sufficient data incriminating a certain individual in the perpetration of a crime, they shall deliver the materials collected to the investigative body and shall immediately notify the prosecutor.

Separation of the case

Article 216

(1) Where evidence is collected in the case of the involvement of more individuals, the prosecutor may take the materials concerning non-identified and non-located individuals in a separate case.

(2) Where evidence is collected in the case of several criminal offences committed by one and the same individual, the prosecutor may take materials concerning some of the offences in a separate case.

Joinder of cases

Article 217

(1) Where two or more cases for different criminal offences against different individuals have a certain relationship to each other, they shall be joined if so required for the proper discovery of the objective truth.

(2) The prosecutor may join two or more cases concerning different offences against one and the same accused party.

Assistance from other bodies

Article 218

(1) Where necessary, the investigative body may request from another investigative body to perform separate investigative actions.

(2) Should the investigative body so request, the bodies of the Ministry of Interior shall be obligated to assist him/her in carrying out separate investigative actions .

Constituting the accused party and presentation of the decree to this effect

Article 219

(1) Where sufficient evidence is collected for the guilt of a certain individual in the perpetration of a publicly actionable criminal offence, and none of the grounds for terminating criminal proceedings are present, the investigative body shall report to the prosecutor and issue a decree to constitute the person as accused party.

(2) The investigative body may also constitute the accused party in this particular capacity upon drafting the act for the first investigative action against him/her, of which it shall report to the prosecutor.

(3) In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

1. The date and location of issuance;

2. The issuing body;

3. The full name of the individual constituted as accused party, the offence on account of which he/she is constituted and its legal qualification;

4. Evidence on which such constitution is based, provided this will not obstruct the investigation;

5. The remand measure, if one is imposed;

6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

(4) The investigative body shall present the decree for constitution to the accused party and his/her defence counsel, allowing them to gain knowledge of its full content and, where needed, giving additional explanations. The investigative body shall serve against a signature a copy of the decree on the accused party.

(5) Where the accused party has not authorised a defence counsel and request to organise his/her defence, the investigative body shall postpone the presentation of the decree for constitution and the interrogation of the accused party for a period of up to 72 hours, issuing summons anew.

(6) If the accused party again appears without defence counsel, the investigative body shall present

him/her with the decree for constitution, appointing him a defence counsel in cases under Article 94, para 1.

(7) The investigative body may not take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

Action in respect to an individual enjoying immunity

Article 220

(1) No individual enjoying immunity shall be constituted as accused party. Criminal prosecution in respect of such individual on account of the same crime shall be instituted once he/she is divested of immunity, if no other bars thereto are present.

(2) Where the accused party acquires immunity, criminal proceedings shall be stayed, measures for procedural coercion taken against him/her being withdrawn. In this case proceedings may resume in respect to the other accused parties, provided this will not hinder the discovery of the objective truth.

Interrogation of the accused party

Article 221

Following presentation of the decree for constitution of the accused party, the pre-trial body shall immediately proceed with the interrogation of the accused party in pursuance of Article 138.

Interrogation of the accused party before a judge

Article 222

(1) Should the pre-trial body deem it appropriate, the interrogation shall be made before a judge from the respective first instance court or the court in the area of which the action is taken with the participation of a defence counsel, if such exists. In this case the file is not presented to the judge.

(2) For the interrogation under paragraph (1) the respective body shall secure the appearance of the accused party and his defence counsel.

(3) Insofar as no special rules have been introduced, interrogation under paragraph 1 shall be conducted following the rules of judicial trial.

Interrogation of the witness before a judge

Article 223

(1) If there is a risk for the witness failing to appear before court because of serious illness, prolonged absence from the country or for other reasons that make impossible his/her appearance at a court hearing, as well as where it is necessary to affix the testimony of a witness that is of exceptional importance for the discovery of the objective truth, the interrogation shall be carried out before a judge from the respective first instance court or the court in the area of which the action is taken. In this case the file is not presented to the judge.

(2) The pre-trial body shall secure the appearance of the witness and shall make it possible for the accused party and his defence counsel, if such exists, to participate in the interrogation.

(3) Insofar as no special rules have been introduced, interrogation under para 1 shall be conducted following the rules of judicial trial.

(4) The accused party or his/her defence counsel may request for the pre-trial body the interrogation of a witness under para 1. Refusal shall be put down in a record signed by the respective body, the accused party and his/her defence counsel.

Presence during the performance of investigative actions

Article 224

Where the provisions of this Code do not provide for attendance of the accused party, of his/her defence counsel or of the victim and his/her counsel in conducting the respective investigative actions, the pre-trial body may allow them to attend, provided this shall not obstruct the investigation.

New constitution of the accused party

Article 225

Where during investigation the presence of grounds is found require the application of a law concerning a criminal offence punishable by a more serious sanction or the factual circumstances have considerably changed, or new offences need to be introduced or new individuals need to be constituted, the investigative body shall report this to the prosecutor and perform a new constitution of the accused party.

Action before presentation of the investigation

Article 226

(1) Where the investigative body finds that all investigative action necessary to discover the objective truth has been taken, he/she shall report the case to the prosecutor.

(2) The prosecutor shall verify whether the investigation has been lawful, objective, comprehensive and complete.

(3) Where the prosecutor finds that during investigation a serious violation of procedural rules has been made or that evidence required for the discovery of the objective truth has not been collected, or that a new constitution is required, he/she shall alone take the required action or instruct the investigative body to perform it.

Presentation of the investigation

Article 227

(1) Following completion of action under Article 226, the investigative body shall present the investigation.

(2) The accused party and his/her defence counsel shall be summonsed to be presented with the investigation.

(3) The victim and his/her counsel, provided they have submitted a request to this effect, shall be summonsed for the presentation of the investigation.

(4) Where the accused party or his/her defence counsel do not appear, the investigative body shall schedule a new presentation of the investigation within 72 hours, if the participation of a defence counsel is mandatory, or if the accused has not been able to authorise such counsel in good time but wishes to organise his/her defence.

(5) Where the accused party again appears without authorised counsel, the investigative body shall present him/her with the investigation, appointing a defence counsel in cases under Article 94, para 1.

(6) Failure of the victim or his/her counsel to appear where validly summonsed, shall not be grounds for scheduling a new presentation. The investigation shall not be presented to the victim where he/she has not be located at the address for the service of process indicated by him/her in this country.

(7) Prior to presenting the investigation, the investigative body shall explain to the attending persons their rights.

(8) The investigation shall be presented, the investigative body placing at the disposal of the attending persons all relevant materials for examination.

(9) The prosecutor may present the investigation where he/she has alone taken the actions under Article 226, para 3. In this case the prosecutor shall not draft a final decree.

Getting familiarized with the materials

Article 228

(1) The investigative body shall set a term for examination of the materials, depending upon the factual and legal complexity of the case, the volume of the file and other circumstances which may be of significance for the duration of the examination.

(2) Where some of the attending persons are not in a position to examine the materials, the investigative body shall be obligated to explain the latter to them and, if necessary, to read the materials out to them.

(3) Where a person refuses to examine the materials, the refusal and the reasons therefore shall be noted down in the record for presentation of the investigation.

Requests, remarks and objections

Article 229

(1) After examination of the materials, the respective persons may make requests, remarks and objections.

(2) The written requests, remarks and objections shall be enclosed with the case file, and the verbal ones shall be entered into the record for presentation of the investigation.

(3) The supervising prosecutor shall rule on requests, remarks and objections.

Additional investigative actions

Article 230

(1) The persons who have requested additional investigative actions, may attend during the performance of the latter.

(2) Upon completion of the additional actions, the investigative body shall present the investigation for a second time.

Final decree of the investigative body

Article 231

Upon final completion of the investigation, the investigative body shall draw up a final decree.

Accusatory decree

Article 232

(1) The investigative body shall draft an accusatory decree where he/she finds that the perpetrated criminal offence and the involvement of the accused party have been substantiated beyond doubt.

(2) The following shall be indicated in brief in the factual part of the accusatory decree: the crime committed by the accused; the time, place and manner of its perpetration; the victim and the amount of damages; data about the personality of the accused party, the evidence on the basis of which the specified circumstances are established, and the legal qualification of the act.

(3) The following shall be indicated in the concluding part of the accusatory decree: the prosecutor office to which the case file shall be forwarded; the date and place of drawing up the decree and the name and position of its author.

(4) The following shall be enclosed with the accusatory decree: a list of persons to be summonsed to the court hearing; information about the remand measures taken, indicating the date of detention of the accused, if the measure is remand in custody or house arrest; information about the

documents and the material pieces of evidence; information about the expenses incurred and information about the measures taken to secure the claims; as well as information about placement of children in cases under Article 63, paragraph (8).

Decree for termination or suspension of the criminal proceedings

Article 233

(1) Should he/she find that there are legal grounds therefore, the investigative body shall draw up a decree for termination or suspension of the criminal proceedings.

(2) The following shall be indicated in the decree under paragraph (1): the offence on account of which the individual has been constituted as accused party; the grounds on which criminal proceedings should be terminated or suspended; the date and place of drawing up the final decree and the name and position of its author.

Time limit for carrying out the investigation

Time limit for measures of procedural coercion

Article 234

(1) Investigation shall be completed and the file shall be sent to the prosecutor within two months at the latest, as from the date of institution thereof.

(2) The prosecutor may set a shorter limit. Should this time prove insufficient the prosecutor may extend it to the expiry of the term under paragraph 1.

(3) Upon request of the prosecutor, where the case presents factual or legal complexity, a prosecutor with a higher-standing prosecution office may extent the time limit under para 1 by no more than four months. In exceptional cases this time limit may be extended by the Prosecutor-General.

(4) A request for extension of the time limit shall be sent no later than fifteen days prior to expiry of the periods under paras 1 and 2. It shall state the reasons making it impossible the complete the investigation in due course, the investigative actions taken, as well as any forthcoming actions due.

(5) The prosecutor with a higher-standing prosecution office or the Prosecutor-General may set a shorter time limit than requested. In this case the extension shall occur in pursuance of paras 2 and 3.

(6) The prosecutor who extends the time limit for completion of the investigation shall also make a pronouncement on the measures of procedural coercion.

(7) Investigative actions taken outside the time limits under paras 1 - 3 shall not generate legal effect and the evidence collected may not be used before court for the issuance of a sentence.

(8) Measures of procedural coercion taken in respect to the accused party shall be revoked by the prosecutor after expiry of more than two years of constitution of the accused party, in cases of serious crimes and of more than one year - in all other cases.

(9) If the prosecutor fails to discharge his/her duty under para 8, the measures of procedural coercion shall be revoked at the request of the accused party or his/her defence counsel by the respective first-instance court.

(10) The court shall issue as a single-judge panel a ruling which shall be subject to appeal within three days before the intermediate appellate review instance court.

(11) The intermediate appellate review instance court shall make pronouncement in a three-judge panel sitting in camera by a decree which shall be final.

Forwarding the file to the prosecutor

Article 235

After drawing up the final decree, the investigative body shall immediately forward the file to the prosecutor.

Section II: Records for investigative actions.

Sound and video recordings.

Presentation and service of records for investigative actions

Article 236

(1) The pre-trial body shall present the record for the investigative action to the persons who have participated in their performance, in order to enable them to get acquainted with it, or shall read it out to them upon their request.

(2) The pre-trial body shall explain to each person the right to request corrections or changes and additions to the record. The requests made shall be entered into the record.

(3) Where some of the persons who have taken part in the investigative actions refuse or are not in a position to sign the record, the pre-trial body shall make a note thereof and shall also state the reasons.

(4)A copy of the record for search, personal search, seizure and personal examination shall be served on the person with respect to whom such investigative actions have been conducted.

Record of interrogation

Article 237

(1) The record of interrogation shall comprise the following data about the person interrogated: full name, date and place of birth, citizenship, nationality, education, family status, occupation, place of work and position, residence, record of previous convictions and other data, which may be of significance for the case. In the cases of Article 123, paragraph (2), item 2, the identity data shall not be entered in the record.

(2) Explanations and testimonies shall be recorded in the first person, verbatim, if possible.

(3) Where necessary, the questions and the answers shall be recorded separately.

(4) The interrogated persons shall certify with their signatures that the explanations or depositions have been correctly recorded. If the record is written on several pages, the interrogated persons shall sign on each page.

(5) The interrogated persons may, if they wish so, set forth in their own hand the explanations or testimonies given orally. In this case the pre-trial body may ask additional questions.

Sound recording

Article 238

(1) At the request of the person interrogated or at the initiative of the pre-trial body, a sound recording may be made of which the person interrogated shall be informed prior to the beginning of interrogation.

(2) The sound recording shall contain the information indicated in Article 129, paragraph (1), and Article 237.

(3) The sound recording of part of the interrogation or the repetition, especially for the sound recording, of part of the interrogation, shall not be allowed.

(4) Upon completion of the interrogation the sound recording shall be played in full to the person interrogated. Additional explanations and testimonies shall also be reflected in the sound recording.

(5)The sound recording shall end with a declaration by the person interrogated that it reflects correctly the explanations and testimonies given thereby.

Interrogation record in the case of sound recording

Article 239

(1) The investigative body shall draw up interrogation record also where a sound recording has been made.

(2) The record shall comprise: the major circumstances of the interrogation; the decision to make a sound recording; the notification of the person interrogated of the sound recording; the remarks made by the person interrogated in relation to the sound recording; the reproduction of the sound recording before the person interrogated and the statement of the pre-trial body and of the person interrogated as to the correctness of the sound recording.

(3) The sound recording shall be enclosed with the record, after it has been sealed with a note indicating: the body conducting the interrogation; the case, the name of the person interrogated and the date of interrogation. The note shall be signed by the pre-trial body and the interrogated person.

(4) Breaking the seal of the sound recording for the needs of investigation shall be allowed only by authorisation of the prosecutor and in the presence of the person interrogated. While playing the sound recording, the person interrogated shall also be present.

(5)After hearing, the sound recording shall be sealed again, pursuant to paragraph (3).

Video recording

Article 240

The provisions of Articles 237 -239 shall apply to making video recording, mutatis mutandis.

Sound and video recording in other investigative actions

Article 241

Sound and video recordings may also be made in other investigative actions, with due application of the provisions of Articles 237 - 239.

Chapter eighteen - ACTION TAKEN BY THE PROSECUTOR FOLLOWING COMPLETION

OF THE INVESTIGATION

Powers of the prosecutor

Article 242

(1) After receiving the case, the prosecutor shall terminate, suspend criminal proceedings, make a proposal for exemption from criminal liability with the imposition of an administrative sanction or a proposal for agreement to dispose of the case, or press new charges with an indictment, provided grounds to this effect are present.

(2) Where upon presentation of the investigation the investigative body has made considerable procedural violations, the prosecutor shall instruct him/her to remove these or shall remove them him/herself.

(3) The prosecutor shall exercise his/her powers under paras 1 2 within the shortest possible term, but not later than one month after receipt of the case file.

Termination of criminal proceedings by the prosecutor

Article 243

(1) The prosecutor shall terminate the criminal proceedings:

1. in cases under Article 24, paragraph (1);

2. should the prosecutor find that the involvement of the accused party in the offence has not been

proved;

(2) In the decree, the prosecutor shall also decide on issues pertaining to material evidence and revoke the measures of procedural coercion, as well as the measure securing the civil claim, where grounds for the imposition of the latter no longer exist.

(3) Copies of the decree for termination of the criminal proceedings shall be sent to the accused party and to the victim or his/her heirs, or to the prejudiced legal person who may, within seven days from the receipt thereof, appeal it before the respective first instance court.

(4) The court shall hear the case in a panel of one judge sitting in camera no later than 7 days following submission of the case-file, concluding on the substantiation and legality of the decree for termination of the criminal.

(5) By virtue of its ruling the court may:

1. Confirm the decree of the prosecutor,

2. Modify the decree of the prosecutor in relation to the grounds for termination of the criminal proceedings and the modalities of disposal of material evidence,

3. Revoke the decree of the prosecutor and remit the case to him/her accompanied with mandatory guidance on the application of the law.

(6)The decree under paragraph (5) may be objected by the prosecutor and appealed by the accused party, his/her defence counsel and the victim or his/her heirs, or by the prejudiced legal person, within seven days from notification before the respective intermediate appellate review instance court.

(7) The intermediate appellate review instance court shall make pronouncement in a three-judge panel sitting in camera, by a ruling which shall be final.

(8) No decree for the partial termination of criminal proceedings shall be drafted in the event of new constitution of the same individual in relation to the same criminal act.

(9) Where grounds under paragraph 1 were absent, the decree for termination of the criminal proceedings, which has not been appealed by the accused party, the victim or his/her heirs, or by the prejudiced legal person, may ex officio be revoked by a prosecutor with a higher-standing prosecution office.

Suspension of the criminal proceedings by the prosecutor

Article 244

(1) The prosecutor shall suspend criminal proceedings:

1. in cases under Articles 25 and 26;

2. where the perpetrator of the crime has not been discovered;

3. in the case of prolonged absence of an only eye witness from the country, where the interrogation of that witness is of exclusive interest to the discovery of the objective truth, unless such witness may be interrogated by letter rogatory, or through a phone or video conference.

(2) Where in cases under para 1, item 2 an accused party has been constituted, criminal proceedings in respect thereto shall be terminated.

(3) In the event of suspension of the criminal proceedings, the prosecutor shall send copies of his/her decree to the accused party and to the victim and his/her heirs.

(4) After reopening suspended criminal proceedings, the investigation shall be carried out within the terms under Article 234.

(5) A decree under para 1 may be appealed by the accused party, the victim or his/her heirs before

the respective first-instance court within seven days of receipt of a copy thereof. The court shall rule in a single-judge panel, in camera, no later than seven days of submission of the case-file in court, by a ruling, which shall be final.

(6) Subsequent appeal against the suspension of criminal proceedings may be submitted no earlier than six months after the ruling paragraph (5).

(7) In cases under para 1, item 3 criminal proceedings shall be suspended for a period not longer than one year.

Actions in suspended criminal proceedings

Article 245

(1) Where criminal proceedings have been suspended because the perpetrator had not been discovered, the prosecutor shall remit the case to the investigative body in order to continue searching for him/her. The investigative body shall notify the prosecutor of the outcome of search operations and hand over any collected material.

(2) Suspended criminal proceedings shall be reopened by the prosecutor, after elimination of the reasons for suspension, or provided there is need for further investigative actions.

(3) After reopening the suspended proceedings, the investigation shall be carried out within the terms under Article 234. These terms shall not take into account the time during which criminal proceedings were suspended.

Indictment

Article 246

(1) The prosecutor shall draw up an indictment where he/she is persuaded that the necessary evidence for the discovery of the objective truth and for pressing charges before court were collected, that there are no grounds for terminating or suspending criminal proceedings, that no considerable violation of procedural rules has been allowed that is susceptible of elimination.

(2) The following shall be indicated in the factual part of the indictment: the crime committed by the accused party; the time, place and manner of its perpetration; the victim and the amount of the damages; full data about the personality of the accused party, whether the conditions for application of Article 53 of the Criminal Code are at hand; the circumstances which aggravate or attenuate the liability of the accused party; the evidential materials from which the indicated circumstances have been established.

(3) The following shall be indicated in the concluding part of the indictment: information about the identity of the accused party; the legal qualification of the act; whether there are grounds for application of Article 53 of the Criminal Code ; whether there are grounds for the transfer of criminal proceedings and under which international treaty; the date and place of drawing up the indictment and the name and position of its author.

(4) The following shall be enclosed with the indictment: a list of persons to be summonsed at the court hearing; information about the remand measure taken, indicating the date of detention of the accused party if the measure is remand in custody or house arrest; information about the documents and the pieces of material evidence; information about the expenses incurred; information about the security measures taken; as well as information on the placement of children in cases under Article 63, paragraph (8).

PART FOUR: COURT PROCEEDINGS

Chapter nineteen - PREPARATORY ACTION PRIOR TO EXAMINATION OF THE CASE AT A COURT HEARING

Section I: Submission to court

Institution of proceedings before the first instance

Article 247

(1) Proceedings before the first instance court shall be instituted:

1. on the basis of indictment, and

2. on the basis of complaint by the victim - by order of the Chairperson of the court.

(2) The order of the Chairperson of the court, whereby institution of proceedings pursuant to item 1, item 2 is refused, shall be subject to appeal in pursuance of Chapter twenty-two.

(3) The indictment and the complaint shall be presented to the court in as many transcripts as is the number of the accused parties.

Issues considered by the judge-rapporteur

Article 248

(1) After institution of the case, the Chairperson of the court shall appoint a judge-rapporteur.

(2) The judge-rapporteur shall verify:

1. whether the case is within the jurisdiction of the court;

2. whether there are grounds for termination or suspension of the criminal proceedings;

3. whether there have been any substantial violations of procedural rules in the course of pre-trial proceedings susceptible of being removed, which have resulted in the restriction of procedural rights of the accused party and his counsel, of the victim or of his/her heirs;

4. whether grounds are present for the examination of the case in pursuance of Chapter twenty-four, twenty-five, twenty-seven, twenty-eight, and Chapter twenty-nine.

Termination of court proceedings by the judge-rapporteur

Article 249

(1) The judge-rapporteur shall terminate court proceedings in cases under Article 248, para (2), items 1 and 3.

(2) When terminating court proceedings on grounds of Article 248, paragraph (2), item 3, the judge-rapporteur shall return the case file to the prosecutor for further investigation, stating the violations made in his/her order.

Termination of criminal proceedings by the judge-rapporteur

Article 250

(1) The judge-rapporteur shall terminate criminal proceedings:

1. in cases under Article 24, paragraph 1, items 2, 3, 4, 6, 7, 8, 9 and 10;

2. where the act described in the indictment does not constitute a criminal offence.

(2) When terminating criminal proceedings, the judge-rapporteur shall rule on the issue of material evidence and revoke any measures for procedural coercion imposed on the accused party, as well as the measure securing the civil claim, where the grounds for its imposition have ceased to exist.

(3) A copy of the order for termination of criminal proceedings shall be served on the prosecutor and the accused party, as well as on the victim, where the latter is located at the address he/she has indicated.

(4) The order shall be subject to appeal and protest in pursuance of Chapter twenty-one.

Suspension of criminal proceedings by the judge-rapporteur

Article 251

(1) The judge-rapporteur shall suspend criminal proceedings in cases under Articles 25 and 26.

(2) The judge-rapporteur shall rule on the remand measure, the prohibition to leave the territory of the Republic of Bulgaria and the removal of the accused party from office.

(3) The judge-rapporteur shall also revoke the measure for securing the civil claim, if the grounds for its imposition are no more valid.

(4) The order shall be subject to appeal and protest in pursuance of Chapter twenty-two.

Scheduling the case for hearing

Article 252

(1) Where grounds are present for the examination of the case at a court hearing, the judge-rapporteur shall schedule the case for hearing within two months of receiving it.

(2) Where the case presents factual or legal complexity and in other exceptional circumstances the Chairperson of the court may issue an authorization in writing for the hearing to be scheduled within an extended period determined by him/her, which shall not be longer than three months.

Parties to the court proceedings

Article 253

The following shall be the parties to the court proceedings:

1. the prosecutor;

2. the defendant and the defence counsel;

3. the private complainant and private prosecutor.

4. the civil claimant and civil respondent.

Section II: Preparatory actions for examination of the case at a court hearing

Service of a copy of the indictment or private complaint on the defendant in court

Article 254

(1) At the order of the judge-rapporteur a copy of the indictment shall be served on the defendant.

(2) Where court proceedings have been instituted on the basis of a complaint by the victim, transcripts of the complaint and of the order whereby the court has allowed the complaint to proceed, shall be served on the accused party.

(3) Except in cases under Chapters twenty-four, twenty-five, and twenty-eight, within seven days following service of the papers under paragraphs 1 and 2, the defendant may file a response stating therein any objections and making new requests.

Notification of a court hearing scheduled

Article 255

(1) The victim or his/her heirs, as well as the prejudiced legal person, shall be notified of the scheduled court hearing.

(2) Except in cases under Chapters twenty-four, twenty-five, and twenty-eight, within seven days of service of notice, the victim or his/her heirs may file requests to be constituted as private prosecutor and civil claimant, and the prejudiced legal person - as a civil claimant.

Preparation of the Court Hearing

Article 256

(1) With regard to the preparation of the court hearing the judge-rapporteur shall rule on the following:

1. Examination of the case behind closed doors, the participation of a reserve judge or assessor, the appointment of an ex officio counsel, an expert witness, interpreter or a special assistant to people with hearing or verbal disabilities and on the performance of investigative action by letters rogatory.

2. The remand measure without further examination of the presence of reasonable doubt as to the commission of a crime;

3. Measures for securing the civil claim, confiscation, fine, and forfeiture of objects to the benefit of the state;

4. The procedure for examination of the case;

5. The persons to be summonsed.

(2) The orders of the judge-rapporteur under para 1, items 2 and 3 shall be subject to appeal in pursuance of Chapter twenty-two.

(3) The judge-rapporteur shall submit the case to an open hearing with regard to requests in relation to the remand in custody measure where the prosecutor, the defendant and his defence counsel shall be present. In issuing its ruling, the court shall deliberate whether grounds are present to reform or revoke the remand measure, without examining the issue of the presence of reasonable doubt as to the commission of a crime.

(4) A ruling under para 3 shall be subject to appeal in pursuance of Chapter twenty-two.

Obligations of the judge-rapporteur

Article 257

The judge-rapporteur shall order the persons on the list to be summonsed to the court hearing, and shall take the necessary measures to provide allow the defendant and his/her defence counsel, the victim or his/her heirs and the prejudiced legal person to acquaint themselves with the materials in the case and to make the necessary excerpts.

Chapter twenty: COURT HEARING

Section I: General provisions

Permanence of the court panel

Article 258

(1) The case shall be examined by one and the same constitution of the court from the beginning to the end of the court hearing.

(2) Where a member of the court panel cannot continue taking part in the examination of the case and should it be necessary for such member to be replaced, the court hearing shall start from the beginning.

Uninterruption of the court hearing

Article 259

After hearing the pleadings in court and the last word of the defendant the members of the panel may not consider another case prior to issuing a sentence in this case.

Reserve judges and assessors

Article 260

(1) Where the examination of a case requires a long period of time, a reserve judge or assessor may be appointed.

(2) The reserve judge or assessor shall attend the examination of the case from the beginning of the court hearing with the rights of member of the panel, except for the power to take part in deliberations and in making decisions on issues relevant to the case.

(3) Where a member of the court panel cannot continue taking part in the examination of the case, the reserve judge shall substitute for him with all rights of a member of the panel, and the examination of the case shall continue.

Measures to ensure the educative impact of the court hearing

Article 261

The court shall take the necessary measures to ensure the court hearing has proper educative impact.

Appointment of court hearings outside court premises

Article 262

Where necessary, the court hearing or separate court actions shall be appointed to be held outside court premises.

Trying the case behind closed doors

Article 263

(1) The case shall be examined or individual acts within court proceedings shall occur behind closed doors where this is required in view of safeguarding the state secret or morality, as well as in the hypotheses of Article 123, para 2, item 2.

(2) The provision of paragraph (1) may also apply where this is necessary for preventing the divulgence of facts pertaining to the intimate life of citizens.

(3) Sentences shall be announced publicly in all cases.

Individuals who may attend court hearings behind closed doors

Article 264

(1) Court hearings behind closed doors may be attended by individuals whom the presiding judge authorises to do so, as well as one individual indicated by each accused party.

(2) The provision of paragraph 1 shall not apply where there is a risk of divulging a state or other secret under statutory protection, as well as in the hypotheses of Article 123, para 2, item 2.

Individuals who may not attend the court hearing

Article 265

A court hearing may not be attended by:

1. Individuals who have not completed eighteen years of age, if they are not parties to the case or witnesses;

2. Armed individuals, with the exception of security guards.

Functions of the presiding judge

Article 266

(1) The judge presiding the court panel shall direct the court hearing with a view to securing objective, comprehensive and complete elucidation of the circumstances in the case, as well as exact compliance with the law.

(2) The presiding judge shall maintain decorum in the courtroom, being competent to impose a fine of up to BGN five hundred on anyone present on account of gross violations thereof.

(3) Orders of the presiding judge shall be mandatory for all individuals in the courtroom.

(4) The orders of the presiding judge may be revoked by the panel of the court.

Removal from the courtroom

Article 267

(1) Where the accused party, the private prosecutor, the private complainant, the civil claimant or the civil defendant fail to abide by the rules of decorum at the court hearing, the presiding judge shall warn them that upon second violation they shall be removed from the courtroom. Should such a person continue to violate the order, the court may remove that person from the courtroom for a specified period of time.

(2) When the removed persons return to the courtroom, the presiding judge shall inform such persons of the actions performed in their absence, by reading out the record drawn up by the court.

(3) Where the prosecutor, the defence counsel or the counsel, after the warning of the presiding judge, continue to violate the order in the courtroom, the court may adjourn the examination of the case, if it is impossible to replace any of them with another person under the respective procedure without prejudice to the case. The presiding judge shall inform the respective body about the violation.

(4) Where other individuals disturb the order, the presiding judge may remove them from the courtroom.

Mandatory participation of the prosecutor

Article 268

Participation of the prosecutor at court hearing of publicly actionable cases shall be mandatory.

Presence of the accused party in the court hearing

Article 269

(1) The presence of the accused party at the court hearing shall be mandatory in cases with indictment in serious crimes.

(2) The court may order the accused party to also appear in cases where the presence thereof is not mandatory, if this is necessary for the discovery of the objective truth.

(3) Provided this shall not obstruct the discovery of the objective truth, the case may be tried in the absence of the accused, if:

1. the person could not be found at the address specified by him, or he has changed his/her address without notifying the respective body;

2. his/her place of residence in this country is not known and has not been identified after a thorough search;

3. is located outside the boundaries of the Republic of Bulgaria

a) his/her place of residence is not known;

b may not be otherwise summonsed;

c) has been validly summonsed, but has failed to specify good reasons for his/her non-appearance.

Pronouncement on the remand measure and on the measures of procedural coercion in court proceedings

Article 270

(1) The issue about the reformation of the remand measure may be raised at any time during court proceedings. A new request in relation to the remand measure in the respective instance may only be made in the presence of change in the underlying circumstances.

(2) The court shall issue a decree at an open hearing without examining the issue of the presence of reasonable doubt as to the commission of a crime.

(3) The court shall also rule in respect to requests regarding the prohibition on the defendant from leaving the territory of the Republic of Bulgaria and his/her removal from office in pursuance of paras 1 and 2.

(4) The ruling under paras 2 and 3 shall be subject to appeal and protest in pursuance of Chapter twenty-two.

Section II: Actions to allow the case to progress at court hearing

Deciding on the issue of allowing the case to progress

Article 271

(1) After opening the court hearing in the case, the presiding judge shall check whether all persons summonsed have appeared, and if some have failed to appear - the reasons therefore.

(2) The court hearing shall be adjourned where one of the following fails to appear:

1. the prosecutor;

2. the accused party, should the appearance of the latter be mandatory, except in cases under Article 269, paragraph (3);

3. the defence counsel, where his/her replacement is not possible by another without infringing upon the right to defence of the accused party.

(3) In presence of more than one defence counsel, failure of one of them to appear shall not be grounds for continuance of the hearing.

(4)Where the private complainant fails to appear without valid reasons, the court shall apply Article 24, paragraph (4), item 5.

(5) The court hearing shall not be adjourned, if the victim or his/her heirs were not found at the address they had indicated for the service of process in this country.

(6) The court shall rule on the requests made for the constitution of new parties to the proceedings. A ruling whereby the admission of a new private prosecutor may be appealed in pursuance of Chapter twenty-two.

(7) Where the private prosecutor or the counsel thereof, the civil plaintiff or the counsel thereof, the civil respondent or the counsel thereof, fails to appear without valid reasons, the court shall examine the case in their absence, and where they fail to appear for valid reasons, the court hearing shall be adjourned, unless it has been expressly requested that the hearing continue.

(8) The failure of a witness or an expert to appear shall not be reason for adjourning the court hearing, should the court consider that even without them the circumstances in the case can be elucidated.

(9) In all cases of failure of summonsed persons to appear the court shall hear out the parties on the issue whether to proceed with examination of the case.

(10) In all cases of adjournment of the hearing, it shall be scheduled within a reasonable period, but not later than three months.

(11) Where the case is adjourned because of the non-appearance without good reason of a party, witness, or expert the court shall fine them up to BGN 500.

Verification of the identity of persons who have appeared

Article 272

(1) The presiding judge shall verify the identity of the accused party, asking the latter about his/her

full name, date and place of birth, nationality, citizenship, domicile, education, family status and his/her single registration number, as well as whether the accused party has been previously convicted.

(2) In the event of doubt in the identity of the defendant, he/she may be identified using photographs or information from citizens with established identity who know the person.

(3) After that, the presiding judge shall also verify the identity of the other persons that have appeared, whereas in the cases under Article 123, paragraph (2), item 2 this shall be done in such a way that does not allow disclosure of the identity of the witness.

(4) The presiding judge shall also verify whether the copies and notifications under Articles 254 and 255 have been served.

Removal of the witnesses from the courtroom

Article 273

(1) The witnesses shall be removed from the courtroom until their interrogation, with the exception of those who take part in the proceedings as private prosecutors, civil claimants and civil defendants.

(2) In the cases under Article 123, paragraph (2), item 2, the witnesses shall not be present in the courtroom.

Disqualification

Article 274

(1) The presiding judge shall explain to the parties their right to raise disqualifications against members of the court panel, the prosecutor, the defence counsel and the secretary, the experts, the translator and the interpreter, as well as their right to raise objections against the interrogation of certain witnesses.

(2) After the court makes pronouncement on the disqualifications and objections, the presiding judge shall explain to the parties their rights provided by this Code.

New requests

Article 275

(1) The parties may make new requests relevant to the evidence and the procedure of judicial trial.

(2) The court shall make pronouncement on the requests, after hearing the parties.

Section III: Judicial trial

Conducting the judicial trial

Article 276

(1) The judicial trial shall be conducted by the judge presiding the court panel and shall commence, in publicly actionable cases - by the prosecutor reading the indictment , and in privately actionable cases - by the private complainant reading the complaint.

(2) Where a civil claim has been filed, the statement of claim shall be read by the civil claimant.

(3) The presiding judge shall ask the defendant whether he/she has understood the charges.

Interrogation of the defendant

Article 277

(1) The presiding judge shall ask the defendant to give explanations on the indictment.

(2) The defendant may give explanations at any time of the judicial trial.

(3) The defendant shall be asked questions, first by the prosecutor or the private complainant, the private prosecutor, the counsel thereof, the civil claimant and the counsel thereof, the civil respondent and the counsel thereof, the other defendants and their defence counsels, and by the defence counsel of the defendant.

(4) The presiding judge and the members of the panel may question the defendant after the parties have finished with their questions.

Interrogation of the defendant in the absence of the other defendants

Article 278

(1) Questioning of a defendant in the absence of other defendants shall be allowed where this is necessary for the discovery of the objective truth.

(2) Upon return of the defendant to the courtroom, the presiding judge shall familiarise him/her with the explanations given in his/her absence, by reading out the record of the court.

Reading out the explanations of the accused party or the defendant

Article 279

(1) Depositions of the accused party or defendant given in the same case at the pre-trial proceedings before a judge or before another court panel, shall be read out where:

1. the defendant has died and the case has been allowed to progress with regard to the other defendants

2. the case is being tried in the absence of the defendant;

3. there is substantial contradiction between the explanations given at the pre-trial proceedings and those given at the judicial trial;

4. the defendant refuses to give explanations or alleges that he/she does not remember something.

(2) The use of sound and video recordings shall not be allowed before the explanations of the defendant have been read out.

Interrogation of witnesses

Article 280

(1) First, the witnesses called by the prosecution shall be interrogated, and then the other witnesses. Where necessary, the court may change this order.

(2) The questions shall be put to the witnesses in the order established under Article 277, paragraph (3) and (4). The party that has called the witness shall put questions before the other parties.

(3) Interrogated witnesses shall not be allowed to leave the courtroom before completion of the judicial trial, except by permission of the court, granted after hearing the parties. In cases under Article 123, paragraph (2), item 2, the witness shall remain at the disposal of the court in suitable premises out of the courtroom.

(4) After giving their testimonies, witnesses who are underage shall be removed from the courtroom, unless the court rules otherwise.

(5) In the cases under Article 123, paragraph (2), item 2, the interrogation of the witnesses shall be conducted in a way that does not allow disclosure of their identity.

Reading out depositions of witnesses

Article 281

(1) Depositions of witnesses given in the same case at the pre-trial proceedings before a judge or before another court panel, shall be read out where:

1. there are substantial contradictions between them and those given at the judicial trial;

2. the witness refuses to testify or alleges that he/she does not remember something;

3. a duly summonsed witness cannot appear before court for a long or indefinite period of time, and it is not necessary or the witness cannot be interrogated by letters rogatory;

4. the witness cannot be found to be summonsed, or has died.

5. the witness fails to appear, and the parties agree with that.

(2) In pursuance of the procedure under para the explanations made in the same case by an accused party could be read out, where said party is interrogated on grounds of Article 118, paragraph 1, item 1.

(3) In the presence of conditions under para 1, the testimony of a witness deposited before a pre-trial body may be read out with consent of the defendant and his/her defence counsel, the civil claimant, private prosecutor and their counsels. In respect to this particular judicial trial action, at the request of the defendant, the court shall appoint him/her a defence counsel, where he/she has none, and shall explain that the testimony read out may be used in the issuance of a sentence.

(4) Under conditions of paragraph 1, items 1 - 5 witness testimony submitted before a body entrusted with the pre-trial proceedings may be read out upon request of the defendant or his counsel, where their request under Article 223, paragraph 4 has not been granted.

(5) The use of sound and video recordings shall not be allowed before the explanations of the witness have been read out.

(6) Where the witness has been interrogated by letter rogatory, the record of interrogation shall be read out.

Interrogation of an expert witness

Article 282

(1) Questions shall be posed to the expert after the expert's report has been read out.

(2) Questions shall be asked in the order set out in Article 277, paras 3 and 4.

(3) The interrogation of an expert witness may not take place, where the latter fails to appear and the parties do not object thereto.

Reading out records and other documents

Article 283

The court shall read out the records of the observation on site and of physical examination, of search and seizure, of re-enactment of the crime, and of identification of persons and objects, as well as the other documents enclosed with the case-file, if they contain facts of significance for elucidating the circumstances in the case.

Presentation of material evidence

Article 284

The material evidence shall be presented to the parties and where it is necessary - to the expert and to the witnesses as well.

Observation on site

Article 285

Observation on site shall be conducted by the entire constitution of the court in the presence of the parties, and where necessary - also in the presence of the expert and witnesses.

Conclusion of the judicial trial

Article 286

(1) Where all investigative actions have been conducted, the judge presiding over the panel shall ask the parties if they have any requests for undertaking new investigative actions, needed for the objective, comprehensive and full elucidation of the circumstances in the case.

(2) If the parties do not make any requests or if those made are found unjustified, the presiding judge shall declare the judicial trial completed.

Modification of the indictment

Article 287

(1) Where during trial circumstances are established which had not been known to pre-trial bodies, the prosecutor shall issue a new indictment, if the said circumstances are grounds for substantial changes in the factual part of the indictment or for applying a law for a more heavily punishable crime.

(2) The court shall terminate the criminal proceedings and send the case-file to the respective public prosecutor when the new indictment is for a crime falling under the jurisdiction of a higher or military court.

(3) Besides the cases under paragraph (2) the court shall adjourn the hearing should the parties request so in order to prepare themselves for the new indictment.

(4) In the event of substantial changes in the factual part of the charges, the provisions of Article 279 shall not apply to explanations given before the new charges were presented.

(5)Where in the course of the judicial trial the prosecutor or the private prosecutor finds out that it refers to an offence prosecuted under a complaint of the victim and the criminal proceedings were instigated prior to the expiry of the time limit under Article 81 (3), the prosecutor on grounds of Article 48 or the private prosecutor may ask the court to make pronouncement in the sentence as well with regard to the offence which is prosecuted upon complaint of the victim.

(6)Where the criminal proceedings have been instituted following a complaint of the victim and in the course of judicial trial a substantial change in the factual part of the indictment is established, the private complainant may press a new charge, provided that the time limit under Article 81, paragraph (3) has not expired. In this case the court shall adjourn the hearing, if the defendant or his/her defence counsel requests so in order to prepare themselves for the new indictment.

(7) Where the criminal proceedings have been instigated on the grounds of a complaint by the victim and in the course of judicial trial it is established that the crime is publicly actionable, the court shall terminate the criminal proceedings and shall forward the case-file to the respective prosecutor.

Termination of court proceedings and return of the case-file to the prosecutor

Article 288

The court shall terminate court proceedings and shall forward the case-file to the respective prosecutor where:

1. there have been any removable substantial violations of procedural rules in the course of preliminary proceedings, which have resulted in the restriction of procedural rights of the accused or his counsel;

2. in the course of the judicial trial it is established that the crime is subject to examination by a higher standing or military court.

Termination of criminal proceedings at a court hearing

Article 289

(1) The court shall terminate the criminal proceedings in cases under Article 24, paragraph (1), items 2 - 10 and paragraph 4.

(2) Where at court hearing the presence of grounds under Article 24, paragraph (1), items 2 and 3 is revealed, and the defendant makes a request for the proceedings to continue, the court shall make a pronouncement by issuing a sentence.

(3) Where the criminal proceedings are terminated, the court shall rule on the material evidence, shall revoke the remand measures imposed on the defendant, and the measure to secure the civil claim - where grounds for its imposition no longer exist.

(4)The ruling shall be subject to appeal and protest under the terms and conditions of Chapter twenty-one.

Termination and suspension of criminal proceedings at a court hearing

Article 290

(1) The court shall suspend the criminal proceedings in the cases under Article 25 and 26;

(2) The ruling shall be subject to appeal and protest in pursuance of Chapter twenty-two.

Section IV: Court debates

Order of court debates

Article 291

(1) Upon completion of judicial trial the court shall proceed to hearing court debates.

(2) Court debates shall start with a speech of the public prosecutor, or the private complainant, respectively. Afterwards the floor shall be consequently given to the private prosecutor and the counsel thereof, the civil claimant and the counsel thereof, the civil defendant and the counsel thereof, the defence counsel and the defendant.

Data to which reference may be made in court debates

Article 292

The parties participating in court debates may refer only to evidence collected and verified in the course of judicial trial, pursuant to the procedure established in this Code.

Statement by the prosecutor that he/she does not maintain the indictment

Article 293

The statement by the prosecutor that criminal proceedings should be terminated or that a sentence of acquittal should be issued, shall not exempt the court from the obligation to make pronouncement in accordance with their inner conviction.

Re-opening of judicial trial

Article 294

(1) The parties may request that new investigative actions be taken.

(2) Should it consider the request justified, the court shall terminate court debates, re-open judicial trial and, after completion of the new investigative actions, resume the hearing of court debates.

Right of rebuttal

Article 295

(1) Each party shall have the right to rebuttal in respect of the allegations and arguments of the other parties.

(2) The defence counsel and the defendant shall have the right to last rejoinder.

Ban against restriction of court debates in time

Article 296

(1) The court may not limit the time of court debates.

(2) The presiding judge may interrupt the parties only where they obviously deviate to issues not relevant to the case.

Section V: Last plea of the defendant

Securing the right of the defendant to last plea

Article 297

(1) After completion of court debates, the presiding judge shall give the defendant the right to last plea.

(2) The court shall be obligated to provide the defendant with ample opportunity to express his/her final attitude towards the indictment in the last plea.

(3) The defendant may not be subjected to interrogation in the course of the last plea.

Ban against restriction of the last plea in time

Article 298

(1) The court may not limit the time for the last plea of the defendant.

(2) The presiding judge may interrupt the defendant only in case of obvious deviation into matters not relevant to the case.

Re-opening of judicial trial

Article 299

If the defendant reveals new data in the course of the last plea, which are of significance to the case, the court shall re-open the judicial trial and shall again hear the debates of the parties and the last plea of the defendant.

Section VI: Pronouncement of the sentence

Withdrawal of the court for deliberations

Article 300

After hearing the last plea of the defendant, the court shall withdraw for secret deliberation in order to pronounce the sentence.

Issues to be considered by the court in pronouncing the sentence

Article 301

(1) In pronouncing the sentence, the court shall consider and decide on the following issues:

1. whether there is an act done, was it perpetrated by the defendant, and was it culpably perpetrated;

2. whether the act constitutes a crime and whether its qualification is correct;

3. whether the defendant is subject to punishment, what punishment needs to be determined, and in cases under Article 23 - 25 and 27 Criminal Code , what aggregate punishment to be imposed on him/her;

4. whether there are grounds for exemption from criminal responsibility under Article 61, paragraph (1) and Article 78a, paragraph (1) of the Criminal Code ;

5. whether the defendant should be exempted from serving the punishment, what must be the probation period in case of conditional sentencing, and in the cases under Article 64, paragraph (1)

of the Criminal Code - what educative measure should be imposed;

6. what regime of deprivation of liberty should be applied initially

7. who should be entrusted with the educational work in the cases of conditional sentencing;

8. whether the conditions under Articles 68 and 69 of the Criminal Code are at hand, and what punishment should the defendant serve;

9. whether the grounds pursuant to Article 53 of the Criminal Code are at hand;

10. should the civil claim be honoured and to what extent;

11. how to dispose of the pieces of material evidence;

12. who should be charged with the costs of the case.

(2) Where the defendant has been charged with several crimes, or several persons have participated in the perpetration of one or several crimes, the court shall consider and decide on the issues under paragraph (1) for each person and for each crime separately.

(3) Where the court has omitted to make pronouncement on the civil claim, the court shall make such pronouncement by an additional sentence within the term fixed for appeal.

Re-opening of judicial trial

Article 302

Where in the course of deliberations the court finds that the circumstances in the case have not been sufficiently elucidated, it shall re-open the judicial trial.

Finding the defendant guilty

Article 303

(1) Sentences may not be based on supposition.

(2) The court shall find the defendant guilty where the accusation is proved beyond doubt.

Finding the defendant not guilty

Article 304

The court shall find the defendant not guilty where it is not established that the act has been committed, that it has been committed by the defendant or that it has been culpably committed by the defendant, as well as where the act does not constitute a crime.

Content of the sentence

Article 305

(1) Sentences shall be issued in the name of the people.

(2) The introductory part of a sentence shall specify: the date of its issuance; the court, the names of the members of the court panel, of the secretary and of the prosecutor; the case in which the sentence is issued; the name of the defendant and the offence in respect to which charges were pressed.

(3) The reasoning shall specify which circumstances are considered ascertained, on the basis of what evidentiary materials, and what are the legal considerations for the decision taken. In presence of contradictory evidence material, arguments need to be submitted why some are credited and others - rejected.

(4)The operative part of the sentence shall contain data about the identity of the defendant and the decision of the court on issues set forth under Article 301. The court before which the sentence may be appealed and within what term shall also be Designated therein.

(5) In cases of Article 21, paragraph (1), items 2 and 3 in combination with Article 289, paragraph (2), the court shall find the defendant guilty and shall apply the respective provisions on amnesty or prescription; in the cases under Article 61, paragraph (2), proposal one of the Criminal Code , the court shall find the defendant guilty, exempt him/her from criminal responsibility and impose educative measure thereon; in the cases under Article 78a of the Criminal Code , it shall find the defendant guilty, exempt him/her from criminal responsibility and impose an administrative sanction on him/her.

(6) An acquitting sentence may not contain expressions which cast doubt on the innocence of the acquitted.

Matters on which the court may make pronouncement by ruling

Article 306

(1) The court may also make its pronouncement by ruling on matters regarding:

1. fixing an aggregate punishment pursuant to Articles 25 , 27 , and the application of Article 53 of the Criminal Code ;

2. the initial regime of serving the punishment of deprivation of liberty, where the court has omitted to do so in the sentence;

3. whether the conditions under Articles 68, 69, 69a and 70, paragraph (7) of the Criminal Code are at hand, and what punishment the defendant is to serve;

4. the material evidence and the costs of the ease.

(2) In the cases of items 1 to 3 of paragraph (1), the court shall make its pronouncement at a court hearing to which the convicted shall be summonsed.

(3) The ruling under para 1, items 1 - 3 may be appealed and protested in pursuance of Chapter twenty-one, and the one under para 1, item 4 - in pursuance of Chapter twenty-two.

Pronouncement on the civil claim

Article 307

The court shall make pronouncement on the civil claim also where it finds the defendant not guilty, criminal responsibility being extinct, or where the defendant should be exempted from criminal responsibility.

Time limit for setting forth the reasons of the sentence

Article 308

(1) Reasoning may be prepared after announcement of the sentence, but not later than fifteen days thereof.

(2) In cases of factual and legal complexity reasoning may be set forth after pronouncement of the sentence, but not later than 30 days.

Pronouncement on remand measures and on the measure for securing the civil claims, the fine and the confiscation

Article 309

(1) After issuing the sentence, the court shall also make pronouncement on the remand measure.

(2) Where the defendant has been exempted from criminal responsibility, conditionally sentenced, convicted to punishment less severe than deprivation of liberty, or acquitted, the remand measure shall be rescinded or replaced with the least severe measure provided for by law. In this case the detained defendant shall be released in the courtroom.

(3) Where the defendant is acquitted, the court shall also make pronouncement on the measure for

securing the civil claim, the fine and the confiscation.

(4) The ruling pursuant to paragraph 2 and 3 is subject to appeal an protest under the terms and conditions of Chapter XXII.

Signature and pronouncement of the sentence

Article 310

(1) The sentence shall be read out by the presiding judge immediately after it is signed by all members of the court panel.

(2) Where the preparation of reasoning has been postponed, the presiding judge shall only announce the operative part, signed by all members of the panel. Court assessors need to mandatorily sign the reasoning, where the sentence has been signed with a dissenting opinion.

(3) The dissenting opinion shall be noted down upon signature of the sentence, of its operative part respectively, and shall be set forth in writing within the term of Article 308.

(4) When the punishment of imprisonment has been imposed on the national of another state and the Republic of Bulgaria has a treaty for the transfer of sentenced persons with that state, the court shall notify the sentenced person of the possibility to request serving the punishment imposed in the state whose national he or she is.

Section VII: Record of the court hearing

Content of the record

Article 311

(1) Further to data under Article 129, paragraph (1), the record of the court hearing shall include:

1. names of persons who have failed to appear and the reasons therefore;

2. data about the personality of the defendant; the date on which a copy of the indictment or of the complaint have been served on the defendant together with the order;

3. explanations of the defendant, testimonies of witnesses and reports of expert witnesses;

4. all orders of the presiding judge and rulings of the court;

5. the documents and records read out, as well as the film, sound or video recordings used;

6. summary of the court debates and of the last plea of the defendant;

7. the pronouncement of the sentence pursuant to the respective procedure and the explanations of the presiding judge about the procedure and term of appeal thereof.

(2) The record of the court hearing shall be signed by the presiding judge and the court secretary.

(3) The court may also order the preparation of a sound and video recording of the court hearing subject to the provisions of Article 237-239.

Corrections and supplements to the record

Article 312

(1) The parties shall have the right to make requests in writing for corrections and supplements within three days following the date of preparation of the record.

(2) The requests shall be examined by the presiding judge, and where the presiding judge refuses to grant them - by the panel of the court sitting in camera.

Chapter twenty-one: INTERMEDIATE APPELLATE REVIEW PROCEEDINGS

Section I: General provisions

Subject matter of the intermediate appellate review

Article 313

The intermediate appellate review instance shall verify the correctness of the sentence that has not entered into force.

Limits of the intermediate appellate review

Article 314

(1) The intermediate appellate review instance shall verify in full the correctness of the sentence, irrespective of the grounds pointed out by the parties.

(2) The intermediate appellate review instance shall also revoke or modify the sentence in the section that has not been appealed, as well as with respect to the persons who have not filed an appeal, provided there are grounds therefore.

Evidence which shall be allowed in the intermediate appellate review instance

Article 315

The intermediate appellate review instance shall allow all evidence that can be collected under the terms and procedures set forth in this Code.

Establishment of a new factual situation

Article 316

The intermediate appellate review court may establish the existence of a new factual situation.

Application of the rules for the first instance

Article 317

The rules for first instance proceedings shall apply, insofar as this Chapter does not contain any special rules.

Section II: Institution of proceedings before the intermediate appellate review instance

Right to appeal or protest

Article 318

(1) Proceedings before the intermediate appellate review instance shall be instituted by protest of the prosecutor or by appeal of the parties.

(2) The prosecutor shall file a protest where he/she finds that the sentence is wrong. The prosecutor may not file a protest against the sentence where it has been issued in accordance with the requests he/she had made.

(3) The defendant may appeal the sentence in all its sections. The defendant may also appeal it only with regard to the reasons and the grounds for acquittal.

(4) The private complainant and the private prosecutor may appeal the sentence if their rights and legal interests have been infringed upon. They may not file appeal against the sentence where it has been issued in accordance with the requests they had made.

(5) The civil claimant and the civil defendant may appeal the sentence only with regard to the civil claim, if their rights and legal interests have been infringed upon.

(6) Appeals may be filed also by the counsels.

Terms and procedures for filing appeal and protest

Article 319

(1) Appeals and protests shall be filed within 15 days after the announcement of the sentence.

(2) Appeals and protests shall be filed through the court which has pronounced the sentence.

Form and content of the appeal and protest

Article 320

(1) The appeal and protest shall be made in writing. They shall specify: the court to which they are addressed; the name of the author and the request which is being made. The appeal and protest shall indicate the circumstances which have not been elucidated and the evidence to be collected and verified by the intermediate appellate review court.

(2) The appeal and the protest shall be signed by the author.

(3) The parties may file additional written statements for the purpose of supplementing the arguments and considerations expounded in the appeal and the protest, by the time the case is allowed to progress at a court hearing.

(4) Copies shall be enclosed with the appeal and protest, according to the number of the interested parties.

(5)Where several persons have been summonsed as defendants in the capacity of accomplices, each of them may join the appeal already filed by the other, making an oral or written request therefore not later than the moment the case has been allowed to progress.

Notices of appeal and protest

Article 321

The court through which the appeal and the protest have been lodged shall immediately advise the parties concerned, sending them copies thereof.

Written objections by the parties

Article 322

The parties may file written objections against the appeal or protest filed until the case is allowed to proceed before the intermediate appellate review instance.

Return of the appeal and the protest

Article 323

(1) The first-instance court judge shall return the appeal and protest where:

1. they do not comply with the requirements under Article 320, paras 1 and 2, if the omission or discrepancy is not remedied within seven days after the invitation;

2. they have not been filed within the term under Article 319 (1);

3. they have not been filed by a person entitled to appeal or protest the sentence.

(2) The return of the appeal and the protest shall be subject to appeal under the terms and conditions of this Chapter.

Withdrawal of the appeal and the protest

Article 324

(1) The appeal and the protest may be withdrawn by the appealer or the prosecutor who participates in the hearing at the intermediate appellate review instance, prior to the beginning of judicial trial, and where such is not carried out, prior to the commencement of court debates. The protest may be withdrawn as well by the prosecutor who has made it, prior to the institution of proceedings before the intermediate appellate review instance.

(2) The defence counsels may not withdraw the appeal without consent of the defendant and counsels - without consent of their mandators respectively.

Forwarding the case-file to the appellate review instance

Article 325

The case-file together with the appeals, protests and objections received shall be forwarded to the intermediate appellate review instance after the expiry of the term under Article 319 (1).

Pronouncement of the intermediate appellate review instance court on the withdrawal of the appeal and protest

Article 326

In the cases under Article 324 the intermediate appellate review instance court shall make pronouncement in camera.

Admission of evidence

Article 327

(1) Admission of requested evidence shall be decided at a hearing in camera by the judicial panel hearing the case.

(2) The court shall rule on the need for interrogation of the defendant.

(3) Witnesses and expert witnesses interrogated by the first instance court shall be admitted in the intermediate appellate review instance if the court assumes that their repeated interrogation is necessary or where their testimony or conclusions will refer to newly found circumstances.

(4) New witnesses and expert witnesses shall be allowed where the court accepts that their evidence or conclusions will be important for the correct disposition of the case.

(5) Parties may present new written and material evidence until the case is allowed to progress.

Section III: Issuance of the judgement

Summonsing the parties

Article 328

The parties and the other persons to take part in the intermediate appellate review proceedings shall be summonsed pursuant to the procedure set forth under Articles 178 - 182, except where they have been informed by the first instance court of the date on which the case will be examined.

Participation of the parties in the court hearing

Article 329

(1) Participation of the prosecutor in the court hearing of publicly actionable cases shall be mandatory.

(2) Failure of the other parties to appear without valid reasons shall not be an obstacle to the examination of the case.

Action for allowing the case to progress

Article 330

After the start of the court hearing, the court shall hear the parties on allowing the case to progress and rule on the requests, comments and objections.

Report by the judge-rapporteur

Article 331

(1) The appeal and the protest shall be examined at a court hearing.

(2) The examination of the case shall start with a report by the judge-rapporteur.

(3) The substance of the sentence and the content of the appeals, the protests and objections, as well as the allowed evidence shall be Expounded in the report.

Judicial trial

Article 332

For the purposes of judicial trial the court may use all techniques for collecting and verifying the allowed evidence.

Court debates and last plea of the defendant

Article 333

(1) Court debates following the procedure under Article 291, para 2 shall bear arguments as to the sentence issued and the merits of the indictment.

(2) After completion of the court debates, the presiding judge shall give the defendant the right to last plea.

Powers of the intermediate appellate review court

Article 334

The intermediate appellate review court may:

1. revoke the sentence and return the case for another examination by the prosecutor or the first-instance court;

2. revoke the first-instance court sentence and issue a new sentence;

3. modify the first-instance sentence;

4. rescind the sentence and terminate criminal proceedings in cases under Article 24, para 1, item 2 - 8 and 10 and para 4, as well as when the first instance court has not exercised its powers under Article 369, para 4;

5. suspend criminal proceedings in cases under Article 25;

6. confirm the first-instance sentence.

Revocation of the sentence and return of the case for new examination

Article 335

(1) The intermediate appellate review court shall revoke the sentence and return the case for new examination to the prosecutor where:

1. there have been any substantial violations of procedural rules in the course of preliminary proceedings, which have resulted in the restriction of procedural rights of the accused party and his counsel;

2. it is established that the crime for which proceedings have been instituted on the basis of a complaint by a private complainant is publicly actionable.

(2) In cases under Article 348, paragraph 3 the appellate court shall revoke the sentence and remit the case to the first instance, unless it can itself eliminate the violations allowed or these might not be avoided in a new examination of the case.

(3) The appellate court may not revoke sentences under paragraph 1, item 2, or revoke a sentence of acquittal under paragraphs 1 and 2, if there is no accompanying protest by the prosecutor or appeal by the private complainant or the private prosecutor, correspondingly.

Revocation of the sentence and issuance of a new sentence

Article 336

(1) The intermediate appellate review court shall revoke the sentence and issue a new sentence where it is necessary:

1. to apply the law for a more heavily punishable crime where such charges has been pressed during first-instance proceedings;

2. to sentence an acquitted defendant where such charges have been pressed at first instance;

3. to acquit a defendant sentenced by the first-instance court.

(2) Powers under paragraph 1, items 1 and 2 shall be exercised in the event of an accompanying protest by the prosecutor, or an appeal by the private complainant or private prosecutor, correspondingly.

Modification of the first-instance sentence

Article 337

(1) The intermediate appellate review court may:

1. reduce the punishment;

2. apply a law providing for equally or less heavily punishable crime;

3. exempt the defendant from serving the punishment in accordance with Article 64 , paragraph 1 or Article 66 of the Criminal Code ;

4. exempt the defendant from criminal liability in accordance with Articles 78 and 78a of the Criminal Code.

(2) Where a protest or appeal correspondingly by the prosecutor or private complainant or the private prosecutor exist, the appellate court may:

1. increase the punishment;

2. revoke the exemption from serving the punishment under Article 64 , paragraph 1 or Article 66 of the Criminal Code .

(3) The intermediate appellate review instance may also rule only in respect of the reasons and grounds for acquittal of the defendant or with regard to the civil claim.

Confirmation of the sentence

Article 338

The intermediate appellate review court shall confirm the sentence where it finds that no grounds exist for revoking or modifying it.

Content of the judgement of the intermediate appellate review instance

Article 339

(1) The judgement of the intermediate appellate review court shall indicate: the appeal or protest on which pronouncement has been made; the main content of the sentence, the appeal or the protest; a brief outline of the arguments put forward by the parties at the court hearing, and its judgement on the appeal or the protest.

(2) In the event of confirmation of the sentence, the intermediate appellate review instance shall indicate the grounds for rejecting the arguments in favour of the appeal or the protest.

(3) Where the intermediate appellate review instance issues a new sentence, the requirements of Articles 305 shall apply.

Time limit for drawing up and announcement of the judgement

Article 340

(1) The judgement of the intermediate appellate review instance together with the reasons thereof shall be drawn up not later than thirty days following the court hearing where the case has been

announced for adjudication.

(2) The judgement together with the reasons thereof shall be announced at a court hearing to which the parties shall be summonsed or the parties shall be notified in writing that it has been drawn up.

Chapter twenty-two: PROCEDURE BEFORE THE INTERMEDIATE APPELLATE REVIEW INSTANCE FOR VERIFICATION OF COURT RULINGS AND ORDERS

Acts subject to verification

Article 341

(1) The rulings and orders, which terminate the criminal proceedings, as well as the rulings under Article 306, paragraph 1, item 1 - 3, Article 431, 436 and Article 457, para 2 shall be verified under the terms and conditions of Chapter twenty-one.

(2) The rulings and orders for which this has been expressly provided for by law shall be reviewed in pursuance of the procedure under this Chapter.

(3) All other rulings and orders shall not be subject to review by the intermediate appellate review instance court apart from the sentence.

Time limit for filing accessory appeal and protest and objections thereto

Article 342

(1) Accessory appeals and protests from acts under Article 341, para 2 shall be filed within 7 days following the pronouncement, and where such acts were made in camera - within 7 days following service of a copy thereof.

(2) The defendant shall be informed of the accessory protest filed and can raise objections within 7 days following notification.

Effect of the accessory appeal and protest

Article 343

Accessory appeals and protests shall not suspend proceedings in the case and the execution of the ruling, unless the first or intermediate appellate review instance courts rule otherwise.

Revocation of the ruling by the court which has pronounced it

Article 344

The court which has issued a ruling may revoke or modify it itself at a hearing in camera. The court shall otherwise send the case to the intermediate appellate review instance together with the accessory appeal or protest received.

Procedure for examining accessory appeals and protests

Article 345

(1) The intermediate appellate review instance court shall examine accessory appeals and protests in camera within 7 days, and should it find necessary - at a court hearing to which the parties shall be summonsed, to be scheduled within a reasonable time, but not more than a month.

(2) Should it revoke the ruling, the intermediate appellate review instance court shall decide on the matters raised in the accessory appeal and protest.

(3) Insofar as there are no special rules in this Chapter, the rules of procedure under Chapter twenty-one shall apply.

Chapter twenty-three: CASSATION PROCEEDINGS

Subject matter of cassation appeals

Article 346

The following may be subject to cassation appeal:

1. new sentences and judgements of the intermediate appellate review instance court, except for those which exempted the offender from criminal responsibility by imposing an administrative sanction on the grounds of Article 78a of the Criminal Code and those under Article 334, items 1;

2. new sentences issued by the District Court as an intermediate appellate review instance court, except those, whereby the perpetrator has been exempted from criminal responsibility by imposing an administrative sanction on the grounds of Article 78a of the Criminal Code ;

3. rulings of the District and Appellate Courts under Article 306, para 1, issued in cases of new sentences;

4. decisions and rulings of the District and Appellate Courts issued for the first time in the course of intermediate appellate review instance court proceedings, whereby the progress of criminal proceedings is terminated, suspended or otherwise barred.

Scope of the cassation inspection

Article 347

(1) The cassation instance shall examine the sentence or judgement only in its appealed section and with respect to the persons who have appealed against it, and it shall make pronouncement within two months.

(2) The cassation instance shall also revoke or modify the sentence or judgement with respect to the defendants who have not lodged an appeal, provided that the grounds therefore are in their favour.

Cassation grounds

Article 348

(1) The sentence and the judgement shall be subject to revocation or modification in the course of cassation proceedings in any of the following cases:

1. breach of law;

2. substantial breach of procedural rules;

3. obviously unfair punishment.

(2) There is a breach of law where the law has been applied wrongly or an applicable law has not been applied.

(3) The breach of procedural rules shall be substantial where:

1. it has led to restriction of the procedural rights of the accused party or the other parties and has not been remedied;

2. there is no reasoning or record of the court hearing of the first instance or the intermediate appellate review instance;

3. the sentence or judgment have been issued by an illegitimate panel;

4. secrecy of deliberations has been infringed upon on the occasion of rendering a sentence or judgment.

(4) A procedural breach which cannot be remedied in the course of new examination of the case shall constitute no grounds for revocation of the sentence.

(5) The punishment shall be obviously unfair where:

1. it is in obvious discrepancy with the public threat of the offence and the offender, the circumstances mitigating and aggravating liability, as well as the objectives of Article 36 of the

Criminal Code ;

2. conditional sentencing rules have been wrongly applied or their application has been wrongly denied.

Right to cassation appeal and protest

Article 349

(1) Proceedings before the cassation instance shall start at the protest of the prosecutor or the appeal of the other parties.

(2) The prosecutor may lodge a cassation protest in the interest of the accusation as well as in the interest of the defendant.

(3) The other parties may lodge cassation appeals where their rights and legal interests have been impaired.

Terms and procedures for serving cassation appeals and protests

Article 350

(1) The appeal and the protest against the sentence of the intermediate appellate review court shall be filed within the time limits prescribed by Article 319, paragraph 1.

(2) The appeal and the protest against the judgement of the intermediate appellate review instance court shall be filed within fifteen days from their announcement as provided under Article 340, paragraph (2).

(3) Appeals and protests shall be filed through the court which has pronounced the appealed sentence or judgement.

(4) Copies shall be enclosed with the appeal and protest, according to the number of interested parties.

Content of the cassation appeal and protest

Article 351

(1) The cassation appeal and the protest shall indicate: the author; the sentence, the judgement and the section thereof which is appealed; the cassation grounds and the data supporting them; the request.

(2) The appeal and the protest shall be signed by the author.

(3) Any objection against an appeal or a protest or any supplements thereto may be made in writing before the case is allowed to progress.

(4) The appeal and the protest shall be returned by the judge with the intermediate appellate review court through which they have been served where:

1. they do not comply with the requirements under paragraphs 1 and 2 and the omission or discrepancy has not been remedied within the 7 day period afforded by a judge with the intermediate appellate review court;

2. they have not been filed by a person entitled to serve an appeal or a protest or within the specified time;

3. they are not subject to cassation proceedings.

(5) The return of the appeal and the protest shall be subject to appeal before the Supreme Court of Cassation which rule in camera.

Withdrawal of the cassation appeal and the protest

Article 352

(1) The appeal and the protest may be withdrawn by the parties which have filed them until the case is allowed to progress at a court hearing.

(2) The defence counsel may only withdraw his/her appeal with consent of the sentenced person and the counsel - with consent of his/her mandatory.

Examination procedure for cassation appeals and protests

Article 353

(1) The cassation appeal and the protest shall be examined at a court hearing to which the parties shall be summonsed.

(2) The participation of a prosecutor shall be mandatory.

(3) Failure of the other parties to appear without valid reasons shall not be an obstacle to the examination of the case. The case shall be examined in the absence of a party, where the latter has not been located at the address it had indicated.

(4) The report of the judge-rapporteur shall expound the circumstances of the case, the content of the appealed sentence or judgement and the complaints against them.

(5) No judicial trial shall be conducted.

(6) Hearings shall be conducted under the terms and conditions prescribed by the court.

Powers of the cassation instance in issuing a judgement

Article 354

(1) After examination of the appeal and the protest filed, the cassation instance may:

1. leave the sentence or the judgement in force;

2. revoke the sentence or the judgement and terminate or suspend the criminal proceedings in cases provided for by law or acquit the defendant in cases under Article 24, paragraph 1, item 1;

3. modify the sentence or judgement;

4. wholly or partially revoke the sentence or judgment and remit the case for new examination.

(2) The cassation instance shall modify the sentence where it is necessary:

1. to reduce the punishment;

2. to apply a law for an equally or less heavily punishable crime;

3. to apply the provisions of Article 64, paragraph 1 or Article 66 of the Criminal Code ;

4. to apply a law for a more heavily punishable crime where no increase of the punishment is required provided that charges have been pressed at the first instance.

5. to honour of reject the civil claim where there was a breach of the law, or to increase or decrease the amount of immaterial damages awarded or to terminate proceedings in relation to the civil claim.

(3) The cassation instance shall wholly or partially revoke the sentence and return the case for new examination where it is necessary:

1. to increase the punishment;

2. to eliminate substantial procedural violations;

3. to eliminate violations of the substantive law in the issuance of the acquittal.

(4) The judgement of the cassation instance shall be drawn up in accordance with the rules under Article 339, paragraphs 1 and 2 and announced not later than thirty days after the court hearing in which the case was announced for adjudication. This judgement shall not be subject to appeal.

Mandatory instructions of the cassation instance and conditions for aggravating the position of the defendant

Article 355

(1) During a new examination of the case, the instructions issued by the cassation instance shall be mandatory with respect to:

1. the stage at which the new examination of the case will start;

2. the application of the law, except for cases where other factual situations are ascertained;

3. the elimination of the substantial violations of procedural rules.

(2) The court to which the case is returned for new examination may impose a heavier punishment or apply the law for a more heavily punishable crime where the sentence has been revoked following a protest of the prosecutor, an appeal of the private complainant or of the private prosecutor due to a request for aggravation of the situation of the defendant.

(3) The court to which the case is returned for new examination may sentence the acquitted defendant where the sentence has been revoked following a protest of the prosecutor, an appeal of the private complainant or of the private prosecutor due to a request for sentencing.

PART FIVE: SPECIAL RULES

Chapter twenty-four: SUMMARY PROCEEDINGS

Cases in which summary proceedings shall be carried out

Article 356

(1) Summary proceedings shall be carried out, where:

1. the perpetrator was caught in the act or immediately after the perpetration;

2. obvious traces of the crime have been found on the body or the clothes of the perpetrator;

3. the perpetrator has appeared in person before the respective bodies of the Ministry of Interior, the investigative body or the prosecutor and has confessed the perpetrated crime;

4. an eye-witness has designated the perpetrator of the crime.

(2) The investigative body shall be obligated to forthwith notify the prosecutor.

(3) Summary proceedings shall be considered instituted upon drafting the act for the first investigative action.

(4) The person in respect to whom there is a reasonable assumption that he/she has committed crime, shall be considered as accused party from the moment of drafting the act for the first investigative action taken against him/her.

(5) The investigative body shall complete the investigation within seven days of establishing the presence of the respective grounds under para 1, the victim not being summonsed at the presentation of the investigation.

Action taken by the prosecutor

Article 357

(1) The supervising prosecutor shall rule within three days of completion of the investigation, by

1. terminating the criminal proceedings on grounds of Article 24, para 1;

2. suspending criminal proceedings in presence of the conditions under Article 25 and 26;

3. pressing charges in an indictment and submitting the case for examination in court;

4. submitting the case with a decree for exemption from criminal liability with the imposition of an

administrative sanction or a proposal for agreement to dispose of the case;

5. ordering additional investigation for the collection of new evidence or for the removal of considerable violations of the procedural rules, setting a time limit not longer than seven days.

(2) Where the case presents factual or legal complexity, the supervising prosecutor shall order for the investigation to be carried out in accordance with the general procedure.

(3) In cases under para 1, item 5, the supervising prosecutor may him/herself take additional investigative action within the shortest possible period and not later than seven days.

Action taken by the judge-rapporteur

Article 358

(1) In cases under Article 357, paragraph (1), item 3, the judge-rapporteur shall:

1. terminate the criminal proceedings in cases and in accordance with the procedure of Article 250;

2. terminate the criminal proceedings in cases and in accordance with the procedure of Article 251;

3. terminate court proceedings and remit the case to the prosecutor, where a removable serious violation of procedural rules has been allowed;

4. schedule the case for hearing within seven days following its receipt.

(2) In cases under para 1, item 4, the judge-rapporteur shall order the supervising prosecutor to immediately serve a copy of the indictment on the defendant and ensure his presence, as well as the presence of witnesses and expert witnesses at the court hearing.

(3) Within three days following service of the copies of the indictment on the defendant, the latter may give response stating therein any objections and making new requests.

Examination of the case in the first instance

Article 359

(1) Where the grounds under Article 358, paragraph 1, item 1 - 3 are not at hand, the court shall issue the sentence along with the reasoning thereof, and where the case presents factual and legal complexity, the reasoning may also be drawn up after announcement of the sentence, but not later than seven days thereafter.

(2) In these proceedings no civil claim shall be admitted.

(3) No private prosecutor shall take part in these cases.

Time limit for filing the appeal and the protest

Article 360

In cases under Article 359, paragraph (1) the appeal and the protest shall be filed within seven days after announcement of the sentence, and where the reasoning to be drawn up has been postponed, within fifteen days.

Application of the general rules

Article 361

The rules for first instance proceedings shall apply, insofar as this Chapter does not contain any special rules.

Chapter twenty-five: IMMEDIATE PROCEEDINGS

Action taken by the investigative body

Article 362

(1) Immediate proceedings shall be carried out where the individual has been caught during or

immediately after the commission of a criminal offence and has been indicated by an eyewitness as the perpetrator thereof.

(2) The investigative body shall be obligated to immediately notify the prosecutor.

(3) Immediate proceedings shall be considered instituted upon drafting the act for the first investigative action.

(4) An individual in respect to whom a reasonable assumption exists that he/she has committed a criminal offence, shall be considered as accused party from the moment of drafting the act for the first investigative action taken against him/her.

(5) The investigative body shall complete the investigation within three days of establishing the presence of the respective ground under para 1, the victim not being summonsed for the presentation of the investigation.

Action taken by the prosecutor

Article 363

(1) The supervising prosecutor shall made an immediate pronouncement, by:

1. terminating criminal proceedings on grounds of Article 24, para 1;

2. suspending criminal proceedings in presence of the conditions under Article 25 and 26;

3. pressing charges in an indictment and submitting the case for examination in court;

4. submitting the case with a decree for exemption from criminal liability with the imposition of an administrative sanction or a proposal for agreement to dispose of the case;

5. ordering additional investigation for the collection of new evidence or for the removal of considerable violations of the procedural rules, setting a time limit not longer than seven days.

(2) Where the case presents factual or legal complexity, the supervising prosecutor shall order for the investigation to be carried out in accordance with the general procedure.

(3) In cases under para 1, item 5, the supervising prosecutor may him/herself take additional investigative action within the shortest possible period and not later than five days.

Submission of The Case in Court

Article 364

In cases under Article 363, paragraph (1), item 3 the prosecutor shall immediately draft an indictment, serve it on the accused party and submit the case for examination in court.

Examination of the case in the first instance

Article 365

(1) Where the grounds under Article 358, paragraph 1, item 1 - 3 are not at hand, the court shall examine the case on the same day it was filed. The supervising prosecutor shall ensure the presence of the defendant, the witnesses and the expert witnesses.

(2) The court shall examine the case and issue the sentence along with the reasoning thereof, and where the case presents factual and legal complexity, the reasoning may also be drawn up after the announcement of the sentence, but not later than seven days thereafter.

(3) In these proceedings no civil claim shall be admitted.

(4) No private prosecutor shall take part in these cases.

Time limit for filing the appeal and the protest

Article 366

In cases under Article 365 the appeal and the protest shall be filed within seven days after the announcement of the sentence, and where the reasoning to be drawn up thereto has been postponed, within fifteen days.

Application of the general rules

Article 367

The general rules shall apply, insofar as no special rules have been set forth in relation to proceedings under this Chapter.

Chapter twenty-six: EXAMINATION OF THE CASE IN COURT UPON REQUEST OF THE ACCUSED PARTY

Request of the accused party to the court

Article 368

(1) Where more than two years have elapsed since an accused party has been constituted on account of a serious crime within pre-trial proceedings, and, in all other incidences, where more than one year has elapsed, the accused party shall be entitled to request the examination of his/her case in court.

(2) In cases under paragraph 1 the accused party may file a request to the competent first-instance court, which shall immediately demand submission of the case-file.

Examination of the case

Article 369

(1) The court shall rule on the request in a panel of one within 7 days and where the presence of grounds under Article 368 paragraph 1 is found, it shall remit the case to the prosecutor, enabling him to submit the case for examination by the court with an indictment within two months, with a proposal for exemption of the accused party from criminal liability with the imposition of an administrative sanction or with an agreement to dispose of the case, or to terminate criminal proceedings, notifying the court thereof.

(2) Where the prosecutor fails to exercise his/her powers under para 1 by the end of the 2-month period or the court does not approve the agreement to dispose of the case, the court shall demand to obtain the case-file and shall terminate criminal proceedings, sitting in camera in a panel of one, issuing a ruling to this effect. Following issuance of the above ruling, criminal proceedings shall remain pending with regard to accessories and to other crimes, on account of which the accused party has been constituted.

(3) Where the prosecutor makes use of his/her powers under paragraph 1, but serious violations of procedural rules have been allowed during pre-trial proceedings, the court shall terminate court proceedings sitting in camera, in a panel of one, and shall remit the case to the prosecutor to repair the violations and submit the case to court within a month.

(4) Where the prosecutor fails to submit the case for examination by the court within the time limit under paragraph 3 or the serious violations of procedural rules have not been repaired, or new ones have been allowed, the court shall terminate criminal proceedings issuing a ruling in camera, in a panel of one.

(5) Act of the court under para 2 and 4 shall be final.

Chapter twenty-seven: REDUCED JUDICIAL TRIAL IN PROCEEDINGS BEFORE THE FIRST INSTANCE

Decision on a preliminary hearing of the parties

Article 370

(1) The court shall ex officio or at the request of the defendant make a decision for a preliminary hearing of the parties.

(2) The court shall order a preliminary hearing of the parties without summonsing witnesses and expert witnesses.

Issues to be decided during the preliminary hearing of the parties

Article 371

In the preliminary hearing of the parties:

1. the defendant and his/her defence counsel, the civil claimant, the private prosecutor and their counsels may agree not to conduct an interrogation of all or some witnesses and expert witnesses, while in the issuance of the sentence the content of the respective records and experts conclusions at the pre-trial stage of proceedings will be used;

2. the defendant may fully admit the facts stated in the factual section of the indictment, agreeing not to collect evidence in respect thereof.

Procedure for the preliminary hearing of the parties

Article 372

(1) The court shall explain the defendant his/her rights and notify him/her that the respective evidence from the pre-trial proceedings and his/her confessions made under Article 371, item 2 shall be used in the issuance of the sentence.

(2) The court shall appoint a defence counsel for the defendant where he/she has none.

(3) In cases under Article 371, item 1 the court shall approve the consent given in a ruling, provided the respective investigative actions were taken in pursuance of the terms and conditions herein set forth.

(4) In cases under Article 371, item 2, where it finds that confessions are supported by the evidence collected during pre-trial proceedings, the court shall announce in a ruling that in issuing the sentence it shall use the confessions without c collecting evidence of the facts stated out in the factual part of the indictment.

Effects of the preliminary hearing of the parties

Article 373

(1) In cases under Article 372, paragraph (3), during the judicial trial before the first instance the witnesses and expert witnesses shall be interrogated, to whom the consent approved by the court applies, the respective records of interrogation and the expert conclusions being read out in pursuance of Article 283.

(2) In cases under Article 372, para 4, during judicial trial the defendant, the witnesses and expert witnesses shall not be interrogated on the facts set out in the factual part of the indictment, and the court, if it issues a verdict, shall determine the applicable punishment under the terms of Article 55 Criminal Code , even in the absence of a large number or of exceptional circumstances attenuating liability.

(3) In cases under Article 372, para 4, the court in its reasoning for the sentence shall consider the circumstances set out in the indictment as established, relying on the confessions and the evidence collected during pre-trial in support thereof.

Application of the general rules

Article 374

The general rules shall apply, insofar as no special rules have been set forth in relation to proceedings under this Chapter.

Chapter twenty-eight: EXEMPTION FROM CRIMINAL RESPONSIBILITY WITH THE IMPOSITION OF AN ADMINISTRATIVE SANCTION

Proposal of the prosecutor for exemption of the accused party from criminal responsibility by imposition of administrative sanction

Article 375

Where the prosecutor finds out that the grounds under Article 78a of the Criminal Code are at hand, he/she shall submit the case-file to the respective first instance court along with a reasoned decree, making a proposal to exempt the accused party from criminal responsibility with the imposition of an administrative sanction.

Scheduling the case for examination

Article 376

(1) Where it is found out that the conditions for examination of the case are at hand, the court shall schedule it within a month.

(2) Copies of the decree shall be sent to the accused party who may, within seven days after its service, make a response stating therein his objections and making new requests.

(3) In these proceedings no civil claim shall be admitted.

(4) No private prosecutor shall take part in these cases.

Termination of court proceedings and return of the case-file to the prosecutor

Article 377

Where the grounds under Article 78a of the Criminal Code are not at hand, the court shall terminate court proceedings and return the case-file to the prosecutor.

Examination of the case by a first instance court

Article 378

(1) The court shall examine the case in single-judge panel sitting at an open hearing, to which the prosecutor and the accused shall be summonsed to appear. The non-appearance of the parties which have been duly summonsed to appear shall not be an obstacle to the examination of the case.

(2) During the examination of the case the evidence collected in the criminal proceedings may be considered and new evidence may be collected.

(3) The court shall examine the case within the limits of the factual situation pointed out in the decree. Where a new factual situation is established by the court, it shall terminate court proceedings and return the case to the prosecutor.

(4) The court shall issue a judgement whereby it may:

1. exempt the accused party from criminal responsibility and impose an administrative sanction thereto;

2. acquit the accused party;

3. terminate criminal proceedings in cases provided for by the law.

(5) The court judgement shall be subject to appeal and protest as provided in Chapter twenty-one.

Application of the provisions of the Administrative Violations and Sanctions Act

Article 379

When issuing a judgement in the case, the provisions of Articles 17 - 21 of the Administrative Violations and Sanctions Act shall apply as well.

Re-opening of the case

Article 380

(1) The proposal for re-opening of the case under this Chapter shall be made by the appellate, respectively the military appellate public prosecutor and shall be examined by the appellate, respectively the military appellate court in accordance with the procedure and within the time limits specified by the Administrative Violations and Sanctions Act .

(2) Where the proposal is well-founded, the court shall rule on the merits, collecting evidence, where necessary.

Chapter twenty-nine: DISPOSING OF THE CASE BY VIRTUE OF AN AGREEMENT

Agreement to dispose of the case during pre-trial proceedings.

Article 381

(1) Upon completion of the investigation based on a proposal of the prosecutor or of the defence counsel an agreement may be drawn up between them in order to dispose of the case. Where the accused party has not authorised a defence counsel, upon request of the prosecutor a judge from the respective first instance court shall appoint a defence counsel thereto with whom the prosecutor shall negotiate the agreement.

(2) The agreement shall not be allowed in respect of serious crimes of intent under Chapter one , Chapter two , section I and VIII, Chapter eight, Section IV, Chapter eleven , section V, Chapter twelve , Chapter thirteen , sections VI and VII and under Chapter fourteen of the Special Part of the Criminal Code.

(3) Where property damages have been caused by the crime, the agreement shall be admitted after their recovery or securing.

(4) By virtue of the agreement a sentence may be imposed following the provisions of Article 55 Criminal Code , even in the absence of exceptional or numerous circumstances attenuating the level of responsibility.

(5) The agreement shall be drawn up in writing and shall set out consent on the following matters:

1. whether an act has been committed, has it been committed by the accused party and has it been culpably committed, whether the act constitutes a crime and what its legal qualification is;

2. what type and amount of punishment shall apply;

3. what initial regime should be set in serving the punishment of deprivation of liberty, where the provisions of Article 66 of the Criminal Code shall not apply;

4. who should be entrusted with educational work in the cases of conditional sentencing;

5. what educational measure should be imposed on the underage accused party in cases under Article 64, paragraph (1) of the Criminal Code ;

6. how to dispose of the pieces of material evidence, where they are not required for the needs of criminal proceedings with respect to other persons or other crimes, and who should be charged with the costs of the case.

(6) The agreement shall be signed by the prosecutor and the defence counsel. The accused party shall sign the agreement, provided he/she agrees to it, after a statement that he/she makes a waiver from the examination of the case in court following the general procedure.

(7) Where proceedings are conducted against several persons or for several crimes, an agreement may be reached for some of the persons or for some of the crimes.

(8) Where the accused party has committed several crimes by one and the same act or where one and the same accused party has committed several separate crimes, Article 23 and 25 Criminal Code

shall be taken into account and implemented within the agreement.

Pronouncement on the agreement by the court

Article 382

(1) The agreement shall be submitted by the prosecutor to the respective first instance court forthwith after it has been drawn up, along with the case-file.

(2) The court shall schedule the hearing within seven days after receipt thereof and shall examine it in a single-judge panel.

(3) The public prosecutor, the counsel and the accused party shall take part in the court hearing.

(4) The court shall ask the accused party whether he/she understands the charges, whether he/she pleads guilty, whether he/she understands the effects of the agreement, agrees to them and has voluntarily signed the agreement.

(5) The court may propose changes in the agreement which shall be discussed with the prosecutor and the defence counsel. The last to hear shall be the accused party.

(6)In the record of the court the content of the final agreement shall be noted, which shall be signed by the prosecutor, the defence counsel and the accused party.

(7) The court shall approve the agreement where it is not contrary to the law or the morals.

(8) If the court does not approve the agreement, it shall return the case-file to the prosecutor. In this case confessions of the accused party made in accordance with the procedure under paragraph (4) shall not be treated as evidence.

(9) The ruling of the court shall be final.

(10) The victim or his/her heirs shall be notified of the ruling under para 7 with the instruction that they can file a civil claim for immaterial damages before a civil court.

Effects criminal proceedings disposed of by agreement

Article 383

(1) The agreement to dispose of criminal proceedings as approved by the court shall have the effects of a sentence entered into force.

(2) Where the agreement is for an offence committed under the conditions of Article 68, paragraph (1) of the Criminal Code , the court shall also make pronouncement with regard to the service of the punishment deferred under Article 306, paragraph (1), item 3.

(3) Where the agreement is for an offence committed under the conditions of Article 68, paragraph (2) of the Criminal Code , the deferred punishment shall not be served.

Agreement to dispose of the case during court proceedings

Article 384

(1) Under the conditions and procedure of this Chapter, the first instance court may approve an agreement to dispose of the case reached after institution of court proceedings, but prior to completion of the judicial trial.

(2) The court shall appoint a defence counsel to the defendant, where the defendant himself has not authorized one.

(3) In this case the agreement shall be approved only after all parties give their consent.

Chapter thirty: SPECIAL RULES FOR EXAMINATION OF CASES FOR CRIMES COMMITTED BY UNDERAGE PERSONS

Pre-trial proceedings

Article 385

In cases for crimes committed by underage persons, pre-trial proceedings shall be conducted by appointed investigative bodies with appropriate training.

Remand measures

Article 386

(1) With respect to underage persons, the following remand measures may be taken:

1. supervision by the parents or the guardian;

2. supervision by the administration of the educational establishment where the underage person has been placed;

3. supervision by the inspector at the child pedagogical facility; or by a member of the local Commission for Combating Anti-Social Acts of Minors and Underage Persons;

4. Remand in custody.

(2) The remand measure of custody shall be taken in exceptional cases.

(3) The remand of underage persons in supervision of persons and bodies under paragraph (1), items 1 - 3, shall be accomplished through signature, whereby the latter shall assume the obligation to exercise educative supervision over the underage persons, to watch over their conduct, and to secure their appearance before the investigative body and the court. A fine of up to BGN 500 may be imposed for culpable default by such persons.

(4)In the cases of custody, underage persons shall be placed in suitable premises apart from adults, their parents or guardians and the principal of the educational establishment where they study being notified immediately thereof.

Collecting information about the personality of the underage person

Article 387

In the course of investigation and judicial trial evidence shall be collected about the date, month and year of birth of the underage person, about the education, environment and conditions of living thereof, and evidence whether the crime was due to the influence of adult persons.

Participation of a pedagogue or a psychologist in the interrogation of underage persons

Article 388

Where necessary, in the interrogation of an underage accused party a pedagogue or a psychologist shall participate, who may ask questions with the permission of the investigative body. The pedagogue or psychologist shall have the right to familiarize themselves with the record of interrogation and to make remarks on the accuracy or completeness of matters recorded therein.

Presentation of the investigation

Article 389

(1) The parents or guardians of the underage accused party shall be mandatorily notified of the presentation of the investigation.

(2) The parents or guardians of the underage accused party shall be present at the presentation if they so request.

Constitution of the court and forwarding the case to another court

Article 390

(1) Under Article 28, paragraph 1, items 1 and 2 cases against underage persons shall be examined at first instance in a panel of one judge and two assessors and in cases under Article 28, paragraph

1, item 3 - in a panel of two judges and 3 assessors.

(2) Assessors must be teachers or educators.

(3) Where the underage person is a military service officer, the case shall be examined under the procedure set forth under Chapter thirty-one.

Court hearing

Article 391

(1) The court hearing in cases against underage persons shall be conducted behind closed doors, unless the court finds it in the interest of the public to examine the case at an open court hearing.

(2) By discretion of the court, an inspector from the child pedagogical facility and a representative of the educational establishment in which the underage person studies may be invited to the court hearing.

Persons participating in the examination of cases

Article 392

(1) The parents or guardians of underage persons shall be Summonsed to the hearings of cases against them. They shall have the right to take part in the collection and verification of evidentiary materials and to make requests, remarks and objections.

(2) Failure of the parents or guardians to appear shall not be an obstacle to the examination of the case, unless the court finds that their participation is necessary.

(3) In cases against underage persons, the participation of a prosecutor shall be mandatory.

(4) In these cases no private prosecutors shall participate.

Temporary removal of the underage persons from the courtroom

Article 393

Where it is necessary to elucidate facts which may have a negative impact on the defendant who is underage, the court may temporarily remove the underage person from the courtroom after hearing the defence, the parents or the guardian and the prosecutor.

Examination of cases for crimes committed by underage persons in pursuance of the general procedure

Article 394

(1) Where the underage individual has been constituted as accused party for a crime committed by him/her prior to having reached legal age, the case shall be examined in pursuance of the general procedure.

(2) Where the underage individual has been constituted as accused party for an act committed in complicity with an adult, the cases shall not be separated and the proceedings shall be conducted in pursuance of the general procedure.

Putting sentence into execution

Article 395

(1) Where it suspends the service of punishment for an underage person, the court shall inform the respective local Commission Combating Anti-Social Acts of Minors and Underage Persons, to make arrangements for the necessary educative care.

(2) Where the court sets an educative intervention, it shall send a copy of the sentence to the respective local Commission.

(3) The proposal of the prosecutor or the local Commission Combating Anti-Social Acts of Minors

and Underage Persons under Article 64, paragraph (2) of the Criminal Code , for replacement of the placement in a correctional boarding school with another educative intervention following issuance of the sentence, shall be examined at an open court hearing to which the underage person and the defence counsel thereof shall be summonsed.

Chapter thirty-one: SPECIAL RULES GOVERNING THE EXAMINATION OF CASES UNDER THE JURISDICTION OF MILITARY COURTS

Cases within the jurisdiction of military courts

Article 396

(1) Cases concerning crimes committed by the following individuals shall fall within the jurisdiction of military courts:

1. Military service officers under the Defence and Armed Forces of the Republic of Bulgaria Act ;

2. Generals, officers, non-commissioned officers and rank-and-file personnel with other ministries and agencies;

3. Reserve staff when attending training and mobilisation events or in discharging active service in the permanent reserve;

4. Assistants to bodies with the agencies under item 1 and 2 during or on the occasion of discharging their assigned tasks;

5. Civilian staff in the Ministry of Defence, the Bulgarian army and the structures reporting to the Minister of Defence, within the Ministry of Interior, the National Diplomatic Protection Service and the National Intelligence Service during or on the occasion of discharging their service.

(2) Cases for crimes in the commission of which civilians were involved shall also be triable by the military courts.

Jurisdiction before the appellate and cassation review instances

Article 397

Cases adjudicated by military courts shall be examined by the Military Court of Appeals at the intermediate appellate review instance and by the Supreme Court of Cassation at the cassation instance, which shall also examine proposals for re-opening of criminal cases of the military courts.

Jurisdiction disputes

Article 398

Jurisdiction disputes between first instance military courts shall be decided by the Military Appellate Court

Bodies of military pre-trial proceedings

Article 399

(1) The bodies of military pre-trial proceedings shall be military prosecutors and military investigative bodies.

(2) Military investigative bodies shall be military investigative bodies and military police investigative bodies.

(3) Military police investigative bodies shall be designated in an order of the Minister of Defence,

Powers of military police bodies

Article 400

Bodies of the military police shall have the powers of the respective bodies of the Ministry of Interior under Article 196, para 1, item 6, Article 212, para 2, Article 215, Article 218, Article 245,

para 1, and Article 356, para 1, item 3.

Remand measures

Article 401

(1) (Amended SG 46/2007) In respect of individuals under Article 396, para 1, item 3 one of the following remand measures shall be taken:

1. Placement under closest observation within the unit;

2. Detention in custody in barracks' premises or in the general establishments for deprivation of liberty.

(2) One of the remand measures under Article 58 shall be imposed on carrier service members and civilians with the Ministry of Defence, the Bulgarian Army and the structures, governed by the Minister of Defence.

Procedure for taking measures of procedural coercion in pre-trial proceedings

Article 402

(1) The measures of procedural coercion shall be taken as provided in Chapter seven, Section II except for the temporary removal from office under Article 403.

(2) Placement under the closest observation within the unit shall be imposed by the investigative body or the respective military prosecutor.

(3) Detention in custody of officers and civilians shall immediately be notified to the relevant Minister.

Temporary removal from office

Article 403

(1) Where the remand measures of custody or house arrest has been imposed on the accused party, the latter shall temporarily be removed from office until said remand measures have been substituted for less stringent ones.

(2) Where the remand measure taken is less heavy than those indicated in paragraph (1), the accused party may be temporarily removed from office by a ruling of the military court upon a reasoned request by the commander, the military prosecutor or the military investigative body.

Assistance in the execution of the remand measure imposed

Article 404

The investigative body or the prosecutor shall notify the respective commander of the remand measure taken and the latter shall be obligated to assist in its execution.

Distribution of cases in military pre-trial proceedings among the investigative bodies

Article 405

(1) Investigation shall be carried out by military investigative bodies in respect of cases for the following crimes:

1. those set out in Article 194, paragraph 1, item 1

2. committed by commissioned officers.

(2) In cases other than those specified in paragraph (1), investigation shall be carried out by military police investigative bodies.

(3) The respective commander shall be notified forthwith about any instituted pre-trial proceedings.

Acceptance of investigative actions carried out by a non-military body

Article 406

The military investigative body may accept all or some investigative action taken by a non-military body as its own, but shall be obligated constituted the accused party and serve him/her the decree for constitution, to interrogate him/her and to present the investigation thereto.

Observation on site and identification

Article 407

Observation on site and identification in the area of the military unit shall be performed in presence of the nearest commander, chief or a person authorized thereby. In such case servicemen shall be invited as certifying witnesses.

Separation of cases

Article 408

(1) Where several crimes have been committed and into the gravest of them investigation has been carried out, and for the investigating the less serious ones a longer period of time is necessary, the military investigative body shall conclude the investigation of the gravest crime and shall send the case-file to the military prosecutor, while continuing the investigation of the less serious crimes in a separate case-file.

(2) Paragraph 1 shall also apply where the crime has been committed by several persons. In such incidences the case-file shall be separated, provided this shall not obstruct the discovery of the objective truth.

Limitations to the publicity of the court hearing

Article 409

(1) The court may request from the defence counsels and counsels, the witnesses and the other persons attending in the courtroom, to declare that they shall not divulge the circumstances presented in the court hearing where the latter constitutive of classified information.

(2) When examining cases against officers, no sergeants and privates shall be allowed in the courtroom as listeners.

Securing the execution of sentences

Article 410

The execution of sentences against persons of the officer, non-commissioned and rank-and-file personnel, who have not been dismissed from service, shall be secured by the respective commander.

Application of the general rules

Article 411

The general rules shall apply, insofar as this Chapter does not contain any special rules.

PART SIX: PUTTING INTO EXECUTION ACTS OF THE COURT THAT HAVE ENTERED INTO FORCE

RE-OPENING OF CRIMINAL CASES

Chapter thirty-two: PUTTING INTO EXECUTION ACTS OF THE COURT THAT HAVE ENTERED INTO FORCE

Acts subject to execution

Article 412

(1) The sentences, judgements and rulings shall be put into execution after they have entered into

force.

(2) The sentences, judgements and rulings shall enter into force:

1. from the moment of their pronouncement, where they are not subject to verification following appeal or protest;

2. from the moment of pronouncement of the judgement by the cassation instance, where the appeals and protests have been denied examination or have been rejected, or where the sentence has been modified;

3. from expiry of the term for their appeal, where no appeal or protest was lodged.

Binding force of judicial acts

Article 413

(1) The sentences, judgements, rulings and orders that have entered into force shall be binding upon all institutions, legal persons, officials and citizens.

(2) The sentences and judgements that have entered into force shall be binding upon the civil court with regard to the following matters:

1. whether the act has been performed;

2. whether the perpetrator is guilty;

3. whether the act is punishable.

(3) The provision of para 2 shall also apply to the acts of the regional court under Chapters twenty-eight and twenty-nine.

Judgement of the court relating to putting into execution sentences and rulings

Article 414

(1) The court which has issued a sentence or ruling that have entered into force, shall make pronouncement on:

1. all difficulties and doubts relevant to their interpretation;

2. the substitution of probation for deprivation of liberty and rescission of the application of Article 66 Criminal Code ;

3. the exemption from serving a punishment imposed for a crime which is prosecuted following a complaint by the victim, where prior to the beginning of its execution the private complainant has requested so.

(2) The issues specified in paragraph 1 shall be examined at a court hearing to which the convict, and in the cases under paragraph 1, item 3 - the complainant as well shall be summonsed.

(3) The participation of the prosecutor shall be mandatory.

Suspension of the service of punishment

Article 415

The regional prosecutor or the district prosecutor may suspend by decree the execution of a sentence to deprivation of liberty or probation:

1. in case of a serious illness, which hinders the service of a punishment - up to six months; after expiry of this term, the service of the punishment may be suspended for the same period on the grounds of a new medical examination;

2. in case of pregnancy or childbirth of the convicted woman - for up to six months before and one year after delivery of the child;

3. where due to particular circumstances such as fire, natural calamity, severe ailment, death of the sole able-bodied member of the family, etc., the immediate execution of the sentence may bring about grave consequences for the convict or his/her family - for up to three months;

4. with respect to particularly needed specialists at enterprises, institutions or organizations - for up to three months;

5. for completion of the current academic year or vocational qualification course - for up to two months.

Acts relevant to putting into execution sentences and rulings

Article 416

(1) A copy of the sentence whereby the defendant has been acquitted or exempted from criminal responsibility or from serving the punishment, as well as a copy of the ruling for termination of the criminal proceedings, shall be sent to the respective bodies to return any seized documents, valuables or other objects, as well as to terminate police registration. Where a measure for securing a claim has been revoked, a copy of the sentence or ruling shall be sent to the appropriate bodies.

(2) A copy of the sentence whereby the defendant has been convicted to serve a certain punishment, shall be sent to the prosecutor for execution.

(3) Where by the sentence confiscation of certain objects or forfeiture of objects pursuant to Article 53 of the Criminal Code has been ruled, the court shall send a copy of the sentence to the State Receivables Agency for execution. The State Receivables Agency shall inform the court within seven days of the seizure of objects forfeited and confiscated.

(4) Where by sentence a fine has been imposed or compensation has been awarded to the benefit of the state, as well as court expenses and fees, the court shall issue a writ of execution and forward it to the respective body for enforcement.

(5) Actions under paras 1-4 shall be taken within seven days of the entry into force of the sentence.

Deduction of the time spent in custody and of the time of deprivation of rights

Article 417

Where Article 59 of the Criminal Code has not been applied by the court, it shall be applied by the prosecutor with a decree.

Bodies who shall detain the convict

Article 418

The detention and bringing of the convict to the place for execution of the punishment shall be carried out by the services of the Ministry of Justice.

Chapter thirty-three: RE-OPENING OF CRIMINAL CASES

Acts subject to verification

Article 419

(1) The effective sentences and judgements shall be Subject to verification pursuant to this Chapter. The rulings under Article 243, paragraph (5), items 1 and 2, Article 382, paragraph (7), as well as the rulings and orders under Article 341, para 1 shall also be Subject to verification pursuant to this Chapter.

(2) Rulings of the court under Article 369, para 5 shall be subject to verification in pursuance of this Chapter on grounds of Article 422, para 1, items 1 - 3, as well as in presence of considerable violations of the procedural rules.

Bodies who may make requests for reopening

Article 420

(1) A request for reopening a criminal case under Article 422, para 1, items 1 - 3 could be made by the District or the Military Prosecutor, and under Article 422, para 1, items 4 - 6 - the Prosecutor-General.

(2) Any individual sentenced for a publicly actionable criminal offence who has not been exempted from criminal liability with the imposition of an administrative punishment on grounds of Article 78a Criminal Code may alone extend a request for reopening the criminal case in the hypotheses of Article 422, para 1, item 5.

(3) The proposal for re-opening shall not suspend the execution of the sentence, unless the prosecutor or the Supreme Court of Cassation has ruled otherwise.

(4) In cases under Article 422, para 1, item 4, where the judgement of the European Court of Human Rights is in the interest of the sentenced individual, as well as in cases under Article 422, para 1, item 6, suspension of execution shall be mandatory.

Time limit for making a proposal

Article 421

(1) A proposal for re-opening of a criminal case which has ended with sentence of acquittal or with ruling or order for termination, as well as a proposal whereby it is requested to increase the punishment or to apply a law for a more heavily punishable crime, may be made not later than six months after the respective act has entered into force pursuant to Article 422, paragraph (1), item 5 and paragraph (2), or from the discovery of new circumstances.

(2) The Prosecutor-General shall be obligated to make a request under Article 422, para 1, item 4 within one month of gaining knowledge of the judgement, and under Article 422, para 1, item 6 - within one month of gaining knowledge of the admitted extradition.

(3) The sentenced person may file a new request under Article 422, para 1, item 5 within six months of the entry into force of the respective act.

(4) The criminal case may also be re-opened after the death of the convict.

Grounds for re-opening

Article 422

(1) A criminal case shall be re-opened where:

1. some of the pieces of evidence that serve as basis for the sentence, judgement, court ruling or order, prove to be false;

2. a judge, court assessor, prosecutor, investigative body or police investigative body has committed a crime in relation to his involvement in the criminal proceedings;

3. circumstances or proofs are revealed through investigation, which had not been known to the court that issued the sentence, judgement, ruling or order, and which are of substantial importance to the case.

4. by virtue of a judgement of the European Court of Human Rights a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms has been established that has a considerable importance for the case;

5. substantial violations have been committed under Article 348, paragraph 1, items 1 -3 in relation to sentences, judgements, court rulings and orders which have not been examined in the course of cassation proceedings.

6. Extradition has been allowed in the case of sentencing in absentia where a guarantee has been provided by the Bulgarian state for reopening the criminal case in respect of the offence, in respect

to which extradition has been allowed.

(2) The circumstances under paragraph 1, items 1 and 2 shall be established by sentence that has entered into force, and where no sentence may be issued - through investigation.

Re-opening of a criminal case upon request of an individual sentenced by default

Article 423

(1) Within six months from the date when the convict by default has come to knowledge of a sentence that has entered into force, he may file a request for re-opening the criminal case, if the criminal prosecution had not be known to him, including the sentence issued against him.

(2) The request shall not stay the execution of the sentence, unless the court rules otherwise.

(3) Proceedings for re-opening of the criminal case shall be terminated, if the convict by default has failed to appear at the court hearing without valid reasons.

(4)Where the convict by default was detained in execution of the sentence that has entered into force and the court has re-opened criminal proceedings, in its judgement it shall also rule on the remand measure.

(5) Where a request has been made by a convict sentenced in absentia, surrendered by another state to the Republic of Bulgaria, where guarantees have been given for reopening the case without assessing whether the individual had been aware of the criminal prosecution against him/her.

Court which shall examine the request

Article 424

(1) The request for re-opening the case shall be examined by the Supreme Court of Cassation.

(2) The request shall be filed through the respective first-instance court which shall immediately send a copy thereof to the prosecutor, the accused party or the acquitted individual, and the case - to the Supreme Court of Cassation.

(3) The case shall be heard at an open hearing.

Powers of the Court

Article 425

(1) Where the court finds the request for reopening well-founded, it may:

1. revoke the sentence, judgement, ruling or order, and return the case for new examination, specifying the stage at which the new examination should start;

2. revoke the sentence, the decision or ruling and terminate or suspend the criminal proceedings or acquit the defendant in the case of Article 24, paragraph 1, item 1 within the framework of the factual situations under the effective sentence;

3. Modify the sentence, the appellate instance decisions or the new sentence in cases where the grounds to this effect are in favour of the convict.

(2) In cases under Article 423, para 1 proceedings shall be reopened and the cases shall be remitted to the stage in which proceedings in absentia began.

Application of the rules for cassation proceedings

Article 426

The rules for cassation proceedings shall apply, insofar as this Chapter does not contain any special rules.

PART SEVEN: SPECIAL PROCEEDINGS

Chapter thirty-four: APPLICATION OF COMPULSORY MEDICAL MEASURES. REHABILITATION

Section I: APPLICATION OF COMPULSORY MEDICAL MEASURES

Proposal for application of compulsory medical measures

Article 427

(1) A proposal for application of compulsory medical measures under Article 89 et seq. Criminal Code shall be made by the regional prosecutor, and in the cases of interrupted service of the punishment of deprivation of liberty - by the district prosecutor.

(2) Before making the proposal, the prosecutor shall appoint an expert assessment and shall charge an investigative body to elucidate the behaviour of the person before and after the perpetration of the act, and whether this person constitutes a threat to the public.

Court which shall examine the proposal

Article 428

The proposal for application of compulsory medical measures shall be examined by the regional court at the place of residence of the individual and in case of termination of the execution of the punishment of deprivation of liberty - by the district court at the location where the punishment is served.

Court hearing in camera

Article 429

(1) Following institution of the case a judge-rapporteur shall be appointed.

(2) The judge-rapporteur shall assess whether all required conditions for the examination of the case are present and shall schedule a hearing within three days of receiving a proposal.

Court hearing

Article 430

(1) The person with respect to whom the application of compulsory medical measures has been requested, the parents of the person, the guardian or custodian, and the victim shall be summonsed to the court hearing via the prosecutor.

(2) The participation of a prosecutor, as well as of a defence counsel for the individual in respect to whom the application of compulsory medical measures is requested shall be mandatory.

(3) The presence of the person with respect to whom the application of compulsory medical measures has been requested shall not be mandatory, where the health status of the person is an obstacle therefore.

(4) In all cases the court shall hear out the conclusion of an expert-psychiatrist.

Ruling of the court

Article 431

(1) The court shall make its pronouncement in a panel of one by ruling.

(2) The ruling under para 1 may be subject to appeal or protest within seven days from its issuance in pursuance of Chapter twenty-one.

(3) Should it revoke the ruling, the intermediate appellate review instance court shall resolve the case.

Extension, replacement or termination of compulsory medical measures

Article 432

(1) After expiry of six months following the admission for compulsory treatment, the court shall ex officio make pronouncement on extension, replacement or termination of the compulsory treatment.

(2) Prior to the expiry of the six-month period following admission for compulsory treatment, as well as in cases under Article 89, indent "a" of the Criminal Code , the court may replace or terminate the compulsory treatment upon proposal of the prosecutor.

(3) The court shall make pronouncement on the extension, replacement or termination of compulsory medical measures at a court hearing after obtaining the opinion of the appropriate health establishment and the report of an expert-psychiatrist.

Section II: REHABILITATION

Courts which may decree rehabilitation

Article 433

(1) Rehabilitation may be decreed by the court which has issued the sentence as first instance.

(2) Where the person has been sentenced with several sentences by different courts, that court which has imposed the heaviest punishment shall be competent, and where the punishments are equally heavy - the court which has issued the last sentence.

Application for rehabilitation

Article 434

(1) Proceedings for rehabilitation shall be initiated upon written application by the convicted person.

(2) The following shall be enclosed with the application for rehabilitation:

1. a copy of the sentence, and where the case-file has been destroyed - a copy of the convictions record;

2. evidence that the conditions under Article 87 of the Criminal Code are at hand.

Examination of the application

Article 435

(1) The application for rehabilitation shall be examined by the court at a court hearing to which the applicant shall be summonsed.

(2) The participation of the prosecutor shall be mandatory.

Ruling of the court

Article 436

(1) The court shall make its pronouncement by ruling.

(2) Appeals or protests against the ruling may be lodged within seven days following its pronouncement and they shall be examined in pursuance of chapter twenty-one.

(3) Should it revoke the ruling, the intermediate appellate review instance court shall resolve the case.

(4) Should the application be rejected, a new application may be filed not earlier than one year following the pronouncement of the ruling.

Chapter thirty-five: PROCEEDINGS IN CONNECTION WITH THE EXECUTION OF PUNISHMENTS

Section I: Early release

Proposals for early release

Article 437

(1) Proposals for early release under Article 70 and 71 of the Criminal Code may be made by:

1. the district prosecutor, the military prosecutor, respectively, at the place of execution of the punishment;

2. the Commission under Article 17 of the Implementation of Penal Sanctions Act .

3. the Chair of the respective Probation Board.

(2) The personal file of the person proposed for early release, the other written materials of significance for the correct decision of the case and a list of the persons who have to be summonsed shall be enclosed with the proposal.

(3) The presence of the convict shall be mandatory, unless his bringing is impossible for health reasons.

Court which shall examine the proposal

Article 438

The proposal under Article 437, para shall be examined by the District or Military Court at the location of service of the punishment.

Procedure for examination of the proposal

Article 439

(1) The court shall hear the proposal in a panel of one, in camera.

(2) Participation by the prosecutor, the Chair of the Commission under Article 17 Implementation of Penal Sanctions Act and of the Chair of the respective Probation Board, shall be mandatory.

(3) The presence of the convict shall be mandatory.

(4) Upon completion of the collection and verification of evidence, the court shall give the floor to the body that has made the proposal.

(5) The prosecutor shall submit a conclusion, if the proposal does not come from him/her.

(6) The convict shall be the last to make a statement.

Ruling of the court

Article 440

(1) The court shall make its pronouncement by reasoned ruling.

(2) The prosecutor may file a protest against the ruling of the court, which shall be examined following the procedure of Chapter twenty-two.

A new proposal

Article 441

If the proposal under Article 437 is not granted by the court, a new proposal may be filed not earlier than three months following the date of pronouncement of the ruling.

Court which shall make pronouncement on serving the remainder of the punishment

Article 442

Where the early released individual commits a new crime within the probation period, the matters under Article 70, paragraphs (7) and (8) of the Criminal Code shall be resolved by the court which has jurisdiction in the case of the new crime.

Section II: Revocation of the validity of work days

Proposal for revocation

Article 443

A proposal for revocation of recognized work days in case of deprivation of liberty pursuant to Article 41, paragraphs (4) of the Criminal Code may be made by:

1. the district prosecutor at the place of execution of the punishment;

2. the Governor of the prison.

Examination of the proposal

Article 444

(1) The proposal shall be examined by the District Court at the location where deprivation of liberty is served, sitting in panel composed of one judge and two court assessors.

(2) The ruling of the court may be appealed within seven days of its issuance in pursuance of Chapter twenty-two.

(3) Should it revoke the ruling, the intermediate appellate review instance court shall resolve the case.

(4) Insofar as there are no special rules in this section, the rules of Section I of this Chapter shall apply.

Section III: Replacement of the regime of deprivation of liberty with a heavier one

Proposal for replacement

Article 445

Proposals for replacement of the regime of deprivation of liberty with a heavier than the one determined by court, may be made by:

1. the District Prosecutor at the location where the sentence is served;

2. the Governor of the prison or the correctional institution;

3. the supervisory commission at the place of execution of the punishment.

Procedure for examination of the proposal

Article 446

(1) The proposal shall be examined by the District Court at the location where the punishment is served, sitting in panel composed of a judge and two court assessors.

(2) The ruling of the court may be appealed within seven days of its issuance in pursuance of Chapter twenty-two.

(3) Should it revoke the ruling, the intermediate appellate review instance court shall resolve the case.

(4) Insofar as there are no special rules in this Section, the rules of Section I of this Chapter shall apply.

Section IV: Interruption of the execution of a punishment of deprivation of liberty

Grounds for interrupting the execution

Article 447

The execution of a punishment of deprivation of liberty may be interrupted:

1. where a convicted woman gives birth to a child in prison or in a correctional institution - until the

child reaches one year of age;

2. under exceptional reasons of family or public nature - for not longer than three months;

3. where the convict falls seriously ill - until the recovery of his/her health;

4. for sitting for examination at an educational establishment - for up to ten days.

Body who interrupts execution

Article 448

(1) Service of the punishment shall be interrupted by the District Prosecutor at the location where it is served.

(2) A proposals for interruption may also be made by the Governor of the prison and of the correctional institution.

Section V: Replacement of life imprisonment with deprivation of liberty

Proposal for replacement

Article 449

The proposal for replacement of the life imprisonment punishment with deprivation of liberty may be made by the district prosecutor at the place where the punishment is served.

Procedure for examination of the proposal

Article 450

(1) The proposal shall be examined by the District Court at the location where the punishment is served, sitting in a panel composed of two judges and three court assessors.

(2) The participation of the prosecutor, the Governor of the prison and of the convict shall be mandatory.

(3) The court shall make pronouncement by a ruling with reasons. The ruling whereby replacement of the punishment is rejected, shall be subject to appeal in pursuance of chapter twenty-two.

(4) Where the proposal under Article 449 is not granted, a new proposal may be made not earlier than two years following the pronouncement of the ruling.

Section VI: Replacement of the punishment of probation with deprivation of liberty

Proposal for replacement

Article 451

The following shall be able to make a proposal for replacement of the punishment of probation with deprivation of liberty:

1. The District Prosecutor at the location where the sentence is served;

2. The Chair of the Probation Board at the location where the sentence is served.

Procedure for examination of the proposal

Article 452

(1) The proposal shall be examined by the District Court at the location where probation is served, sitting in panel composed of a one judge and two court assessors.

(2) Participation of the prosecutor, the Chair of the Probation Board and of the sentenced person shall be mandatory.

(3) The court shall issue a ruling which may be appealed or protested within seven days of being issued in pursuance of Chapter twenty-two.

(4) Insofar as this Section contains no special rules, the provisions of Section I of this Chapter shall apply.

Chapter thirty-six: PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

Section I: Transfer of Sentenced Persons

Competent body

Article 453

(1) The transfer of individuals sentenced by a court of the Republic of Bulgaria to the purpose of serving their punishment in the state of which they are the nationals, and the transfer of Bulgarian citizens sentenced by a foreign court for the purpose of serving their punishment in the Republic of Bulgaria shall be decided by the Prosecutor-General in an agreement with the competent body of the other state, in the case where consent of the sentenced individual in writing is available.

(2) A decision on the transfer of a sentenced individual may also be taken after service of his/her punishment has begun.

Transfer in the absence of consent by the individual

Article 454

(1) The consent of a Bulgarian national convicted by a foreign court or of a foreign national convicted by a Bulgarian court shall not be required, where:

1. The sentence or a subsequent administrative decision of the sentencing state includes an expulsion (deportation) order or another act, by virtue of which the individual, following his/her release from an institution for deprivation of liberty, may not stay within the territory of the sentencing state;

2. Before serving his or her sentence the sentenced individual has escaped from the sentencing state to the territory of the state whose national he or she is.

(2) In cases falling under para 1, item 1, before issuing a decision for transfer, the opinion of the sentenced person shall be taken into account.

Setting the place, time and procedure for delivery and admission of the sentenced person

Article 455

The place, time and procedure for delivery and admission of the convicted person shall be determined by agreement between the Prosecutor General and the competent body of the other state.

Request for detention

Article 456

(1) Where information is available that an individual sentenced by a Bulgarian court is located on the territory of the state whose national he or she is, the Prosecutor-General may extend a request to the foreign country's authorities to detain said individual, in respect of whom a request shall be made for the enforcement of his or her sentence to be taken over, notifying that a sentence for such individual has come into effect.

(2) In the event a request for the detention of a Bulgarian national has been received from another state, Article 64 and 68 shall apply mutatis mutandis.

Decision of the court on issues relevant to the execution of the sentence

Article 457

(1) After the sentenced individual arrives in the Republic of Bulgaria or it has been found that he or

she is located on its territory, the Prosecutor-General shall forward the sentence accepted for execution and the materials attached thereto, to Sofia City Court, with a proposal to resolve the issues relevant to its execution.

(2) The court shall decide on the proposal by ruling at a court hearing with the participation of a prosecutor and with summonsing of the sentenced individual.

(3) The ruling shall specify the number and date of the sentence admitted for execution, the case in which it has been issued, the text of the law of the Republic of Bulgaria providing for responsibility for the crime committed, the term of punishment by deprivation of liberty imposed by the foreign court, and the initial regime shall be determined for serving the punishment.

(4) Where under the law of the Republic of Bulgaria the maximum term of deprivation of liberty for the committed crime is shorter than that fixed in the sentence, the court shall decrease the imposed punishment to that term. Where the law of the Republic of Bulgaria does not provide for deprivation of liberty for the crime committed, the court shall determine a punishment which most fully corresponds to that imposed with the sentence.

(5) The pre-trial detention and the punishment already served in the state in which the sentence has been pronounced shall be deducted, and where the punishments are different the same shall be taken into consideration in determining the term of the punishment.

(6) The additional punishments imposed with the sentence shall be subject to execution if such are provided in the respective text of the legislation of the Republic of Bulgaria, and they have not been executed in the state in which the sentence has been pronounced.

(7) The ruling of the court shall be subject to appeal before Sofia Appellate Court.

Execution of a judgement of a foreign court for the revocation or modification of a sentence

Article 458

(1) A judgement modifying a sentence issued by the court of the other state after the transfer of the sentenced individual shall be admitted for execution pursuant to the procedure under the Article 457.

(2) A judgement for the revocation of a sentence issued by the court of the other state after transfer of the sentenced individual shall be immediately enforced at the orders of the Prosecutor-General.

(3) Where the sentence of the foreign court has been revoked and a new investigation or trial of the case has been ruled, the issue of the institution of criminal proceedings against the person delivered to the purpose of serving punishment shall be decided by the Prosecutor-General pursuant to the laws of the Republic of Bulgaria.

Review of the sentence

Article 459

(1) The sentence with respect to an individual transferred or admitted pursuant to this Section to the purpose of serving punishment shall be subject to review only by the competent bodies of the state in which it has been issued.

(2) Where the sentence with respect to an individual transferred to the purpose of serving punishment in another state is revoked or modified, the Supreme Prosecution Office of Cassation shall forward a copy of the judgement to the competent body of that state. If a new investigation or trial of the case has been ruled, all the necessary materials therefore shall also be forwarded.

Termination of punishment service in the event of amnesty

Article 460

(1) In the event of amnesty in the Republic of Bulgaria, service of punishment under a foreign

sentence admitted for execution shall be terminated pursuant to the general procedure.

(2) In the event of amnesty in the state in which the sentence admitted for execution has been issued, service of the punishment shall be terminated immediately by order of the Prosecutor-General.

(3) In the event of amnesty in the Republic of Bulgaria, the Prosecutor-General shall notify immediately the competent body of the state to which the individual has been transferred for serving the punishment.

Force and effect of the sentence

Article 461

The sentence accepted for execution pursuant to this Section, as well as the decision for its modification or revocation, shall have the force and effect of sentence and decision issued by a court of the Republic of Bulgaria.

Application of the provisions of this Section

Article 462

The provisions of this Section shall be applicable unless otherwise agreed in an international agreement to which the Republic of Bulgaria is a party.

Section II: Recognition and enforcement of a sentence issued by a foreign national court

Conditions necessary for the recognition and execution of sentences issued by foreign national courts

Article 463

An effective sentence issued by a foreign national court shall be recognised and enforced by the authorities in the Republic of Bulgaria in compliance with Article 4, para 3 where:

1. The act in respect of which the request has been made constitutes a criminal offence under Bulgarian law;

2. The offender is criminally responsible under Bulgarian law;

3. The sentence has been issued in full compliance with the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms and with the Protocols thereto, to which the Republic of Bulgaria is a party;

4. The offender has not been sentenced for a crime that is considered political or for one associated with a political or a military crime;

5. In respect of the same offender and for the same crime the Republic of Bulgaria has not recognised any sentence issued by another national court;

6. The sentence does not stand in contradiction to the fundamental principles of Bulgarian criminal and criminal procedural law.

Conditions necessary for a refusal to recognise and execute a sentence issued by a foreign national court

Article 464

The request of another state for the recognition and enforcement of a sentence issued by a court in said state shall be rejected, where:

1. The punishment imposed may not be served due to the expiry of the prescription period envisaged under the Bulgarian Criminal Code;

2. At the moment the criminal offence was committed no criminal proceedings in the Republic of

Bulgaria could have been initiated against the sentenced individual;

3. In respect of the same criminal offence against the same individual in the Republic of Bulgaria criminal proceedings are pending, a sentence has come into force, or a decree or ruling terminating the proceedings have come into force;

4. There are sufficient grounds to believe that a sentence has been imposed or aggravated due to racial, religious, national or political considerations;

5. Execution stands in contradiction to international obligations of the Republic of Bulgaria;

6. The offence has been committed outside its territory.

Procedure for recognition

Article 465

(1) A request for the recognition of a sentence issued by a foreign court in the Republic of Bulgaria shall be extended by the competent authority of the other state concerned to the Ministry of Justice.

(2) The Ministry of Justice shall refer the request together with the sentence and other relevant documents attached thereto to the district court at the place of residence of the sentenced individual. Where the latter does not live in this country, Sofia City Court shall be competent to examine the request.

(3) The court shall examine the request for recognition of the sentence issued by a foreign national court hearing in a panel of three judges, at an open hearing of the court, which shall be attended by the prosecutor, a counsel for the sentenced individual being appointed, where the latter has not hired one.

(4) After hearing the prosecutor, the sentenced person and his or her counsel the court shall issue a decision within 10 days, whereby it shall honour or reject the request for recognition of the sentence issued by a foreign national court.

(5) The decision of the court shall be subject to appeal or protest before the respective Appellate Court within seven days from its notification.

(6) The appeal and protest shall be examined by the respective Appellate Court within 10 days from being received at the court. The decision of the Appellate Court shall be final.

(7) A certified copy of a judgement which has come into effect shall be sent to the Ministry of Justice, which shall forward it to the competent authorities of the state which had requested recognition of the sentence. Where at the time a judgement is issued the sentenced individual serves a sentence to deprivation of liberty in another state, the court shall serve him or her with a copy of the decision, acting through the Ministry of Justice.

Effect of the judgement, recognising a sentence issued by a foreign national court

Article 466

(1) A judgement whereby a sentence issued by a foreign national court has been recognised has the effect of a sentence issued by a Bulgarian court.

(2) Where the punishment of imprisonment has been imposed on several individuals in the sentence concerned issued by a foreign national court, recognition shall only have effect in respect of the individual for whom recognition of the sentence has been requested.

(3) Where the recognised sentence issued by a foreign national court only concerns an isolated offence belonging to a series of offences, which have been committed on the territory of another state, the recognised sentence shall not be an obstacle to the criminal prosecution of the sentenced individual in respect of other offences included in the series of offences, which have been committed on the territory of the Republic of Bulgaria.

Remand in custody

Article 467

(1) In order to secure the execution of a punishment to deprivation of liberty imposed by a sentence issued by a foreign national court, the competent court under Article 465, para 2 may, at any time after institution of proceedings for recognition and execution of the sentence concerned issued by a foreign national court and until a judgement has come into effect, set a measure of remand in custody and serve it on the sentenced individual who is in the territory of the Republic of Bulgaria.

(2) A ruling imposing a measure of remand in custody shall be appealed pursuant to the general rules.

Execution procedure

Article 468

(1) The district court at the place of residence of the sentenced individual shall be competent to rule on the execution of a judgement, recognising a sentence issued by a foreign national court, and where a sentenced individual does not have a place of residence inside this country, this shall be Sofia City Court.

(2) A court under para 1 shall also be competent to rule on the execution of a judgement on the rights over any assets that have been forfeited or confiscated.

(3) The court under para 1 shall be competent in all matters pertaining to the procedure for execution, including the examination of a request for clear criminal record in respect of the punishment of deprivation of liberty imposed in the sentence issued by a foreign national court.

(4) The court shall rules on the issue of the period of service of a punishment of deprivation of liberty, deducting the period of detention in custody and the punishment of deprivation of liberty, which has been served in the other state.

(5) The court shall terminate the procedure for enforcement of the punishment of deprivation of liberty in respect of a recognised sentence issued by a foreign national court where the state whose court had issued it announces amnesty, pardon or gives any other reason due to which the subsequent enforcement of the sentence is inadmissible. Where by virtue of amnesty, pardon or another reason the punishment imposed is reduced, the court shall decide what portion of the sentence should be served. The decision of the court shall be subject to appeal following the general rules.

(6) The provisions of the Criminal Procedure Code for enforcement of sentences shall also apply to the enforcement of a decision, whereby a sentence issued by a foreign national court has been recognised.

Recognition and enforcement of other judicial acts

Article 469

Other acts of foreign national courts, ruling the forfeiture or confiscation of the means of crime and of proceeds acquired through crime, or of their equivalent, shall be recognised and enforced pursuant to this section.

Necessary conditions for requests addressed to another state for the recognition and execution of a sentence issued by a Bulgarian court

Article 470

A request addressed to another state for the recognition and enforcement of a sentence issued by a Bulgarian court shall be made by the respective Bulgarian court and sent by the Ministry of Justice where:

1. The sentenced individual has his or her permanent residence in said other state;

2. The execution of the sentence in the other state may improve the chances of the sentenced person for re-socialisation;

3. The individual has been sentenced to deprivation of liberty and has already started serving or should serve another punishment of deprivation of liberty in said other state;

4. The other state is the state of origin of the sentenced individual and it has stated its wish to admit the sentence for service;

5. The punishment may not be executed in the Republic of Bulgaria, even as a result of extradition.

Section III: International Legal Assistance in Criminal Cases

Grounds and contents of international legal assistance

Article 471

(1) International legal assistance in criminal matters shall be rendered to another state under the provisions of an international treaty executed to this effect, to which the Republic of Bulgaria is a party, or based on the principle of reciprocity. International legal assistance in criminal cases shall also be made available to international courts whose jurisdiction has been recognised by the Republic of Bulgaria.

(2) International legal assistance shall comprise the following:

1. Service of process;

2. Acts of investigation;

3. Collection of evidence;

4. Provision of information;

5. Other forms of legal assistance, where they have been provided for in an international agreement to which the Republic of Bulgaria is a party or have been imposed on the basis of reciprocity.

Refusal of international legal assistance

Article 472

International legal assistance may be refused if the implementation of the request could threaten the sovereignty, the national security, the public order and other interests, protected by law.

Appearance of witnesses and experts before a foreign national court

Article 473

(1) Appearance of witnesses and experts before foreign national judicial bodies shall be allowed only if assurance is provided, that the individuals summonsed, regardless of their citizenship, shall not incur criminal liability for acts committed prior to summonsing. In the event they refuse to appear, no coercive measures may be taken in respect thereof.

(2) The surrender of individuals remanded in custody to the purpose of being interrogated as witnesses or experts shall be only admitted under exceptional circumstances at the discretion of a panel of the respective district court, based on papers submitted by the other country, or an international court, provided the individual consents to being surrendered, and his/her stay in another state does not extend beyond the term of his/her remand in custody.

Interrogation of individuals through a video or phone conference

Article 474

(1) The judicial body of another state may conduct the interrogation, through a video or phone conference, of an individual who appears as a witness or expert in the criminal proceedings and is in

the Republic of Bulgaria, where so envisaged in an in international agreement to which the Republic of Bulgaria is a party. An interrogation through a video conference involving the accused party or a suspect may only be conducted upon their consent and once the participating Bulgarian judicial authorities and the judicial authorities of the other state agree on the manner in which the video conference will be conducted. An interrogation through a video or phone conference may only be conducted where this does not stand in contradiction to fundamental principles of Bulgarian law.

(2) The request for interrogation filed by a judicial body of the other state should indicate:

1. The reason why the appearance in person of the individual is undesirable or impossible;

2. The name of the judicial body of the other state;

3. The data of individuals who shall conduct the interrogation;

4. The consent of the individual who shall be interrogated as a witness or expert through a phone conference;

5. Consent of the accused party who will take part in an interrogation hearing through a video conference.

(3) Bulgarian competent authorities in the field of criminal proceedings shall implement requests for interrogation through a video or phone conferences. A request for interrogation through a video or phone conference shall be implemented for the needs of pre-trial proceedings by the National Investigation Service. For the need of judicial proceedings, a request for interrogation through a phone conference shall be implemented by a court of equal standing at the place of residence of the individual, and for interrogation through a video conference - by the Appellate Court at the place of residence of the individual. The competent Bulgarian authority may require the requesting party to ensure technical facilities for interrogation.

(4) The interrogation shall be directly conducted by the judicial authority of the requesting state or under its direction, in compliance with the legislation thereof.

(5) Prior to the interrogation the competent Bulgarian authority shall ascertain the identity of the person who needs to be interrogated. Following the interrogation a record shall be drafted, which shall indicate:

1. The date and location thereof;

2. The data of the interrogated individual and his or her consent, if it is required;

3. The data of individuals who took part therein on the Bulgarian side;

4. The implementation of other conditions accepted by the Bulgarian party.

(6) An individual who is abroad may be interrogated by a competent Bulgarian authority or under its direction through a video or phone conference where the legislation of said other state so admits. The interrogation shall be conducted in compliance with Bulgarian legislation and the provisions of international agreements to which the Republic of Bulgaria is a party, wherein the above means of interrogation have been regulated.

(7) The interrogation through a video or phone conference under para 6 shall be carried out in respect of pre-trial proceedings by the National Investigation Service, whereas in respect of trial proceedings - by the court.

(8) The provisions of paras 1 - 5 shall apply mutatis mutandis to the interrogation of individuals under para 6.

Procedure for submission of a request to another country or international court

Article 475

(1) A letter rogatory for international legal assistance shall contain data about: the body filing the letter; the subject and the reasoning of the letter; full name and citizenship of the individual to whom the letter refers; name and address of the individual on whom papers are to be served; and, where necessary - the indictment and a brief description of the relevant facts.

(2) A letter rogatory for international legal assistance shall be forwarded to the Ministry of Justice, unless another procedure is provided by international treaty to which the Republic of Bulgaria is a party.

Execution of request by another country or international court

Article 476

(1) Request for international legal assistance shall be executed pursuant to the procedure provided by Bulgaria law or pursuant to a procedure provided by an international agreement to which the Republic of Bulgaria is a part. A request may also be implemented pursuant to a procedure provided for in the law of the other country or the statute of the international court, should that be requested and if it is not contradictory to the Bulgarian law. The other country or international court shall be notified of the time and place of execution of the request, should that be requested.

(2) Request for legal assistance and all other communications from the competent authorities of another state which are sent and received by fax or e-mail shall be admitted and implemented by the competent Bulgarian authorities pursuant to the same procedure as those sent by ordinary mail. The Bulgarian authorities shall be able to request the certification of authenticity of the materials sent, as well as to obtain originals by express mail.

(3) The Supreme Prosecution Office of Cassation shall set up, together with other states, joint investigation teams, in which Bulgarian prosecutors and investigative bodies will take part. An agreement with the competent authorities of the participant states shall be entered in respect of the activities, duration and composition of a joint investigation team. The joint investigation team shall comply with provisions of international agreements, the stipulations of the above agreement and Bulgarian legislation while being on the territory of the Republic of Bulgaria.

(4) The Supreme Prosecution Office of Cassation shall file requests with other states for investigation through an under-cover agent, controlled deliveries and cross-border observations and it shall rule on such requests by other states.

(5) In presence of mutuality a foreign authority carrying out investigation through an agent under cover on the territory of the Republic of Bulgaria shall be able to collect evidence in accordance with its national legislation.

(6) In urgent cases involving the crossing of the state border for the purposes of cross-border observations on the territory of the Republic of Bulgaria the Supreme Prosecution Office of Cassation shall be immediately notified. It shall make a decision to proceed with or terminate cross-border observations pursuant to the terms and conditions of the Special Intelligence Instruments Act .

(7) The implementation of requests for controlled delivery or cross-border observations filed by other states shall be carried out by the competent investigation authority. It shall be able to request assistance from police, customs and other administrative bodies.

Costs for execution of request

Article 477

The costs for execution of request shall be distributed between the countries in compliance with international treaties to which the Republic of Bulgaria is a party, or on the basis of the principle of reciprocity.

Section IV: Transfer of Criminal Proceedings

Transfer of criminal proceedings from another state

Article 478

(1) A request for the transfer of criminal proceeding by another state shall be sent to:

1. The Supreme Prosecution Office of Cassation - in respect of pre-trial proceedings;

2. The Ministry of Justice - in respect of trial proceedings.

(2) A request for the transfer of criminal proceedings by another state shall be admitted by the authority under para 1 where:

1. The act in respect of which the request has been made constitutes a criminal offence under Bulgarian law;

2. The offender is criminally responsible under Bulgarian law;

3. The offender has his or her permanent residence on the territory of the Republic of Bulgaria;

4. The offender is a national of the Republic of Bulgaria;

5. The offence in respect of which a request has been made is not considered a political or politically associated, nor a military offence;

6. The request does not aim at prosecuting or punishing the person due to his or her race, religion, nationality, ethnic origin, sex, civil status or political affiliations;

7. Criminal proceedings in the Republic of Bulgaria in respect of the same or another offence have been initiated against the offender;

8. The transfer of proceedings is in the interest of discovering the truth and the most important pieces of evidence are located on the territory of the Republic of Bulgaria;

9. The enforcement of the sentence, should one be issued, will improve the chances of the sentenced person for re-socialisation;

10. The personal appearance of the offender may not be ensured in proceedings in the Republic of Bulgaria;

11. The sentence, if one is issued, may be enforced in the Republic of Bulgaria;

12. The request does not contradict international obligations of the Republic of Bulgaria;

13. The request does not stand in contradiction to the fundamental principles of Bulgarian criminal and criminal procedural law.

(3) Should the authority under para 1 honour the request, it shall forthwith refer it to the competent criminal proceedings authorities, in accordance with the provisions of this code.

(4)Any procedural action taken by a body of the requesting state in accordance with its national law shall enjoy in the Republic of Bulgaria the same evidentiary power as it would enjoy if it were taken by a Bulgarian authority.

Transfer of criminal proceedings to another state

Article 479

(1) Where the individual against whom criminal proceedings have been instituted in the Republic of Bulgaria is the national of another state or has his or her permanent residence in another state, the authorities under para 2 may file a request for the transfer of criminal proceedings to said state.

(2) The request for transfer of criminal proceedings to another state at the proposal of competent Bulgarian authorities in the field of criminal proceedings shall be filed:

1. The Supreme Prosecution Office of Cassation - in respect of pre-trial proceedings;

2. The Ministry of Justice - in respect of trial proceedings.

(3) A request for the transfer of criminal proceedings to another state may be extended, where:

1. The extradition of an individual who committed the offence from the requested state is impossible, is not allowed or has not been requested for other reasons;

2. It is opportune for criminal proceedings to take place in the requested state in order to establish the facts, determine the sentence or enforce it;

3. The individual who committed the offence is or shall be extradited to the requested state or his or her appearance at the criminal proceedings in said state in person is possible due to other reasons;

4. The extradition of an individual who has been sentenced by a Bulgarian court and the sentence has taken effect is impossible or not allowed by the requested state or where the enforcement thereof in said state is impossible.

(4) If the requested state allows the transfer of criminal proceedings, they may not be pursued on the territory of the Republic of Bulgaria against the individual who committed the offence and the sentence imposed under para 3, item 4 in respect of the offence in relation to which criminal proceedings have been transferred, shall not be enforced.

(5) Pre-trial authorities or the court may pursue criminal proceedings or refer the sentence for enforcement, where the requested state:

1. Once it has admitted the request for transfer does not institute any criminal proceedings;

2. Subsequently rescinds its decision to transfer the criminal proceedings;

3. Does not pursue the proceedings.

Decision by subsidiary competence

Article 480

In the event where information has been received from the authority of another state concerning the institution of criminal proceedings or the forthcoming institution of criminal proceedings in relation to a criminal offence committed in said other state, the competent prosecutor under Article 37 shall make a decision whether Bulgarian authorities will exercise their power under Article 4, para 1 concerning the institution of criminal proceedings in respect of the same criminal offence.

ADDITIONAL PROVISIONS

§ 1. (1) For the purposes of this Code "next of kin" shall be the relatives in ascending line, descending line (including adopted children and stepchildren), relatives in collateral line to the fourth degree, as well as the in-laws to the third degree.

(2) For the purposes of this Code "data concerning traffic" shall mean all data related to a message going through a computer system which have been generated as an element of a communications chain indicating the origin, destination, route, hour, date, size and duration of the connection or of the main service.

TRANSITIONAL AND FINAL PROVISIONS

§ 2. The Criminal Procedure Code (published, SG, No. 89 of 1974; amended, No. 99 of 1974; No. 10 of 1975; amended, No. 84 of 1977; No. 52 of 1980, No. 28 of 1982; amended, No. 38 of 1982; amended, No. 89 of 1986, No. 31 of 1990; amended, No. 32 and 35 of 1990; amended, No. 39, 109 and 110 of 1993, No. 84 of 1994, No. 50 of 1995, No. 107 and 110 of 1996, No. 64 of 1997; amended, No. 65 of 1997; amended, No. 95 of 1997, No. 21 of 1998, No. 45 of 1998. - Decision ? 9 of the Constitutional Court of 1998; amended, No. 70 of 1999, No. 88 of 1999 - Decision ? 14 of the Constitutional Court of the 1999; amended, No. 42 of 2001, No. 74 of 2002, No. 50 and 57 of 2003, No. 26, 38, 89 and 103 of 2004, No 46 of 2005) shall be rescinded.

§ 3. (1) Pending criminal cases, the jurisdiction of which is changed by this Code, shall be examined by the courts where they were instituted.

(2) Preliminary proceedings, which have not been completed, shall be completed by the bodies before which they are pending.

§ 4. With respect to the terms which have started running before the entry into force of this Code, the provisions which were in force before that shall apply, if they provide for longer terms.

§ 5. In the Criminal Code (published SG No. 26 of 1968, amended, SG No. 29 of 1968, amended, SG No. 92 of 1969, SG No. 26 and 27 of 1973, SG No. 89 of 1974, SG No. 95 of 1975, SG No. 3 of 1977, No. 54 of 1978, No. 89 of 1979, No. 28 of 1982; amended, No. 31 of 1982; amended, No. 44 of 1984, No. 41 and 79 of 1985; amended., No. 80 of 1985; amended, No. 89 of 1986; amended, No. 90 of 1986; amended, No. 37, 91 and 99 of 1989, No, 10, 31 and 81 of 1990, No. 1 and 86 of 1991; amended, No. 90 of 1991; amended, No. 105 of 1991, No. 54 of 1992, No. 10 of 1993, No. 50 1995, No. 97 of 1995 - Decision ? 19 of the Constitutional Court of 1995; amended, No. 102 of 1995, No. 107 of 1996, No. 62 and 85 of 1997, No. 120 of 1997 - Decision ? 19 of the Constitutional Court of 1997; amended, No. 83, 85, 132, 133 and 153 of 1998; No. 7, 51 and 81 of 1999, No. 21 and 51 of 2000 , No. 98 of 2000 - Decision ? 14 of the Constitutional Court of 2000; amended, No. 41 and 101 of 2001, No. 45 and 92 of 2002, No. 26 and 103 of 2004, No. 24, 43 and 76 of 2005) the following amendments are made:

1. Article 78a

a) In para 1, indent "a", the words "up to two years" shall be replaced by "up to three years" and the words "up to three years" - by "up to five years";

b) A new paragraph 6 shall be created:

"(6) When the grounds under para 1 are present and the act has been committed by an underage individual, the court shall exempt him/her from criminal liability. In this case the court shall impose the perpetrator an administrative sanction of public reprimand, where he/she has turned 16 years of age or an educational measures, where he/she has not turned 16 years of age."

2. In Article 343, paragraph (2) the words "the perpetrator shall not be punished" shall be replaced with the words "the criminal proceedings shall be terminated".

3. In Article 343a, paragraph (2) the words "the perpetrator shall not be punished" shall be replaced with the words "the criminal proceedings shall be terminated".

4. The provisions of Article 406, para 3 and 4 are rescinded.

5. Article 424

a) Para 6 shall be amended, as follows:

"(6) As regards the military service officers, as well as the officers and non-commissioned officers and the rank-and-file staff of other agencies, the administrative sanctions provided for in this code shall be imposed by the respective commanders and heads, having the right to impose disciplinary sanctions. In this case the appeals against penal decrees shall be examined by a military court";

b) Para 7 shall be rescinded.

6. In the transitional provisions of the Criminal Code Amendment Act (SG, No. 26 of 2004) in § 90 the words "Article 304" are replaced with "Article 306".

7. In the Criminal Code Amendment Act (SG, No. 103 of 2004) in § 44 the words "Article 304" are replaced with "Article 306".

§ 6. In the Civil Procedure Code (published SG No. 12 of 1952, amended, No. 92 of 1952, No. 89 of 1953, No. 90 of 1955, No. 90 of 1956, No. 90 of 1958, No. 50 and 90 of 1961; amended, No. 99 of 1961; amended, SG, No. 1 of 1963, No. 23 of 1968; No. 27 of 1973, No. 89 of 1976, No. 36 of

1979, No. 28 of 1983, No. 41 of 1985, No. 27 1986, No. 55 of 1987, No. 60 of 1988, No. 31 and 38 of 1989, No. 31 of 1990, No. 62 of 1991, No. 55 of 1992, No. 61 and 93 of 1993, No. 87 of 1995, No. 12 and 26 of 1996, No. 37, 44 and 104 of 1996, No. 43, 55 and 124 of 1997, No. 21, 59, 70 and 73 of 1998, No. 64 and 103 of 1999, No. 36, 85 and 92 of 2000, No. 25 of 2001, No. 105 and 113 of 2002, No. 58 and 84 of 2003 and No. 28 and 36 of 2004, No. 38, 42, 43 and 79 of 2005) the following amendments are made:

1. In Article 63, para 1

a) in indent "b" the word "and" after "expenses" shall be deleted;

b) indent "e" shall be created:

"e) by the claimant in respect of damage claims arising from delicts out of a criminal offence in respect to which an effective sentence exists."

2. In Article 65, para 2 at the end the following is added "except in cases under Article 63, para 1, indent "e".

3. In Article 97, para 4 , the words "Article 21, para 1, items 2 - 5" shall be replaced by "Article 24, para 1, items 2-5" and the words "Article 22, item 2 and Article 22a" shall be replaced by "Article 25, item 2 and Article 26".

4. In Article 126a:

a) In para 1, indent "c" shall be created:

"c) in relation to damage claims arising from delicts out of a criminal offences in respect to which an effective sentence exists.";

b) in para 2, the words "indent "m" and the amendment" are replaced by "indent "m" and in case of amendment".

§ 7. In the Tax Procedure Code (published, SG, No. 103 of 1999; No. 29 of 2000 - Decision ? 2 of the Constitutional Court of 2000; amended, No. 63 of 2000, No. 109 of 2001, No. 45 and 112 of 2002, No. 42, 112 and 114 of 2003, No 36, 38, 53 and 89 of 2004, No. 19, 39, 43 and 79 of 2005) in Article 91 the words "Article 97a" are replaced with "Article 123".

§ 8. In the Special Intelligence Means Act (Published, SG No. 95/1997, Amended SG No. 70/1999, SG No. 49/2000, SG No. 17/2003) the following amendments are made:

1. In the provisions of Article 2, para 3 , after the word "information", a comma shall be placed and the following shall be added "controlled delivery, trusted transaction and investigation through an officer under cover".

2. Articles 10a, 10b and 10c shall be created:

"Article 10a. A controlled delivery shall be performed by an intelligence body and shall be used by an investigating or body within the limits of their competence in the presence of uninterrupted strict control on the territory of the Republic of Bulgaria or another country within the context of international cooperation, during which a controlled individual shall be import, export, carry or effect transit transportation through the territory of the Republic of Bulgaria of an object, which makes the object of a criminal offence, with a view of detecting those involved in a trans-border crime.

Article 10b. A trusted transaction shall be used by the undercover officer and it shall be the conclusion of an apparent sale or another type of transaction involving an item with a view to gaining the trust of the other party involved in it.

Article 10c. The undercover officer shall be an officer of the competent services under the Ministry of Interior Act and the Defence and Armed Force of the Republic of Bulgaria Act or of the National Intelligence Service, authorised to make or keep contact with a controlled individual with a view to

obtaining and uncovering information about serious intentional criminal offences and the organisation of criminal activity."

§ 9. In the Implementation of Penal Sanctions Act (published, SG, No. 30 of 1969; amended, No. 34 of 1974, No. 84 of 1977, No. 36 of 1979, No. 28 of 1982, No. 27 and 89 of 1986, No. 26 of 1988, No. 21 of 1990, No. 109 of 1993, No. 50 of 1995, No. 12 and 13 of 1997, No. 73 and 153 of 1998; No. 49 of 2000, No. 62 and 120 of 2002, No. 61, 66, 70 and 103 of 2004) the following amendments are made:

1. In Article 100 , indent "f" the words "Article 361, para 2" shall be replaced by "Article 420, para 3", and the words "Article 362a, para 2" - by "Article 423, para 2".

2. In the transitional and final provisions of the Sentence Enforcement Amendment Act (SG No. 103/2004), in § 54 , the words "Article 304" shall be replaced by "Article 306".

§ 10. In the Law ot Extradition and European Arest Warrent (SG No. 46/2005) the following amendments shall be made:

1. In Article 13 :

a) In para 7 the words "Article 152a, para 5 and 8" shall be replaced by "Article 64, para 3 and 5";

b) In para 10 the words "Article 152b" shall be replaced by "Article 65".

2. In Article 15 , para 1 the words "Article 152a, para 5 and 8" shall be replaced by "Article 64, para 3 and 5".

3. In Article 43 :

a) In para 2, the words "Article 152a" shall be replaced by "Article 64";

b) In para 4, the words "Article 152b" shall be replaced by "Article 65".

§ 11. In the Ministry of Interior Act (published, SG, No. 122 of 1997, No. 29 of 1998 - Decision ? 3 of the Constitutional Court of 1998; amended, No. 70, 73 and 153 of 1998, No. 30 and 110 of 1999, No. 1 and 29 of 2000, No. 28 of 2001, No. 45 and 119 of 2002, No. 17, 26, 95, 103, 112 and 114 of 2003, No. 15, 70 and 89 of 2004, No. 11, 19 and 27 of 2005) the following amendments are made:

1. In Article 181a , para 2, item 2, the words "Article 21, para 3" shall be replaced by "Article 24, para 3".

2. In Article 259 , the words "Article 154 and Article 392" shall be replaced by "Article 69 and 403".

§ 12.§ 12. In the Criminal Assets Forfeiture Act (SG No. 19/2005), in Article 3, para 2, item 3, the words "Article 22" shall be replaced by "Article 25".

§ 13. In the Combating Trafficking in Human Beings Act (SG No. 46/2003), in Article 31 the words "Article 97a" shall be replaced by "Article 123".

§ 14. In the Bulgarian Identity Documents Act (published, SG, No. 93 of 1998; amended, No. 53, 67, 70 and 113 of 1999, No. 108 of 2000, No. 42 of 2001, No. 45 and 54 of 2002, No. 29 and 63 of 2003, No. 96, 103 and 111 of 2004, No. 43 and 71 of 2005) in Article 75, item 3 the words "Article 153a" are replaced with "Article 68".

§ 15. In the Judicial System Act (published, SG, No. 59 of 1994, No. 78 of 1994 - Decision ? 8 of the Constitutional Court of 1994, No. 87 of 1994 - Decision ? 9 of the Constitutional Court of 1994, No. 93 of 1995 - Decision ? 17 of the Constitutional Court of 1995; amended, No. 64 of 1996, No. 96 of 1996 - Decision ? 19 of the Constitutional Court of 1996; amended, No. 104 and 110 of 1996, No. 58, 122 and 124 of 1997, No. 11 and 133 of 1998, No. 6 of 1999 - Decision ? 1 of the Constitutional Court of 1999; amended, No. 34, 38 and 84 of 2000, No. 25 of 2001, No. 74 of 2002, No. 110 of 2002 - Decision ? 11 of the Constitutional Court of 2002, No. 118 of 2002 - Decision ?

13 of the Constitutional Court of 2002; amended, No. 61 and 112 of 2003, No. 29, 36 and 70 of 2004, No. 93 of 2004 - Decision ? 4 of the Constitutional Court of 2004, No. 37 of 2005 - Decision ? 4 of the Constitutional Court of 2005; amended, No. 43 of 2005) the following amendments are made:

1. Article 118a shall be created:

"Article 118a. (1) In discharge of the function under Article 118, item 1, the prosecutor shall govern the investigation and exercise constant supervision for its lawful conduct as a supervising prosecutor.

(2) Where the involvement of the supervising prosecutor in the examination of the case at a court hearing is impossible for valid reasons, the higher-standing prosecutor shall appoint another prosecutor who shall replace him/her."

2. In Article 168, para 1 , after the words " as well as" the following shall be added "for a systemic violation of time limits set forth in procedural legislation, for the performance of acts which delay the proceedings beyond any justification and".

3. Article 188u shall be created:

"Article 188u. (1) Where possible, all case acts and documents shall also be prepared on electronic carrier.

(2) Where a pending case or file must be enclosed with another case, a full copying of the material will be made, which shall be certified by the body before which proceedings are pending and the copy shall be sent to proceed with such attachment."

§ 16. In the Customs Act (published, SG, No. 15 of 1998; amended, No. 89 and 153 of 1998, No. 30 and 83 of 1999, No. 63 of 2000, No. 110 of 2001, No. 76 of 2002, No. 37 and 95 of 2003, No. 38 of 2004, No. 45 of 2005) in Article 15 , para 2, item 9 is rescinded.

§ 17. The application of the Code shall be hereby assigned to the Minister of Justice and the Minister of the Interior.

§ 18. The code shall enter into force six months after its publication in "State Gazette".