Act XIX of 1998
on Criminal Proceedings[1]

(in consolidated structure)[2]

PART ONE

Chapter I BASIC PROVISIONS

Division of the tasks related to the proceedings

Section 1 In criminal proceedings prosecution, defence and sentencing shall be separate functions.

The basis of the court procedure

Section 2 (1) In the course of sentencing, the court proceeds based upon an accusation.

(2) The court may only ascertain the criminal liability of the person against whom the accusatory instrument was filed, and in the course thereof may only contemplate acts contained in such instrument.

Right to court procedure

Section 3 (1) Everyone has the right to have the charge filed against him adjudicated by a court.

(2)[3] It is the exclusive right of the court to ascertain the liability of a person in committing a criminal offence and to impose punishment therefor.

Burden of proof

Section 4 The charge shall be proven by the accuser. Facts not proven beyond a reasonable doubt may not be contemplated to the detriment of the defendant.

Right to defence

Section 5 (1) The defendant shall have the right to defence.

(2) Everyone has the right to defend himself at liberty. This right may only be restricted or a person be deprived of his freedom for reasons and in compliance with the procedure set forth in this Act.

(3)[4] The defendant may undertake his own defence, and may be defended by a counsel at any phase of the proceedings. The court, the prosecutor and the investigating authority shall ensure that the person against whom criminal proceedings are conducted can defend himself as prescribed in this Act.

(4) In the cases specified in this Act, it is compulsory to retain a defence counsel.

Ex officio procedure, initiating criminal proceedings and exemptions from criminal proceedings[5]

Section 6 (1) It is the responsibility of the court, the prosecutor and the investigating authority to initiate and conduct the criminal proceedings if the conditions set forth in this Act prevail.

(2) Criminal proceedings may only be initiated upon the suspicion of a criminal offence and only against the person reasonably suspected of having committed a criminal offence.

(3)[6] No criminal proceedings may be initiated, and criminal proceedings in progress shall be terminated or a verdict of acquittal be rendered if

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[1] This Act was adopted by Parliament on 10 March 1998. Promulgated in the 23/1998 issue of the Official Gazette.

[2] Publication of the text of this Act, consolidated with the amendments, in the Official Gazette was ordered by Section 308 (5) of Act 1 of 2002, then by Section 88 (5) of Act II of 2003.

[3] Section 3 (2) was established by Section 1 of Act I of 2002.

[4] Section 5 (3) was established by Section 2 of Act I of 2002.

[5] The subtitle of Section 6 was established by Section 3(1) of Act I of 2002.

a) the action does not constitute a criminal offence, or was not committed by the defendant (the person against whom the complaint was filed),

b) it cannot be ascertained either that the criminal offence has been committed or that it has been committed by the defendant (the person against whom the complaint was filed),

c) with the exceptions set forth in this Act, grounds for the preclusion or termination of punishability exist,

d) a final court verdict has already been delivered on the action of the defendant, however, this provision does not apply to the procedures defined in Part Four and Titles II and III of Chapter XXVIII.

(4) With the exception of the procedures specified in Part Four (extraordinary legal remedy), subsection (3) *d)* shall apply even if the action of the offender constitutes several criminal offences, but the court – in accordance with the classification in the indictment – does not ascertain the guilt of the defendant in all offences that could be established based on the facts of the indictment.

(5) Prior to the procedure for a new trial[7] defined in the Act on Procedures for Administrative Offences, no criminal proceedings may be instituted against a person who has been declared liable in a court decision delivered in a procedure for administrative offences, if the facts of the case have not changed.

Presumption of innocence

Section 7 Everyone shall be presumed innocent until convicted in a final court verdict.

Prohibition of self-incrimination

Section 8 No one may be compelled to make a self-incriminating testimony or to produce self-incriminating evidence.

Use of the native language

Section 9 (1) Criminal proceedings shall be conducted in the Hungarian language. Not knowing the Hungarian language shall not be a ground for discrimination.

(2)[8] In criminal proceedings all those involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority language, or – failing to command the Hungarian language – another language defined by the party concerned as a language spoken.

(3) Translation of the decisions and other official documents to be served pursuant to this Act shall be the responsibility of the court, prosecutor or investigating authority which has adopted the decision or issued the official document.

Independent judgement of criminal liability

Section 10 When establishing whether the defendant has committed a criminal offence and the nature of the offence, the court, the prosecutor and the investigating authority shall not be bound by decisions adopted in other procedures, thus especially in civil proceedings, procedure for misdemeanours or disciplinary actions, nor by the facts set forth therein.

Scope of the Act

Section 11 (1) Criminal proceedings shall be conducted in compliance with the law in force at the time of judging the action.

(2) In cases falling under Hungarian criminal jurisdiction [Sections 3 and 4 of Act IV of 1978 on the Penal Code (hereinafter: Penal Code)] the proceedings shall be conducted in accordance with this Act.

Chapter II THE COURT

Responsibility of the court

Section 12 (1) The court shall be responsible for the administration of justice.

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[6] Section 6 (3)–(5) was enacted by Section 3 (2) of Act I of 2002.

[7] See Section 103 (1) e) of Act LXIX of 1999.

[8] See Section 103 (1) e) of Act LXIX of 1999.

(2) Unless provided otherwise by this Act, courts shall be responsible for making a decision on coercive measures involving the loss or restriction of liberty.

(3) The court shall discharge other duties as set forth in this Act.

(4) Unless provided otherwise in this Act, prior to the indictment the responsibilities of the court shall be performed by the investigating judge.

Acting courts

Section 13 (1) The court of first instance shall be the local court and the county court.

(2) The court of appeal shall be

a) the county court in the cases falling within the competence of the local court,

b) the tribunal in the cases falling within the competence of the county court,

c)[9] the Supreme Court in the cases falling within the competence of the tribunal, if the decision of the tribunal may be appealed pursuant to this Act.

(3)[10] In the cases specified in this Act the secretary of the court vested with independent signatory rights may also act in lieu of the single judge or the presiding judge in cases falling within the competence of the court of first instance. In such cases the actions of the secretary of the court shall be governed by the provisions set forth in this Act for court procedures.

(4)[11] In the cases specified in the relevant legal regulation, the court executive vested with independent signatory rights may also act – under the direction and supervision of the judge – out of trial. In such cases the actions of the court executive shall be governed by the provisions set forth in this Act for court procedures.

Composition of the court

Section 14 (1) The local court shall act

a[12]*)* in a panel comprising one professional judge and two associate judges, if the criminal offence is punishable by eight years or more imprisonment by law,

b) without the involvement of associate judges (as single judge) in the cases not falling under item *a)*.

(2) Unless provided otherwise by this Act, the county court acting as a court of first instance may conduct its procedure in a panel consisting of one professional judge and two associate judges.

(3) In the case specified in subsection (1) *b)*, the local court may act in a panel consisting of one professional judge and two associate judges, if it establishes a classification of the criminal offence underlying the prosecution differently from that indicated in the indictment.

(4) In the cases specified in this Act, the county court acting as a court of first instance may conduct its procedure in a panel consisting of two professional judges and three associate judges.

(5)[13] The court of appeal, the tribunal and – unless provided otherwise by this Act – the Supreme Court shall act in a panel consisting of three professional judges.

(6) Both the single judge and the presiding judge shall be professional judges; in the course of administering justice, the professional judge and the associate judges have identical rights and obligations.

(7)[14] In the case of criminal offences enumerated in Section 17 (5) and (6) in the first instance the presiding judge (single judge), and in the second instance one of the members of the panel shall be a judge designated by National Judiciary Council.

Competence of the court of first instance

Section 15 Judgement of criminal offences in the first instance shall fall within the competence of the local court, unless they are referred to the competence of the county court by this Act.

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[9] Section 13 (2) c) was enacted by Section 5 (1) of Act I of 2002.

[10] Section 13 (3) was established by Section 5 (2) of Act I of 2002.

[11] Section 13 (4) was enacted by Section 5 (2) of Act I of 2002.

[12] The text of Section 14 (1) a) was established by Section 6 (1) of Act I of 2002.

[13] The text of Section 14 (5) was established by Section 6 (2) of Act I of 2002.

[14] Section 14 (7) was enacted by Section 6 (3) of Act I of 2002. See also Section 14 (3) of Act LXVII of 1997

Section 16 (1)[15] The following shall fall within the competence of the county court

a) criminal offences punishable by imprisonment for a term up to fifteen years or life imprisonment by law; and

b) criminal offences against the state (Chapter X. of the Penal Code);

c) crimes against humanity (Chapter XI of the Penal Code);

d)[16] preparations for murder, negligent homicide [Section 166 (3) and (4) of the Penal Code], murder committed in the heat of passion (Section 167 of the Penal Code), physical injury creating a substantial risk of death or causing death [third sentence part in Section 170 (5) and (6) of the Penal Code], kidnapping (Section 175/A of the Penal Code), trafficking in human beings (Section 175/B of the Penal Code), offences related to medical treatment and offences against the order of medical research and medical self-determination (Title II of Chapter XII of the Penal Code);

e)[17] criminal offences against the order of elections, referenda and the people's motions (Section 211 of the Penal Code), violation of state and official secrets (Title III of Chapter XV of the Penal Code), abuse of public office (Title IV of Chapter XV of the Penal Code), violation against an internationally protected person (Section 232 of the Penal Code), riot of prisoners (Section 246 of the Penal Code), criminal offence against the administration of justice before an international court (Section 249/B of the Penal Code), criminal offences against the integrity of public life (international public life) (Title VII and VIII of Chapter XV of the Penal Code);

f) terrorist acts (Section 261 of the Penal Code), violation of international legal obligations (Section 261/A of the Penal Code), seizure of aircraft and railway vehicles, vessels and road vehicles of mass transportation or vehicles suitable for the mass transportation of goods (Section 262 of the Penal Code), participation in criminal organisation (Section 263/C of the Penal Code);

g) violation of obligations related to the movement of internationally controlled products and technologies (Section 287 of the Penal Code), insider trading (Section 299/A), capital investment fraud (Section 299/B of the Penal Code), organisation of a pyramid scheme (Section 299/C of the Penal Code), money laundering (Section 303 of the Penal Code), counterfeiting of money (Section 304 of the Penal Code) and forgery of stamps (Section 307 of the Penal Code);

[h)[18] *causing public danger resulting in major or greater financial loss [Section 259 (2) b) of the Penal Code], interference with the operation of public utilities [Section 260 (2) of the Penal Code], criminal offence against computer systems and data, causing major or exceptionally large damage [Section 300/C (4) b) and c) of the Penal Code], social security or tax fraud resulting in a major or greater loss of revenue [Section 310 (4) a) of the Penal Code], violation of the payment obligation to the Labour Market Fund [Section 310/A (3) of the Penal Code], violation of the obligation to pay social security, health or pension contribution [Section 310/B (3) of the Penal Code], misuse of excise duty [Sections 311 (4) a) and 311 (5) of the Penal Code], receiving of products subject to excise duty and having major or exceptionally large value [Sections 311/A (3) a) and 311/A (4) of the Penal Code], trafficking in and receiving of stolen dutiable goods of major or exceptionally large value [Sections 312 (3) a) and 312 (4) of the Penal Code], misuse of cash substitutes causing major or exceptionally large damage [Sections 313/C(5) a) and 313/C (6) of the Penal Code], theft [Sections 316 (6) a) and 316 (7) of the Penal Code] and embezzlement [Sections 317 (6) a) and 317 (7) of the Penal Code] of major or exceptionally large value, fraud causing major or exceptionally large damage [Sections 318 (6) a) and 318 (7) of the Penal Code], misappropriation of funds resulting in major or exceptionally large financial loss [Section 319 (3) c) and d) of the Penal Code], negligent mismanagement of funds resulting in major or exceptionally large financial loss [Section 320 (2) of the Penal Code], robbery [Section 321 (4) a) of the Penal Code] and mugging [Section 321 (4) a) of the Penal Code] of major or greater value, further, causing major or exceptionally large damage [Sections 324 (5) and 324 (6) of the Penal Code], receiving of stolen goods of major or exceptionally*

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[15] The text of Section 16 (1) a) to d) and g), further, item h) which latter is in force until January 1, 2005 was established by Section 7 of Act I of 2002.

[16] Pursuant to Section 88 (2) a) of Act II of 2003, the sentence part "infanticide (Section 166/A of the Penal Code)" shall lose effect and not enter into force.

[17] The text of Section 16 (1) e) and f) was established by Section 29 (1) of Act I of 2002.

[18] Section 16 (1) h) was enacted by Section 29 (2) of Act II of 2003, which simultaneously designated item h) as item i). Pursuant to Section 88 (3) of Act II of 2003, the provision shall enter into force on January 1, 2005.

large value [Section 326 (5) a) and 326 (6)], violation of copyright or associated rights resulting in major or exceptionally large financial loss [Section 329/A (3) of the Penal Code] and violation of rights protected by industrial patent law [Section 329/D (3) of the Penal Code].

[i]h) criminal offences subject to military law.

(2) Defendants having committed offences falling within the competence of various courts shall be prosecuted by the county court.

Jurisdiction of the court of first instance

Section 17 (1)[19] Unless provided otherwise by this Act, the court of jurisdiction shall be the court located at the geographical area where the criminal offence has been committed. The geographical jurisdictions of the courts are specified in the Act on the organisation and management of courts.

(2) If the offence has been committed in the area of more than one courts, or the crime scene cannot be established, the court of jurisdiction from among the courts of identical competence shall be the one that had taken measures earlier in the case (preceding authority), not considering, however, the procedure conducted by the investigating judge. If the scene of the crime becomes known prior to the commencement of the trial, the procedure shall be continued by the court located at the geographical area where the criminal offence has been committed, as requested in the motion of the prosecutor, the defendant, the counsel for the defence, the substitute private accuser or the private accuser.

(3)[20] The court located at the place of residence of the defendant shall also have jurisdiction to proceed in the case, if the prosecutor, the private accuser or – unless provided otherwise in this Act – the substitute private accuser files the indictment there.

(4) In the event of several defendants, the court having jurisdiction over any of the defendants may also adjudicate the case of the others, unless it exceeds its competence. If there are more than one court meeting this criterion, the "principle of preceding authority" shall decide the jurisdiction.

(5)[21] Endangering in the course of practising a profession (Section171 of the Penal Code), traffic-related offences (Chapter XIII of the Penal Code) – not including driving under the influence of alcohol or a narcotic substance [Section 188 (1) of the Penal Code] and allowing driving to an unauthorised person [Section 189 (1) of the Penal Code] –, criminal offences related to traffic regulations but not specified in Chapter XIII of the Penal Code, endangering a minor (Section 195 of the Penal Code), causing public danger (Section 259 of the Penal Code) and interference with the operation of public utilities (Section 260 of the Penal Code) shall fall under the jurisdiction of the local court located at the seat of the county court, or, within the geographical jurisdiction of the Metropolitan Court, Pest Central District Court. The jurisdiction of these courts in respect of such criminal offences shall extend to the territory of the county or Budapest, respectively.

(6)[22] Abuse of nuclear materials (Section 264of the Penal Code), abuse of the operation of nuclear facilities (Section 264/A of the Penal Code), abuse of the application of nuclear energy (Section264/B of the Penal Code) and economic crimes (Chapter XVII of the Penal Code) – not including financial offences (Title III of Chapter XVII of the Penal Code) – shall fall under the jurisdiction of the local court located at the seat of the county court, or, within the geographical jurisdiction of the Metropolitan Court, Pest Central District Court. The jurisdiction of these courts in respect of such criminal offences shall extend to the territory of the county or Budapest, respectively.

(7) In the case of defendants having committed criminal offences falling under the jurisdiction of several courts, the court having jurisdiction over any of the offences pursuant to subsections (5)–(6) shall proceed.

(8)[23] The jurisdiction of the court competent in respect of the offender shall be extended to the abettor and the receiver as well.

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[19] The second sentence of Section 17 (1) was enacted by Section 8 ()1) of Act I of 2002. See also Part I of the Annex to Act LXVI of 1997.

[20] The text of Section 17 (3)–(4) was established by Section 8 (2) of Act I of 2002.

[21] The text of Section 17 (5) was established by Section 29 (3) of Act II of 2003.

[22] The text of Section 17 (6) was established by Section 8 (2) of Act I of 2002.

[23] The text of Section 17 (8) was enacted by Section 8 (3) of Act I of 2002.

Section 18 (1) Criminal offences committed outside the boundaries of the Republic of Hungary shall be prosecuted by the court having jurisdiction at the place where the defendant resides or stays, failing this, the court having jurisdiction at the place where the offender is detained.

(2) If the defendant has committed the criminal offence outside the boundaries of the Republic of Hungary and the procedure is conducted in his absence, the court of jurisdiction shall be the court having jurisdiction at the place of the last residence or stay of the defendant.

Examination of competence and jurisdiction

Section 19 The court shall examine its competence and jurisdiction ex officio.

Designation of the acting court

Section 20 (1) In the event of a conflict in the competence or jurisdiction of courts, the acting court shall be designated after obtaining the motion of the prosecutor.

(2) The decision on the designation

a) shall be adopted by the panel of second instance of the county court, if the conflict arises among local courts located in its jurisdiction,

b)[24] shall be adopted by the tribunal, if the conflict of competence arises between the county court and the local court, or a conflict of jurisdictions arises among the county courts or local courts located within the jurisdiction of various county courts,

c) shall be adopted by the Supreme Court, if the conflict of competence arises between the county courts and local courts belonging to various tribunals, the military panel of the county court and another division of the county court or another county court, between the county court and the tribunal, the military panel of the Metropolitan Tribunal and another panel of the tribunal or another tribunal, or between the Supreme Court and the tribunal, further, if the conflict of jurisdiction arises between tribunals or county courts and local courts belonging to various tribunals.

(3) The acting court shall also be designated by the Supreme Court if the conditions for determining jurisdiction cannot be established.

Exclusion of judges

Section 21 (1) No one may act as a judge,

a) who has acted in the case as a prosecutor or a member of the investigating authority, or who is a relative of the prosecutor or a member of the investigating authority having acted or acting in the case,

b) who is or has been involved in the case as a defendant or a counsel for the defence, or a victim, a private accuser, a substitute private accuser, private party, informant or the representatives thereof, further, the relatives of the above,

c) who is or has been involved in the case as a witness, expert or advisor,

d) who has made a decision, under the relevant legal regulation[25] on gathering secret intelligence in the case, regardless of whether the information thus collected has been actually used in the course of the criminal proceedings,

e) who cannot be expected to form an unbiased opinion for other reasons.

(2) The provisions set forth in subsection (1) above shall also apply to the investigating judge.

(3) In addition to the cases regulated in subsection (1) above,

a) the person having acted as a investigating judge in the case shall be excluded from subsequent court procedures,

b)[26] the judge having participated in the judgement of the case in the first instance shall be excluded from the procedure of the appeal court,

c) further, when proceedings of first or second instance are re-instituted due to repealing the original decision, the judge who has participated in adopting either the repealing decision or the decision repealed owing to lack of grounds shall be excluded from the re-instituted proceedings,

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[24] The text of Section 20 (2) b) and c) was established by Section 2 (1) of Act XXII of 2002.

[25] See Section 71 of Act XXXIV of 1994, Section 174 (4) of Act C of 1995, Section 59 of Act XXXII of 1997 and Section 58 (1) of Act CXXV of 1995.

[26] The text of Section 21 (3) b) and c) was established by Section 10 (1) of Act I of 2002.

d)[27] the judge who has participated in the adoption of the decision appealed by a motion for extraordinary legal remedy shall be excluded from the extraordinary legal remedy procedure.

(4) In the case specified in subsection (3) the judge whose relative participated in the adoption of the appealed decision shall also be excluded from the judgement of the case.

(5)[28] In the case of subsection (3) *d)* participation of the judge in the adoption of a decision not affected by the motion for extraordinary legal remedy shall not constitute a ground for exclusion.

Section 22[29] With the exception of the Supreme Court, when a ground for exclusion regulated in Section 21 (1) *a)–c)* exists in respect of the president or vice-president of a court, the given court may not proceed in the case.

Section 23 (1) The judge affected by a ground for exclusion and the presiding judge gaining cognisance of the existence of a ground for exclusion in respect to a member of the panel shall immediately notify the president of the court thereof.

(2) The ground for exclusion may also be reported by the prosecutor, the defendant, the counsel for the defence, furthermore, by the victim, the private accuser, the substitute private accuser, the private party, and the representatives thereof.

(3)[30] After the commencement of the trial, the persons in subsection (2) may only validly refer to the ground for exclusion specified in Section 21 (1) *e),* if they justify that the fact underlying the notification came to their cognisance only after the commencement of the trial and announce it forthwith.

(4) Upon gaining cognisance of a ground for exclusion, the president of the court shall initiate the exclusion of the judge ex officio.

Section 24 (1)[31] If the ground for exclusion is announced by the judge himself or the presiding judge in respect of the judge, from the time of the announcement the judge concerned shall not be involved in the case.

(2) Apart from the cases specified in subsection (1) the judge may remain involved in the case until the motion is given effect, however, the judge may not participate in the adoption of the conclusive decision.

(3) The restriction set forth in subsection (2) shall not apply to the judge, if after the dismissal of the first motion, the same party makes a further motion for the exclusion of the judge referring to the same item of Section 21 (1) and (3).

(4) The president of the court shall ensure the designation of another judge if the ground for exclusion has been notified by the judge himself or the presiding judge in respect of the judge, or the judge has consented to the exclusion. In such cases no separate decision is required thereon.

(5) If the exclusion cannot be arranged as regulated in subsection (4), the exclusion shall be decided upon by another panel of the court.

(6)[32] In the case set forth in Section 22, or if the court division has no panel which is unaffected by the ground for exclusion, the exclusion shall be resolved by the court of appeal, or, if the motion on the ground for exclusion was made, partially or entirely, in respect of the county court as the court of appeal, the exclusion shall be resolved by the tribunal. If the ground for exclusion applies to or affects the tribunal, the decision shall be made by the Supreme Court. Should the motion for exclusion be admitted, designation of the acting court shall be governed by the provisions of Section 20.

(7) The decision on the exclusion shall be adopted by the court at a panel meeting. If the motion for the exclusion was made by a party other than the judge, a declaration shall be obtained from the judge.

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[27] The text of Section 21 (3) d) and c) was established by Section 10 (1) of Act I of 2002.

[28] Section 21 (5) was enacted by Section 10 (2) of Act I of 2002.

[29] The text of Section 22 was established by Section 2 (2) of Act XXII of 2002 then amended by Section 88 (2) c) of Act II of 2003 ("president or vice-president" was amended to read "president and vice-president")

[30] Section 23 (3) was enacted by Section 12 of Act I of 2002, which simultaneously designated the original subsection (3) as subsection (4).

[31] The text of Section 24 (1) was established by Section 13 (1) of Act I of 2002.

[32] The first and third sentence of Section 24 (6) was established by Section 13 (2) of Act I of 2002, while the second sentence was enacted by Section 2 (3) of Act XXII of 2002.

(8) The decision on the exclusion may not be appealed, the denial of the exclusion may be contested in the form of an appeal against the conclusive decision.

Section 25 If the counsel for the defence, the victim, the private accuser, the substitute private accuser, the private party or the representative thereof repeatedly announces an unfounded ground for exclusion in respect of the same judge, a disciplinary penalty may be imposed on them in the decision on the denial of the exclusion.

Section 26 (1) The provisions regarding the exclusion of judges shall also apply to associate judges.

(2) With regard to the exclusion of investigating judges the provisions of Sections 23–25 shall apply; however, if the investigating judge did not consent to the exclusion based on the ground announced against him, he may remain involved in the case until the motion is given effect.

Section 27[33] The provisions regarding the exclusion of judges shall also apply to the exclusion of secretaries of the court, keepers of the records and court executives.

Chapter III THE PROSECUTOR

Responsibilities of the prosecutor

Section 28 [34](1) The prosecutor shall act as the public accuser. The prosecutor shall be obliged to consider both the circumstances aggravating and extenuating for the defendant and the circumstances aggravating and mitigating the criminal liability in all phases of the proceedings.

(2) The prosecutor shall exercise the rights vested in the prosecutor's office where the prosecutor works.

(3) The prosecutor shall order or perform an investigation to establish the conditions for accusation.

(4) When the investigating authority conducts an investigation or certain investigative actions independently [Section 35 (2)], the prosecutor shall supervise compliance with this Act throughout the procedure and ensure that the persons participating in the procedure can assert their rights. With this in view, the prosecutor

a) may order an investigation, assign the investigating authority to conduct the investigation, and may instruct the investigating authority to perform – within the its own geographical jurisdiction – further investigative actions or further investigation, or to conclude the investigation within the deadline designated by the prosecutor,

b) may be present at the investigative actions, and may examine or send for the documents produced during the investigation,

c) may amend or repeal the decision of the investigating authority, and shall consider the complaints received against the decision of the investigating authority,

d) may reject the complaint, terminate the investigation and order the investigating authority to terminate the investigation,

e) may refer the proceedings in his own competence.

(5) In the event that the prosecutor conducts the investigation, it may instruct any investigating authority to perform – within its own geographical jurisdiction – an investigative action, and in the course of an investigation by the prosecutor's office, the Prosecutor General may employ the members of other investigating authorities upon the consent of the national head of the given authority.

(6) The prosecutor shall oversee lawful enforcement of coercive measures ordered in the course of the criminal proceedings and entailing the restriction or deprival of personal freedom.

(7) If the conditions set forth in this Act prevail, the prosecutor shall file an indictment and – unless the charge was pressed by a private accuser or a substitute private accuser – represent the charge before the court, or decide on the postponement or partial omission of filing an indictment. The prosecutor may abandon or modify the charge. In the course of a court action, the prosecutor may examine the documents of the case and shall have the right of motion in any issue arising in connection with the case in which the court has the right to decide.

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[33] The text of Section 27 was established by Section 14 of Act I of 2002.

[34] The text of Section 28 was established by Section 15 of Act I of 2002.

Section 29 It shall fall within the exclusive competence of the prosecutor's office to conduct investigation in the following criminal offences:

a) [35] criminal offences committed by persons enjoying immunity due to holding a public office [Section 551 (1)] and by persons enjoying international immunity [Section 553 (1)], violence against such persons in their capacity as officials and criminal offences committed against such persons in connection with their work, as well as violence against internationally protected persons (Section 232 of the Penal Code),

b) murder and violence against a judge, a prosecutor, a clerk or secretary or executive of the court or the prosecutor's office, an inspector at the prosecutor's office, an independent bailiff, a county court bailiff or their respective deputies, a notary public or an assistant notary public, or a sworn officer of the police in their capacity as official persons, further, kidnapping an official person, violence against an official person and robbery against official persons in the course of their official proceedings [Sections 166 (2) *e)*, 229, 321 (3) *d)*, (4) *b)* and *c)* of the Penal Code],

c)[36] with the exception of the sworn members of the police, any criminal offence committed by the persons listed under item *b)*, as well as criminal offences committed by an associate judge in connection with the administration of justice,

d) bribery of the persons listed in item *b)* [Section 253 (1) and (2) of the Penal Code], bribery by an official person holding a senior position or entitled to take measure in matters of importance [Section 250 (2) *a)* and the second item in Section 250 (3) of the Penal Code], the form of bribery specified in Section 255 of the Penal Code, failure to report a bribery (Section 255/B of the Penal Code) and trafficking in influence [256 Section (1) and (2) of the Penal Code],

e)[37] criminal offences committed by the sworn members of the police and civil national security services if the offence is not subject to the military law, and any criminal offence committed by a sworn member of the Customs and Excise Office or a financial investigator,

f)[38] from among criminal offences against the administration of justice (Chapter XV of Title V of the Penal Code) false accusation (Sections 233 to 236 of the Penal Code), misleading the authority (Section 237 of the Penal Code), perjury (Sections 238 to 241 of the Penal Code), soliciting perjury (Section 242 of the Penal Code), obstruction of official procedure (Section242/A of the Penal Code), suppressing extenuating circumstances (Section 243 of the Penal Code), harbouring crime by official persons in the course of their proceedings [Section 244 (3) *b)* of the Penal Code], misuse of power of attorney (Section 247 of the Penal Code), unlawful legal practice (Section 248 of the Penal Code), criminal offence against the administration of justice before an international court (Section 249/B of the Penal Code), (international public life)

g)[39] criminal offences committed against foreign official persons (Section 137 3. of the Penal Code) and criminal offences against the integrity of public life (Title VIII of Chapter XV of the Penal Code).

Competence and jurisdiction of the prosecutor's office

Section 30 (1)[40] As a rule, the competence and jurisdiction of the prosecutor's office shall depend on the competence and jurisdiction of the court where it operates. The organisation of the prosecutor's office shall be determined by the Prosecutor General pursuant to the relevant law. [41]

(2) In the event of criminal offences falling within the jurisdiction of various prosecutor's offices, the acting prosecutor's office shall be the one that had taken measures in the case earlier.

(3) If instructed by the Prosecutor General, the prosecutor general for appeals or the county prosecutor general, the prosecutor may also proceed in cases otherwise not falling under his competence or jurisdiction.

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[35] The text of Section 29 a) and b) was established by Section 30 (1) of Act II of 2003.
[36] The text of Section 29 c) and d) was established by Section 16 (1) of Act I of 2002.
[37] The text of Section 29 e) was established by Section 30 (2) of Act II of 2003.
[38] The text of Section 29 f) was established by Section 16 (1) of Act I of 2002.
[39] The text of Section 29 g) was enacted by Section 16 (2) of Act I of 2002.
[40] The text of Section 30 (1) was established by Section 17 of Act I of 2002.
[41] See Section 19 (3) of Act V of 1972 and the order of the General Prosecutor's Office No. 3/2001 (ÜK 5).

(4) In the event of a conflict of competence or jurisdiction between prosecutor's offices, the acting prosecutor's office shall be designated by the superior prosecutor.

Exclusion of the prosecutor

Section 31 (1) No one may act as a prosecutor in criminal proceedings,

a) who has acted as a judge in the case, or a relative of a judge acting or having acted in the case,

b) who is or has been involved in the case as a defendant or a counsel for the defence, or a victim, a private accuser, a substitute private accuser, private party, informant or the representatives thereof, further, the relatives of the above,

c) who is or has been involved in the case as a witness, expert or advisor,

d) who cannot be expected to form an unbiased opinion for other reasons.

(2) The prosecutor having conducted the investigation or performed investigative actions, has filed the indictment or represented the charge in the underlying offence may not participate in the re-trial procedure.

(3) It shall not constitute a ground for exclusion, if the prosecutor has filed a report on a criminal offence coming to his cognisance within his official competence.

(4)[42] With the exception of the Prosecutor General's office, when a ground for exclusion regulated in subsection (1) a) or b) exists in respect of the head or deputy head of the prosecutor's office, the given prosecutor's office may not act in the case.

(5)[43] When a ground for exclusion regulated in subsection (1) a) or b) exists in respect of the county prosecutor general or his deputy, the local prosecutor's office located in the area of the county prosecutor general's office may not act in the case.

Section 32 (1)[44] The prosecutor affected by a ground for exclusion shall immediately notify the head of the prosecutor's office thereof. From the time of the notification of a ground for exclusion, the prosecutor may not act in the case.

(2) The ground for exclusion may also be reported by the defendant, the counsel for the defence, furthermore, by the victim, the private accuser, the substitute private accuser, the private party, and the representatives thereof.

(3) Upon gaining cognisance of a ground for exclusion, the head of the prosecutor's office shall initiate the exclusion of the prosecutor ex officio.

(4) If the ground for exclusion is not reported by the prosecutor himself, the prosecutor may proceed in the case until the motion is given effect, however – with the exception of a ground for exclusion regulated in Section 31 (1) *d)* – he shall have no power to dismiss a complaint, terminate the investigation, apply coercive measures, file an indictment or represent the charge.

(5) The decision on the exclusion of the prosecutor and the head of the prosecutor's office shall be adopted by the head of the prosecutor's office and the head of the superior prosecutor's office, respectively.

Section 33 [45](1) The restriction set forth in subsection Section 32 (4) shall not apply to the prosecutor, if after the dismissal of the first motion, the same party makes a further motion for the exclusion of the prosecutor referring to the same item of Section 31 (1) or to Section 31 (2).

(2) If the defendant, counsel for the defence, the victim, the private accuser, the private party or the representative of the victim, the private accuser or the private party repeatedly announces an unfounded ground for exclusion in respect of the same prosecutor, a disciplinary penalty may be imposed on them in the decision on the denial of the exclusion.

Section 34 [46] The provisions regarding the exclusion of the prosecutor shall also apply to the exclusion of the secretary and the keeper of the minutes of the prosecutor's office.

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[42] The text of Section 31 (4) was established by Section 2 (4) of Act XXII of 2002.

[43] Section 31 (5) was enacted by Section 18 of Act I of 2002.

[44] Section 32 (1) to (3) was enacted by Section 19 of Act I of 2002 which simultaneously designated the original subsections (1) and (2) as subsections (4) and (5).

[45] The text of Section 33 was established by Section 20 of Act I of 2002.

Chapter IV THE INVESTIGATING AUTHORITY

Responsibilities of the investigating authority

Section 35 (1) The investigating authority conducts the investigation upon the order of the prosecutor or independently.

(2) The investigating authority shall conduct the investigation or perform certain investigative actions independently, if the criminal offence was detected by, or the complaint filed with, the investigating authority itself, or the offence came to the notice of the investigating authority in another way.

The investigating authority

Section 36 (1) The general investigating authority is the police.

(2)[47] The Customs and Excise Office shall conduct the investigation in the following criminal offences:

a) violation of international legal obligations (Section 261/A of the Penal Code), violation of obligations related to the movement of internationally controlled products and technologies (Section 287 of the Penal Code), foreign trade without a licence (298 Section of the Penal Code), misuse of excise duty (Section 311 of the Penal Code), receiving of goods subject to excise duty (Section 311/A of the Penal Code), smuggling and receiving smuggled goods (Section 312 of the Penal Code);

b) false marking of goods (Section 296 of the Penal Code), usurpation (Section 329 of the Penal Code), violation of copyright or associated rights (Section 329/A of the Penal Code), evasion of technical measures guaranteeing copyright or associated rights (Section 329/B of the Penal Code), forgery of data relating to copyright or associated rights (Section 329/C of the Penal Code) and violation of rights protected by industrial patent law [Section 329/D of the Penal Code], if such offences involve goods subject to customs or excise duty;

c) social security or tax fraud (Section 310 of the Penal Code), fraud (Section 318 of the Penal Code), if such offences involve taxes, contributions or budget subsidies falling within the competence of the Customs and Excise Office,

d) forgery of public deeds (Section 274 of the Penal Code), forgery of private deeds (Section 276 of the Penal Code), forgery of a unique identification mark (Section 277/A of the Penal Code) and forgery of stamps (Section 307 of the Penal Code), if committed in connection with the criminal offences specified in items a) to c) above,

e) drug abuse through importation into Hungary, exportation from Hungary or transportation through the territory of Hungary (Sections 282 and 282/C of the Penal Code) and misuse of substances used for drug production (Section 283/A of the Penal Code), if the offence is detected or the complaint is received by the Customs and Excise Office.

(3) [48] The investigation in the cases of prohibited entry or stay in Hungary (Section 214 of the Penal Code), facilitation of unlawful stay in Hungary (Section 214/A of the Penal Code), trafficking in human beings (Section 218 of the Penal Code), damaging border marks (Section 220 of the Penal Code) and forgery of public deeds in respect of travel documents (Section 274 of the Penal Code) shall be conducted by the Border Guard, if the offence is detected or the complaint has been received by the Border Guard.

(5)[49] The investigation in the criminal offences committed by Hungarian citizens or – with the exception of the cases set forth in Sections 3 (2) and 4 of the Penal Code – any other person on a Hungarian commercial vessel or civil aircraft, the commanding officer of the vessel or the aircraft shall have the power to apply the regulations pertaining to the investigating authority.

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[46] The text of Section 34 was established by Section 21 of Act I of 2002.

[47] The text of Section 36 (2) was established by Section 31 of Act II of 2003.

[48] The text of Section 36 (3) was established by Section 22 of Act I of 2002.

[49] Pursuant to Section 88 (2) a) of Act II of 2003, the original Section 36 (4) will lose effect and will not enter into force. Pursuant to Section 88 (2) b) of Act II of 2003, the numbering of Section 36 (5) shall be amended to 36 (4). See Act LXVI of 2002.

Competence and jurisdiction of the investigating authority

Section 37 (1) The competence and jurisdiction of the investigating authorities is stipulated in the relevant legal regulation. [50]

(2)[51] In the event of a conflict of interest among the investigating authorities listed in Section 36 (1) to (4), or, if an offence falling within the competence of the police, the Customs and Excise Office or the Border Guard is combined with an offence beyond the competence of the given investigating authority and the procedure cannot be practicably separated, the acting investigating authority shall be designated by the competent prosecutor. The prosecutor may also designate as the acting investigating authority an investigating authority which, pursuant to Section 36 (2) and (3) would not otherwise be competent in the investigation of the offence.

(3)[52] Upon the agreement of their heads and the consent of the prosecutor, the investigating authorities may set up a joint task force to investigate a specific case or a specific group of cases.

Exclusion of a member of the investigating authority

Section 38 (1) No one may act as a prosecutor in criminal proceedings,

a) who has acted as a judge in the case, or a relative of a judge acting or having acted in the case,

b) who is or has been involved in the case as a defendant or a counsel for the defence, or a victim, a private accuser, a substitute private accuser, private party or the representatives thereof, further, the relatives of the above,

c) who is or has been involved in the case as a witness, expert or advisor,

d) who cannot be expected to form an unbiased opinion for other reasons.

(2) The member of the investigating authority having participated in the investigation of the underlying offence may not participate in the investigation conducted during the re-trial procedure.

(3) It shall not constitute a ground for exclusion, if the member of the investigating authority has filed a report on a criminal offence coming to his cognisance in the course of discharging his duties.

(4) The investigating authority may not act in the case, when a ground for exclusion regulated in Section 38 (1) exists in respect of its head. Should the ground for exclusion occurs in respect of the head of the investigating authority with nation-wide competence, the investigation shall be conducted by the prosecutor's office.

Section 39 (1) If the ground for exclusion is not reported by the member of the investigating authority himself, such member may proceed in the case until the motion is given effect, without, however, having the power to apply coercive measures.

(2) The decision on the exclusion of a member of the investigating authority and the head of the investigating authority shall be adopted by the head of the investigating authority and the head of the superior investigating authority, respectively. The decision on the exclusion of the head of the investigating authority with nation-wide competence shall be adopted by the competent prosecutor.

Section 40[53] In other respects, to the exclusion of a member of the investigating authority the provisions set forth in Sections 32 (1) to (4) and 33 shall apply as appropriate, however, it shall be the prosecutor's right to impose the disciplinary penalty.

Section 41 The provisions regarding the exclusion of the members of the investigating authority shall also apply to the exclusion of the keeper of the minutes.

V Chapter PERSONS PARTICIPATING IN CRIMINAL PROCEEDINGS

Section 42 [54] In addition to those listed in Chapters II–IV, the following persons participate in criminal proceedings: the defendant, the counsel for the defendant, the private accuser, the

[50] See Decrees No. 15/1994 (VII.14) BM of the Ministry of the Interior, No. 59/1997 (X.31) BM of the Ministry of the Interior and No. 37/1991 (XII.24) PM of the Ministry of Finance.
[51] The text of Section 37 (2) was established by Section 32 of Act II of 2003.
[52] The text of Section 37 (3) was enacted by Section 23 (2) of Act I of 2002.
[53] The text of Section 40 was established by Section 22 of Act I of 2002.
[54] The text of Section 42 was established by Section 33 of Act II of 2003.

substitute private accuser, the private party, other interested parties as well as the representatives thereof and the aides.

The defendant

Section 43 (1) The defendant is the person against whom criminal proceedings have been instituted. The defendant is called suspect in the course of the investigation, accused in the course of the court procedure and convict after the final imposition of the sentence, or the definitive imposition of the reprimand, probation or corrective education.

(2) The defendant is entitled to

a) receive information on the suspicion, on the charge and any changes therein,

b) – unless provided otherwise by this Act – be present at the procedural actions, and inspect the documents affecting him or her in the course of the procedure,

c) be granted sufficient time and opportunity for preparing his or her defence,

d) present facts to his or her defence at any stage of the procedure, and to make motions and objections,

e) file for legal remedy,

f) receive information from the prosecutor and the investigating authority concerning his or her rights and obligations during the criminal proceedings.

(3) [55] The defendant in custody is entitled to

a) contact his or her defence counsel, and, in the case of foreign citizens, the representative of the consulate of his or her native country and communicate with them both in writing and verbally without control,

b) conduct verbal communication with his or her relatives personally under supervision, and written communication under control, based on the decision of the prosecutor and the court before and after the bill of indictment is filed, respectively.

(4) Without prejudice to the right set forth in subsection (2) *c)* above, the defendant shall be granted the possibility for making preparations without causing unreasonable difficulties for conducting the procedure.

(5) [56] The defendant residing in the territory of the Republic of Hungary shall report his or her place of residence or place of stay and any change therein to the court, prosecutor or investigating authority within three working days after moving, which conducts criminal proceedings against him or her. Unless this Act stipulates other legal consequences, upon the failure to report the above, in addition to imposing a disciplinary penalty, the defendant may be obliged to pay the resulting costs.

(6) When the relative (heir) of the defendant is granted the right of motion by this Act, the rights of the defendant shall apply, as appropriate, to the rights of the relatives (heirs). Upon the death of a defendant was a member of a church and was prevented from entering into marriage due to the order of the church which he belonged to or due to an oath made, in the absence of a relative (heir), his principal at the relevant church shall have the rights of a relative in direct line.

The counsel for the defendant

Section 44 [57](1) The counsel for the defendant may be a lawyer acting upon a power of attorney or an official appointment.

(2) More than one counsels for the defence may act on behalf of a single defendant. In the event that powers of attorney are given to several counsels for defence – unless the power of

[55] The text of Section 43 (3) was established by Section 26 (1) of Act I of 2002.
[56] The text of Section 43 (5) and (6) was enacted by Section 26 (2) of Act I of 2002.
[57] The text of Section 44 was established by Section 27 of Act I of 2002.

attorney indicates otherwise – any of the assigned defence counsels may act on behalf of the defendant at procedural actions or upon making a legal statement.

(3) If several defence counsels act on behalf of a single defendant, the official documents – including the subpoena and notices – shall be served on the counsel of record, and any statement concerning legal remedy or pleading may only be made by the counsel of record or the defence counsel designated by him. Until the counsels for the defence unanimously denominate another person, the counsel of record shall be the one who had first submitted his power of attorney.

(4) The same counsel for defendant may act on behalf of several defendants, provided that the defendants do not have adverse interests.

(5) Apprentice lawyers may act together with the lawyer or as an assistant lawyer until the submission of the bill of indictment and at local courts.

Section 45 (1) The following shall not act as counsels for the defence :

a) the victim, the private accuser, the substitute private accuser, the private party as well as the representatives and relatives thereof,

b) who has acted in the case as a judge, prosecutor or a member of the investigating authority, or who is a relative of the judge, prosecutor or a member of the investigating authority having acted or is acting in the case,

c) whose conduct was adverse to the interests of the defendant, or whose interests are adverse to those of the defendant,

d) who is or has been involved in the case as an expert or advisor,

e)[58] who is or has been involved in the case as a witness, unless the person could not be heard pursuant to 81 (1) *b)* or refused to give testimony under Section 82 (1) *c).*

f)[59] who is involved in the case as a defendant.

(2) The lawyer acting in the interest of a witness cannot act simultaneously as a counsel for the defence.

(3) The exclusion of the counsel for the defence pertains to the competence of the court.

Section 46 The participation of a counsel for the defence is statutory in criminal proceedings, if

a) [60]the defendant is detained,

b)[61] the defendant is deaf, mute, blind or – regardless of his legal responsibility – mentally disabled,

c) the defendant does not speak the Hungarian language or the language of the procedure,

d) the defendant is unable to defend himself personally for any other reasons,

e) if expressly stipulated so in this Act.

Section 47 [62](1) A counsel for the defence may primarily be retained by the defendant. A power of attorney may also be conferred by legal representative or a relative of legal age of the defendant, or, in the case of foreign citizens, the officer at the consulate of their native country. The defendant shall be notified of the retainer.

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[58] The text of Section 44 (1) e) was established by Section 34 of Act II of 2003.

[59] The text of Section 44 (1) f) was enacted by Section 28 of Act I of 2002.

[60] Pursuant to Section 88 (2) a) of Act II of 2003, the words "unless he is in custody" shall be repealed and shall not enter into effect.

[61] The text of Section 46 b) was established by Section 29 of Act I of 2002.

[62] The text of the second sentence of Section 47 (1) was established by Section 30 (1) of Act I of 2002.

(2) [63] The power of attorney shall be submitted to the court, prosecutor or investigating authority at which the criminal proceedings is in progress at the time of conferring the power of attorney. The retained counsel for the defence may exercise his procedural rights after submitting the power of attorney.

(3) The defendant may withdraw the power of attorney, regardless of whether the counsel of defence was retained by himself or another person.

Section 48 (1) [64] The court, the prosecutor, or the investigating authority shall officially appoint a counsel for the defence, if defence is statutory and the defendant has not retained a counsel for the defence. The defendant shall be notified of the person of the counsel for the defence after the official appointment thereof. In the case of Section 46 *a)*, the counsel for the defence shall be appointed not later than the first hearing of the defendant.

(2) The court, the prosecutor or the investigating authority shall also appoint a counsel for the defence, if defence is not statutory, but he requests the appointment of a counsel on the ground of inability to make arrangements for his defence due to his financial standing.

(3)[65] If deemed necessary in the interest of the defendant, at the request of those listed in Section 47 (1) or ex officio, the court, the prosecutor or the investigating authority shall appoint a counsel for the defence.

(4) The official appointment shall lose effect if the defence of the defendant is ensured by a retainer.

(5) The appointment of a counsel for the defence shall not be subject to appeal, however, the defendant – with justification – may request the appointment of another counsel. The request shall be judged by the court, prosecutor or investigating authority which is processing the case.

(6) In justified cases the appointed defender may request dispensation from the appointment. The request shall be judged by the court, prosecutor or investigating authority which is processing the case.

(7) [66] The counsel for the defence shall forthwith inform the defendant, as well as the court, prosecutor or investigating authority at which the procedure is in progress of the person of an assistant employed after his appointment.

(8) [67] If the defendant is detained, it shall be the responsibility of the appointing party to notify the detention facility of the person of the appointed defender.

(9) [68] The appointed defender shall be entitled to remuneration for appearing before the court, the prosecutor or the investigating authority when summoned or notified as well as for counselling the detained defendant at the detention facility, as well as to reimbursement of his verified out-of-pocket expenses incurred in connection with his actions.[69]

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[63] Section 47 (2) was enacted by Section 30 (1) of Act I of 2002 which simultaneously amended the original numbering of subsection (2) as subsection (3).

[64] The last sentence of Section 48 (1) was enacted by Section 35 (1) of Act II of 2003.

[65] Section 48 (3) was enacted by Section 31 (1) of Act I of 2002 which simultaneously amended the original numbering of subsections (3)–(6) to subsections (4)–(7).

[66] The text of Section 48 (7) was established by Section 31 (2) of Act I of 2002.

[67] Section 48 (8) was enacted by Section 31 (3) of Act I of 2002.

[68] Section 48 (9) was enacted by Section 31 (3) of Act I of 2002, the text was established by Section 35 (2) of Act II of 2003.

[69] Please refer to the Decree of the Ministry of Justice No. 7/2002 (III.30.) IM.

Section 49 [70](1) The appointment and – unless indicated otherwise therein – the power of attorney shall remain valid until the final conclusion of the criminal proceedings, but shall also extend to special procedures.

(2) With the exception of the case regulated in subsection (1) above, the appointment of the counsel for the defence will lose effect only upon the decision of the acting court, prosecutor or investigating authority, even if the legal cause for the appointment has ceased to exist.

Section 50 (1) The counsel for the defence shall

a) establish contact with the defendant without delay,

b) use all legal means of defence in the interest of the defendant in due time,

c) inform the defendant of the legal means of defence and his rights,

d) further the investigation of facts extenuating for the defendant or diminishing the liability thereof.

(2) [71] For the purpose of the defence, the counsel for the defence may make enquiries, and may obtain and collect data in compliance with the law.

(3) With the exception of the rights attached exclusively to the person of the defendant, the rights of the defendant may also be exercised by his counsel independently.

The victim

Section 51 (1) The victim is the party whose right or lawful interest has been violated or jeopardised by the criminal offence.

(2) The victim shall be entitled to

a) be present at the procedural actions (unless provided otherwise by this Act) and to inspect the documents affecting him or her in the course of the procedure,

b) make motions and objections at any stage of the procedure,

c) receive information from the prosecutor and the investigating authority concerning his or her rights and obligations during the criminal proceedings,

d) file for legal remedy in the cases specified in this Act.

(3)[72] Victims who died, either prior to, or following the institution of criminal proceedings, may be replaced by a relative in direct line, a spouse, life partner or legal representative who may exercise the rights specified in subsection (2) above. Upon the death of a victim who was a member of a church and was prevented from entering into marriage due to the order of the church which he belonged to or due to an oath made, in the absence of a relative (heir), his principal at the relevant church shall have the rights of a relative in direct line.

The private accuser

Section 52 (1) Unless provided otherwise by this Act, in the case of an assault, invasion of privacy, violation of secrecy of correspondence, libel, defamation and irreverence prosecution shall be represented by the victim as a private accuser, provided that the offender may be prosecuted based on a private motion.

(2) In the event of the death of a private accuser he may be replaced by a relative within thirty days.

(3) [73] In the case of a mutual assault, libel and defamation prosecution, when proceedings instituted based on the report filed by either party – when there is a close connection between

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[70] The original text of Section 49 was designated as subsection (1) by Section 32 of Act I of 2002 which simultaneously supplemented Section 49 with subsection (2).

[71] The text of Section 50 (2) was established by Section 33 of Act I of 2002.

[72] The text of Section 51 (3) was established by Section 34 of Act I of 2002.

[73] The text of Section 52 (3) was established by Section 35 of Act I of 2002.

the personal and real aspects of the actions – the other party filing a private motion in compliance with this Act shall act as a cross complainant. The provisions in this Act pertaining to the private accuser shall also apply to the cross complainant.

(4) Libel and defamation committed against an official person in the course of his official proceedings and against an authority in connection with its official operations shall be prosecuted based on a public accusation.

The substitute private accuser

Section 53 (1) [74] In the cases specified herein, the victim may act as a substitute private accuser, if

a) the prosecutor or the investigating authority rejected the report, or terminated the investigation,

b) the prosecutor filed formal charges only in respect of a part of the accusation,

c) the prosecutor dropped the charge.

(2) In the event of the death of the substitute private accuser, he may be replaced – within thirty days – by a relative in direct line, a spouse, life partner or legal representative.

The private party

Section 54 (1) The private party is the victim enforcing a civil claim in criminal proceedings.

(2) The private party may enforce the civil claim against the defendant which arose as a consequence of the act being the subject of the accusation.

(3) The fact that the victim did not take action as a private party shall not preclude the possibility of enforcing a civil claim by other legal means.

(4) [75] Under the conditions specified in the Code of Civil Procedure [76], the civil claim may also be enforced by the prosecutor.

(5) [77] It shall be the right of the Tax and Financial Audit Office to file a civil claim on behalf of the state for compensation for damage caused by a criminal offence related to tax or subsidy falling within the competence of the public tax authority.

(6) If the victim died, his heir may take action as a private party, however, the heir shall only be entitled to the rights regulated in Section 51 inasmuch as the enforcement of the civil claim is concerned.

(7) Procedural issues related to the enforcement of a civil claim not regulated in this Act shall be governed by the rules of civil procedures, provided that such rules are not contradictory to this Act or the nature of the criminal proceedings. The defendant may not enforce a claim against the private party, nor may he file an offset claim.

(8) [78] The decision referring the enforcement of a civil claim to other legal means shall not be subject to an appeal. The court may not declare that the part of the sentence pertaining to the civil claim has the effect of preliminarily injunction. The civil claim filed in the procedure of first instance may not be extended or its amount raised in the appeal.

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[74] The text of Section 53 (1) was established by Section 36 of Act I of 2002.

[75] The text of Section 54 (4) was established by Section 37 (1) of Act I of 2002.

[76] Please refer to Act III of 1952.

[77] Section 54 (5) was enacted by Section 37 (2) of Act I of 2002 which simultaneously amended the original numbering of subsections (5)–(6) to subsections (6)–(7).

[78] Section 54 (8) was enacted by Section 37 (3) of Act I of 2002.

Other interested parties

Section 55 [79](1) Any one whose right or lawful interest may be directly affected by the decision made in the course of criminal proceedings, may make motions and objections in connection with the related issues, may lodge an appeal against the provision of the decision concerning him and may attend the trial.

(2) In proceedings involving a criminal offence subject to confiscation or forfeiture of property, to the rights of other interested parties whose property may be confiscated as well as to the rights of the owners of the property which may be ordered to be forfeited, the rights of the victim shall apply [Section 51 (2)].

(3) In the case of subsection (2), if the court ordered confiscation or forfeiture of property, other interested parties may enforce their ownership claim by other legal means after the order has become final.

Representatives

Section 56[80] (1) Unless this Act stipulates the obligation of personal cooperation, the victim, the private accuser and other interested parties may exercise their respective rights by way of a representative. Such representative may be a lawyer or a relative of full age, acting based upon an authorisation.

(2) Incompetent and partially incompetent victims, private accusers and other interested parties shall be represented by their legal representatives, in the event of a conflict of interests the provisions of the Civil Code shall apply. In the case specified in this Act the temporary guardian shall also be entitled to act as a representative.

(3) Government bodies and economic organisations may also be represented by an authorised representative or a member or employee who is entitled to handle administrative issues.

(4) Substitute private accusers shall be represented by a lawyer unless they are natural persons having taken an examination in law.

(5) Representation of private parties shall be governed by the rules of civil procedures.

(6) No one may act as a representative who has been validly prohibited from participation in public affairs. A non-lawyer relative of full age shall attach a certificate of clean criminal record to his or her authorisation.

Section 57[81] (1) A power of attorney may be issued by the victim – or, upon the death of the victim, the persons specified in Section 51 (3) –, the private accuser, other interested parties, as well as the relatives of full age thereof, in the case stipulated in Section 56 (2) the legal representative and the child welfare agency, and in the case of Section 56 (3) the member and the employee of the government body or economic organisation vested with the right of representation. Relatives of full age may be authorised personally by the victim, the private accuser and the other interested party.

(2) Powers of attorney and authorisations shall be made in writing and filed prior to the first procedural action made by the representative. Representatives failing to file the power of attorney ro authorisation may be ordered to rectify the situation on one occasion, setting a deadline not exceeding eight days. The deadline may exceed the time limit for a private motion.

(3) The court may appoint an advocate to represent victims, private accusers, private parties and other interested parties who are unable to enforce their rights for any reason and have no

[79] The original Section 55 was designated as subsection (1) by Section 38 (1) of Act I of 2002 which simultaneously supplemented Section 55 with subsections (2) and (3).
[80] The text of Section 56 was established by Section 39 of Act I of 2002.
[81] The text of Section 57 was established by Section 40 of Act I of 2002.

representative., and the court may also point out to the prosecutor if the prosecutor is entitled to initiate a suit under the Code of Civil Procedures.

Section 58 (1) If a criminal offence has several victims, they may select from among themselves the natural person or legal entity, as appropriate, who will exercise the victim's rights.

(2) If several parties are entitled to lay or represent a private accusation or substitute private accusation, the person of the representative shall be decided by way of an agreement. In the absence of such an agreement, the court shall designate the representative from among them.

(3) [82] In the course of the procedure, a non-profit organisation falling within the scope of the Act on Non-Profit Organisations [83] established to represent the interests of the victims or groups of victims may act as the representative of the victim, or – if the criminal offence has several victims or a larger, indefinable group of persons is to be regarded as victims – the victims.

The aides [84]

Section 59 [85]

Excerpt from Act XIX of 1998 on Criminal Proceedings:

Chapter VI
REGULATIONS ON PROCEDURAL ACTIONS

Title I
GENERAL RULES FOR ACTIONS TAKEN BY THE COURT, THE PROSECUTOR AND THE INVESTIGATING AUTHORITY DURING PROCEEDINGS

Section 60. Notwithstanding any permission herein to restrict the constitutional rights – in the event of coercive measures – of the person involved, such action may be ordered, even if other conditions have been met, only when the objective of the proceedings could not be attained by other actions requiring lesser restrictions.

Section 61. The court and the prosecutor may assign the notary of the local government or other authority to perform the procedural action required for the criminal proceeding; such assignment shall be complied with promptly by the authority.

Section 62. Prior to performing the procedural action, the court, the prosecutor and the investigating authority shall inform and advise the person involved in the action of his/her rights and obligations.

Section 63. (1) Personal data of individuals participating in the proceedings may only be inspected and managed by the court, the prosecutor, the investigating authority, the expert, and the authority consulted by the court or the prosecutor, in order to perform their respective

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[82] The text of Section 58 (3) was established by Section 41 of Act I of 2002.
[83] Please refer to Act CLVI of 1997.
[84] The subtitle of Section 59 – which is identical to the original subtitle – was re-enacted by Section 36 of Act II of 2003.
[85] Section 308 (2) of Act I of 2002 stipulated that the original Section 59, together with its subtitle, was repealed and will not enter into force. The current provision was re-enacted by Section 36 of Act II of 2003.

duties set forth herein. The scope of personal data of the defendant for criminal records and the rules for managing personal data are stipulated by a separate law.[86]

(2) The personal data of individuals participating in the criminal proceedings shall only be recorded in the minutes to the required extent.

(3) Unless otherwise provided herein, personal data recorded in the course of criminal proceedings may not be deleted.

Title II

GENERAL RULES OF PROCEDURE

Deadlines

Section 64 (1) The time available for the performance of various procedural actions (deadline) and the time that should pass between two procedural actions (time interval) is stipulated by this Act; the deadline shall be established by the court, the prosecutor or the investigating authority pursuant to this Act. The deadline shall be specified in hours, days, months or years.

(2) In the event the deadline is prescribed in hours, each hour started shall be regarded as a whole hour. In the event the deadline is established in days, the day on which the circumstance causing the commencement of the period falls (starting day) shall be disregarded. Deadlines specified in months or year shall expire on the day with the same number as the starting day, or, if no such day exists in the month, on the last day of the month.

(3) If the deadline expires on a holiday, it shall be deemed to expire on the next working day.

(4) The deadline for applications and requests submitted to the court, the prosecutor and the investigating authority, and the deadline for procedural actions that may be performed before the said, shall expire at the end of the official hours. Documents mailed on the last day of the time period shall not be deemed to have defaulted the deadline.

(5) The time determined for performing a procedural action is the closing date. The closing date shall be established by the court, the prosecutor or the investigating authority.

Justification

Section 65. (1) Unless provided otherwise herein, in the event the defendant, the counsel for the defence, the victim, the private accuser, the private party, the substitute private accuser, the witness or the expert, or, in the case of court proceedings, the prosecutor has missed the deadline or closing date, or the person entitled to legal remedy missed the deadline through no fault of their own, a justification may be put forward.

(2) The application for justification may be submitted within eight days following the last day of the deadline or closing date missed. In the event the default comes to the notice of the defaulting party at some later time, or the obstacle has been eliminated subsequently, the period for submitting the application for justification shall commence on the day of recognising the default or on the day of eliminating the obstacle. No application for justification may be filed over the period of six months.

(3) The application for justification shall state the reason of the default and the circumstances supporting that the default was not imputable to the applicant. In the event of defaulting a deadline, simultaneously with submitting the application for justification, the defaulted action shall be rectified.

(4) The application for justification shall be given a fair judgement.

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[86] See Act LXXXV of 1999.

(5) An application for justification has no delaying effect on the progress of the proceedings or on the enforcement of the decision. If the application for justification seems to justify that the defaulting party is not culpable, or that the defaulted action has been or will be rectified, the procedural action or the enforcement of the decision may be suspended.

Section 66. (1) The application for justification shall be judged by the same court, prosecutor or investigating authority, which had prescribed the deadline or the closing date. In the event that a deadline for legal remedy was missed, the application will be judged by the party entitled to decide in respect of the legal remedy.

(2) The application for justification shall be rejected without examining its merit, if

a) the justification is prohibited herein,

b) the application has not been submitted on time,

c) if a deadline was missed and the applicant failed to rectify the omission simultaneously with the submission of the application, even though it would have been possible.

(3) If the court, the prosecutor or the investigating authority accedes to the application for justification, the action subsequently made by the applicant shall be deemed as if it had been taken within the defaulted deadline, and the procedural action taken on the defaulted closing date shall be duly repeated. Pending on the result of such repeated action, a decision shall be made on upholding or revoking – either fully or partially – the previous procedural action.

(4) The decision acceding to an application for justification may not be appealed.

Subpoena and notice

Section 67. (1)[87] Unless provided otherwise herein, the court, the prosecutor and the investigating authority shall serve a subpoena on the person whose presence is statutory for the procedural action and serve a notice on those whose presence is not statutory but permitted by law. The person summoned by the subpoena is compelled to appear before the court, prosecutor or investigating authority having sent the subpoena.

(2) As a rule, subpoenas and notices are made in writing, or by way of verbal communication upon personal attendance before the court, the prosecutor or investigating authority. The subpoena and notice shall state:

a) when and where the recipient of the subpoena is compelled to appear and in what capacity,

b) when and where the recipient of the notice may appear and in what capacity,

c) a warning of the consequences of absence,

d) after filing the indictment, the name of the accused and the description of the criminal action underlying the proceedings.

(3) If justified by the short time available, or, in the case of notices, the substantial number of those involved requires so, a subpoena or notice may also be communicated in a way or by means other than those referred to in subsection (2), particularly by telephone, fax or computer. Should the excessive number of those concerned require so, notices may be published in the form of a press announcement.

(4) In each case, the recipient shall be informed of the court, prosecutor's office or investigating authority having sent the subpoena or notice; the fact that a subpoena or notice was served shall be recorded in the case files.

(5)[88] The person summoned by the subpoena may be requested to bring, in addition to the documentation regarding the case, notes or other evidence that may be used as evidence.

(6) Written subpoenas and notices shall be sent in a sealed envelope. In the event of an announcement in the press, the name of the persons involved may not be published.

Section 68. (1) As a rule, subpoenas and notices may be served on soldiers [Section 122. (1) of the Penal Code] through their commanding officer. The subpoena or notice may also be delivered directly to the soldier, with the simultaneous notification of the commanding officer, if the recipient has no commanding officer at the location of the sender's seat and the delay would endanger the performance of the procedural action.

(2) The ward of a minor shall be notified on the subpoena served together with a request to ensure the attendance of the minor. Subpoenas and notices shall be served on minors under fourteen years of age through their ward. The legal representative of the minor shall also be notified of the fact that a subpoena or notice has been served.

Consequences of defaults related to subpoenas

Section 69. (1)[89] If the defendant, the counsel for the defence, the witness or the expert fails to attend in spite of having received a subpoena, and fails to provide well-grounded justification thereof either in advance — upon gaining cognisance of the obstacle — or, if this is no longer possible, immediately after the obstacle has ceased to exist, or leaves the procedural action without permission,

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[87] Second sentence of Section 67. (1) was enacted by Section 42 (1) of Act I of 2002.
[88] The text of Section 67. (5) was established by Section 42 (1) of Act I of 2002.
[89] The text of Section 69. (1) was established by Section 43 (1) of Act I of 2002.

a) a writ may be issued to bring the defendant to court,

b) a writ may be issued to bring the witness to court, or a disciplinary penalty may be imposed on him/her,

c) a disciplinary penalty may be imposed on the counsel for the defence and the expert.

(2)[90] Should the defendant, the counsel for the defence, the witness or the expert appear, through the fault of their own, in a condition preventing their hearing, or in a state in which they are not able to meet their obligations in respect of the proceedings, a writ may be issued to bring the defendant to court for the next hearing or for enforcing the fulfilment of their respective obligations, a disciplinary penalty may be imposed or a writ may be issued to bring the witness to court, or a disciplinary penalty may be imposed on the counsel for the defence and the expert. The above individuals shall be ordered to cover the costs caused by their conduct.

(3) In the cases specified in subsection (1) above, the defendant, the counsel for the defence, the witness and the expert shall be compelled through an order to reimburse the costs resulting from their absence or leaving.

(4) In the case of default by solders summoned in compliance with Section 68. (1), the provisions set forth in subsection (1)–(3) shall be applied.

(5) If a minor summoned in compliance with Section 68. (2) fails to attend, and his/her ward fails to verify that he/she is not culpable for the absence of the minor, a disciplinary penalty may be imposed on the ward and he/she may be compelled through an order to reimburse the costs resulting from the minor's absence.

(6) If the prosecutor fails to appear at the time and place stated in the notice of the court at a procedural action where his/her presence is statutory, the court shall advise the superior prosecutor thereon.

(7) The consequences of defaults related to subpoenas are only applicable if the subpoena complies with the provisions set forth in Section 67-68., and the service of the subpoena has met the requirements stipulated herein and in the specific law as well as other regulations.

Delivery

Section 70. (1) Official documents of the court, the prosecutor or the investigating authority may be served on (delivered to) the addressee in the following manner:

a) personally,

b) by mail,[91]

c) in the form of an announcement,

d) through the process-server of the court, the prosecutor or the investigating authority,

e) within the scope of an international legal aid[92].

(2) The addressee may also receive the document at the sender's place.

(3) With the exception of the subpoena, documents addressed to a victim or other interested parties having a proxy, shall be delivered to the proxy.

(4)[93] Delivery shall be deemed to have been duly performed, if the official document was received by the addressee or other person on behalf of the addressee, as specified by a separate legal regulation. The official document shall be considered to have been duly delivered, if its receipt has been refused, or if it was received without having signed the delivery voucher (acknowledgement of receipt card).

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[90] The text of Section 69. (2) and (3) was established by Section 43 (2) of Act I of 2002.

[91] See Government Decree No. 254/2001 (XII. 18.) Korm.

[92] See Section61 (2), Section63, Section 80. (3) of Act XXXVIII of 1996 and the Guide of the Ministry of Justice No. 8001/2001. (IK. 4.) IM.

[93] The text of Section 70. (4) and (5) was established by Section 44 (1) of Act I of 2002.

(5) In the case of defendants whose address is unknown, official documents shall be served in the form of an announcement. In such cases the announcement shall state the address of the court, the prosecutor's office or the investigating authority where the document may be taken over by the addressee.

(6)[94] The announcement shall be posted on the notice board of the competent court, prosecutor's office or local government of the last known domestic address of residence or place of stay of the addressee (if any). The document shall be deemed to have been delivered on the fifteenth day following its posting at the court, prosecutor's office or investigating authority.

(7) Official documents mailed with a delivery voucher (acknowledgement of receipt card) shall be deemed to have been duly served on the fifth working day following the second attempt of delivery, if delivery failed because the addressee did not take over the document.

(8) Documents to be served on soldiers [Section 122. (1) of the Penal Code] shall be delivered through their commanding officer. Delivery may also be made directly to the soldier, with the simultaneous notification of the commanding officer, if the recipient has no commanding officer at the location of the sender's seat and the delay in delivery would endanger the success of the proceedings, or violate the soldier's right or appreciable interest. If the military service of the soldier is terminated during the criminal proceedings, delivery shall be governed by the general rules.

(9) If the addressee is under arrest, documents to be served on him/her shall be delivered through the chief warden of the penal institution – in the case of a subpoena and a notice, simultaneously with a writ to bring the defendant to court addressed to the penal institution.

Copying a document produced in the course of the proceedings[95]

Section 70/A. (1) At the request of the individuals participating in the criminal proceedings, the court, prosecutor or investigating authority processing the case shall issue a copy of documents produced during in the course of proceedings – including documents obtained by the court, the prosecutor or the investigating authority, as well as documents submitted or attached by the participants in the criminal proceedings – within eight days of the presentation of such request, in compliance with subsections (2)–(7).

(2) Until the conclusion of the investigation, the suspect, the counsel for the defence, the legal representative of a minor, the victim and the representative thereof may receive a copy of the expert opinion and of documents produced on investigation procedures where their presence is authorized by this Act; or of other documents, provided that this does not interfere with the interest of the investigation. The victim may receive a copy of other documents produced in the course of investigation after being heard as a witness.

(3) The party having filed the report – unless he/she falls under the category of persons listed under subsection (2) above – may only receive a copy of the report. %%

(4) If the documents referred to in subsection (2) above are produced after the hearing of the defendant under Section 179. (1), or the official appointment or authorisation of the counsel for the defence, the defendant may receive a copy after the delivery of the subpoena for the first hearing, and the counsel for the defence after receiving the decision on official appointment or filing the authorisation.

(5) After the conclusion of the investigation

[94] Section 70. (6)–(9) were enacted by Section 44 (2) of Act I of 2002.
[95] Section 70/A and its subtitle was enacted by Section 45 of Act I of 2002.

a) the defendant, the counsel for the defence and the legal representative of the minor may receive a copy of the documents produced during the investigation, which they are entitled to examine pursuant to Section 193. (1), and

b) the victim and his/her representative may receive a copy of the documents produced during the investigation, which they are entitled to examine pursuant to Section 229. (2).

(6) Unless provided otherwise herein, no restrictions may be applied to the issue of a copy for the accused, the counsel for the defence, the legal representative of the minor, the victim, the private accuser, the private party and the representatives thereof during court proceedings.

(7) Other interested parties and their representatives may receive a copy of documents of their concern. Witnesses may receive a copy of the minutes or pages of the minutes containing their testimony.

(8) The issuance of a copy may not be appealed. Refusal of issuing a copy is subject to a separate legal remedy.

(9) The title of the document copied, the recipient and the number of copies issued shall be recorded in the files of the case.

Learning state secrets and official secrets[96]

Section 70/B. (1) In the course of criminal proceedings, the defendant, the counsel for the defence, the legal representative, the victim, the private accuser, the substitute private accuser, the private party, other interested parties, as well as the representatives of the victim, the prosecutor, the substitute private accuser, the private party and other interested parties are entitled to learn of state secrets and official secrets which are contained in documents that they are permitted to examine pursuant to this Act.

(2) The organisation classifying or managing the secret as specified in the Act on State Secrets and Official Secrets[97] shall ensure that the parties enumerated in subsection (1) above may have access to the state secret or official secret that they are permitted to learn during the criminal proceedings even if the specific conditions thereof, set forth in a separate law have not been fulfilled. In such a case, the acting court, the prosecutor and the investigating authority shall advise those concerned of their obligation to keep the state secret or official secret, as well as the consequences of breaching a state secret or official secret. The above advice shall be recorded in a minutes.

(3) In respect of the delivery of documents containing a state secret or official secret the provisions of Section 70 shall be applied, with the following differences:

a) The document containing a state secret or official secret shall only be served on the addressee at a court, the prosecutor's office or the investigating authority in compliance with the Act on the protection of state secrets and official secrets,

b) the addressee shall make a statement on his/her adherence to the conditions set forth in the Act on the Protection of State Secrets and Official Secrets [98]; should the addressee state that he/she does not comply with these requirements or fails to make a statement, the addressee may not take the document containing such information out of the room of the court, the prosecutor's office or the investigating authority designated for storing classified information, and only an abstract of the document, not containing any state secrets or official secrets may be delivered to such addressee. The organisation classifying documents shall make a statement regarding the fact that the abstract contains no state secrets and official secrets

[96] Section 70/B and its subtitle was enacted by Section 46 of Act I of 2002.
[97] See Act LXV of 1995.
[98] See also Government Decree No. 79/1995 (VI. 30.) Korm.

c) If the addressee makes a statement on compliance with the requirements set forth in the Act on the Protection of State Secrets and Official Secrets, the court, the prosecutor, or the investigating authority will deliver the document containing a state secret or official secret to the addressee,

d) The restrictions stipulated in paragraphs *a)-b)* shall not apply to organisations having internal regulations on the protection of classified information.

(4) Prior to the service under paragraph (3) *c)*, the court, the prosecutor or the investigating authority shall verify whether the statement made by the addressee is true to the facts. For this, the court, the prosecutor or the investigating authority may also consult the officer in charge of classified information.

(5) The reproduction of documents containing a state secret or official secret and the management of such copy shall be governed by the following provisions:

a) If observance of the Act on the Protection of State Secrets and Official Secrets by those listed in subsection (1) cannot be ensured, the persons entitled thereto shall be provided with a copy of the document containing a state secret or official secret, however, they shall not be entitled to take this copy out of the room designated at the court, the prosecutor's office or the investigating authority for storing classified information,

b) The copy shall be kept at the court of hearing, the prosecutor or the investigating authority, however, it shall be ensured that the copy may be examined by the persons entitled thereto during official hours without restrictions, and that the copy is made available to the same persons in the official premises of the court during the hearing of the case.

Official requests for information

Section 71. (1)[99] The court, the prosecutor and the investigating authority may contact central and local government agencies, authorities, public bodies, business organisations, foundations, public endowments and public organisations to request the supply or transmission of information, data or documents, and may prescribe a time limit for fulfilling such request ranging between a minimum of eight and maximum of thirty days. Encrypted [100] data and information made unrecognisable in any other manner shall be restored in their original condition by the supplier prior to communication or delivery, or made cognisable to the requestor thereof. Data supply shall be free of charge. Unless stipulated otherwise by law, the organization contacted shall fulfil the request within the prescribed deadline or state the reason for non-compliance therewith.

(2) The court, the prosecutor and the investigating authority may also contact the local government and other authorities for the supply of documents.

(3) Requests concerning the provision of personal data shall only extend to the amount and type of data indispensable for the achievement of the objective of the request. The request shall precisely state the purpose of the data supply and scope of data required.[101]

(4) If the personal data coming to the notice of the requestor as a result of the request are not relevant for the achievement of the objective of the request, the data shall be deleted.

(5) If the personal data specified in subsection (4) are contained in the original copy of a document, an abstract shall be made on the data relevant for the achievement of the objective of the request, and simultaneously the document shall be returned to the sender.

(6)[102] If the organization contacted fails to fulfil the request within the prescribed deadline, or unlawfully refuses to fulfil the request, a disciplinary penalty may be imposed. In the event

[99] The text of Section 71. (1) was established by Section 47 (1) of Act I of 2002.
[100] See Government Decree No. 43/1994 (III. 29.) Korm.
[101] See Act LXIII of 1992.
[102] Section 71. (6)–(8) were enacted by Section 47 (2) of Act I of 2002.

of unlawful refusal to comply with the request, the coercive measures stipulated herein may also be ordered in addition to imposing the disciplinary penalty, provided that the conditions set forth by law are met.

(7) If the organization requested is unable to fulfil the request on account of being prohibited by law [103], no further procedural action towards such organization may be taken to obtain the information possessed by it.

(8) If the conditions set forth in the Act on the Admission and Stay of Foreign Citizens[104] are otherwise not fulfilled, the prosecutor and the court may make a motion to the responsible authority to issue a permission for the admission and stay of the foreign citizen, and in consideration of this foreign citizen his/her relative, whose testimony may hold evidence which presumably would not be available otherwise.

Document management[105]

Section 71/A. (1) The documents of the case shall be numbered in the order of their production or arrival to the court, the prosecutor or the investigating authority. In the course of the investigation, other document management rules may also be adopted.

(2) The documents of the case shall be filed together and sealed with the seal of the court, the prosecutor or the investigating authority at the place of filing. If documents of the case and the attachments thereto cannot be filed together, it shall be ensured that such attachments are kept and remain identifiable in some other way.

(3) Upon recognising, or establishing the fact that a document was lost or destroyed, a report shall be submitted to the chairman of the court, the head of the prosecutor's office, the head of the investigating authority and the competent prosecutor not later than at the end of the following working day. The chairman of the court, the head of the prosecutor's office, the head of the investigating authority shall order to seek or replace the lost or destroyed document. To this end, the persons participating in the proceedings may be heard and copies may be obtained.

(4) It is not required to replace the documents of the case, if the proceedings have been concluded with a decision made on the basis of the lost or destroyed documents. In such a case, it is sufficient to obtain a certified copy of the decision.

Consolidation and severance of criminal cases

Section 72. (1) If more than one defendant is involved in the same criminal action, as a rule, they may be prosecuted in a single criminal procedure.

(2) Furthermore, cases may be consolidated if the joint examination thereof is deemed justified due to the subject or the participants of the proceedings, or for other reasons.

(3) If the establishment of liability in a single procedure would be difficult due to the high number of defendants or for other reasons, the cases shall be dealt with separately.

(4) The documents of the separated case shall be forwarded to the competent court, prosecutor or investigating authority of jurisdiction.

Search for unknown persons, or persons and objects with unknown locations[106]

[103] See e.g. Section18 (3) of Act XLVI of 1993.
[104] See Act XXXIX of 2001.
[105] Section 71/A. and its subtitle was enacted by Section 37 of Act II of 2003.
[106] Section 73. and its subtitle was established by Section 48 of Act I of 2002.

Section 73. (1) The fact that the location of the defendant is unknown shall not be an obstacle of the proceedings. In such a case, the court, the prosecutor and the investigating authority shall take measures to locate the place of stay of the defendant; to this end, they may order an investigation to establish the residence or place of stay, or the apprehension of the defendant, and in the cases specified herein, issue a warrant of arrest.

(2) For the establishment of the residence or place of stay, the reregister of personal data and addresses shall be consulted[107]. Apprehension shall be the responsibility of the police in adherence to the rules set forth in separate legal regulations[108], or – in the cases stipulated by the Act governing its operation[109] – by the Border Guard.

(3) In the case of criminal acts punishable with imprisonment and in other cases set forth herein, located and apprehended defendants may be ordered to be brought before a specific court, prosecutor or investigating authority (warrant of arrest). The person searched under a warrant of arrest shall be arrested after having been located, and within 24 hours, brought before the prosecutor or investigating authority having issued the warrant of arrest or designated therein, and shall be brought before the court having issued the warrant of arrest or the court designated therein within 72 hours.

(4) Should an authority or an official person gain cognisance of the residence or place of stay of a defendant against whom the actions specified in subsections (1) and (3) have been ordered, they shall inform the court, prosecutor or investigating authority that issued the order thereof.

(5) The orders specified in subsections (1) and (3) shall be withdrawn, if the reason for their issue ceases to exist. The party having issued the order shall take prompt measures for such withdrawal. Apprehension ordered by the investigating authority may also be cancelled by the prosecutor. If the reason for apprehension ceases to exist during court proceedings, the order may also be withdrawn by the court.

(6) If the residence or place of stay, or the identity of a suspect in a criminal action is unknown, a warrant of apprehension may be issued in order to establish the residence or place of stay, or the identity of the suspect. Moreover, in order to establish the residence or place of stay, the court or the prosecutor may order the apprehension of a person whose testimony is required in the court proceedings. The warrant of apprehension shall be withdrawn when the reason for issuing the said ceases to exist.

(7) The court, the prosecutor or the investigating authority may order a search for an object with an unknown location, if it may be seized by law, or if it was ordered to be seized or sequestrated. The order shall be withdrawn when the reason thereof ceases to exist.

(8) In the course of court proceedings, the actions set forth in this Section may also be taken by the chairperson of the council and – with the exception of the issue of a warrant of arrest – the secretary of the court.

Cost of criminal proceedings

Section 74. (1) The cost of criminal proceedings shall mean

a)[110] the cost advanced by the state from the commencement of the proceedings until the end of the enforcement of the sentence, in the course of proceedings for extraordinary legal remedy and special proceedings,

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[107] See Section 8 (4) and Section 24 (1) of Act LXVI of 1992.
[108] See Act XVIII of 2001, and Decrees of the Ministry of Interior No. 20/2001 (X. 11.) BM and 21/2001 (X. 11.) BM.
[109] See Section 4 (1) 5 of Act XXXII of 1997.
[110] The text of Section 74. (1) a) was established by Section 49 (1) of Act I of 2002.

b) out-of-pocket expenses incurred by the defendant, victim, private party, substitute private accuser and the private accuser, and the legal representatives of the defendant and the victim, even if such costs have not been advanced by the state, and

c) out-of-pocket expenses and fees of the officially appointed counsel for the defence and the representatives of the victim, the private party and the substitute private accuser, if they have not been advanced by the state.

(2)[111] The cost referred to in paragraph (1) *a)* shall include, in particular, the costs related to the attendance of the witnesses, fees and cost reimbursements established for experts and consultants, costs related to the transportation and storage of seized objects and the fee and cost reimbursement of interpreters.

(3) If, based on the income and property of the defendant, he/she is presumably unable to cover the cost of criminal proceedings, and has certified the above in compliance with the provisions of the relevant legal regulation, the court or the prosecutor may decide on a personal exemption from paying the costs at the request of the defendant or the counsel for the defence. In the event of a personal exemption,

a) the court, the prosecutor or the investigating authority will appoint a counsel for the defence upon the request of the defendant [Section 48. (2)],

b) the defendant and the officially appointed counsel for the defence will receive one copy of the documents requested on the criminal case free of charge,

c) the fee and verified out-of-pocket expenses of the officially appointed counsel for the defence is paid by the state.

(4) The appeal against a decision on the personal exemption from the payment of costs or the part of a decision ordering the payment of the costs shall have a delaying effect.

(5)[112] Costs incurred as a result of bringing a person to court (Section 162) or the attendance of police as specified in the relevant legal regulation may not be included in the costs of criminal proceedings. The reimbursement of the costs due to bringing the person to court shall be governed by a separate legal regulation[113].

Title III

PROTECTION OF THE WITNESS

Section 95 In order to protect the life, physical integrity or personal freedom of the witness as well as to ensure that the witness fulfils the obligation of giving testimony and the testimony is given without any intimidation, the witness shall be provided protection as specified in this Act.

Confidential treatment of the personal data of the witness

Section 96 (1)[114] It may be requested by the witness or the lawyer acting on behalf of the witness, or ordered ex officio that the personal data of the witness [Section 85 (2)] – except for his name – be handled separately and confidentially among the documents. In exceptionally justified cases, the confidential treatment of the name of the witness may also be ordered. In such cases the data of the witness treated confidentially may only be inspected by the court proceeding in the case, the prosecutor and the investigating authority.

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[111] The text of Section 74. (2)-(4) was established by Section 49 (2) of Act I of 2002.

[112] Section 74. (5) was enacted by Section 49 (3) of Act I of 2002

[113] See Joint Decree of the Ministry of Interior, Ministry of Justice and Ministry of Finance No. 2/1986 (IV. 21.) BM-IM-PM.

[114] The first sentence of Section 96 (1) was established by Section 58 (1) of Act I of 2002.

(2)[115] With the effect of the order concerning the confidential treatment of the personal data of a witness

a) the court, the prosecutor and the investigating authority proceeding in the case shall ensure that the data of the witness treated confidentially may not become known from other data of the procedure,

b) the court, the prosecutor and the investigating authority establishes the identity of the witness by way of examining documents suitable for identification,

c) the confidential treatment of the personal data of the witness may only be terminated with the consent of the witness.

(3)[116] From the time of ordering the confidential treatment of the personal data of the witness, the copies of documents containing the personal data of the witness may only be given to the participants in the criminal proceedings without the personal data of the witness.

Specially protected witness

Section 97 A witness may be declared specially protected if

a) his testimony relates to the substantial circumstances of a particularly serious case,

b) the evidence expected by his testimony cannot be substituted,

c)[117] the identity, the place of stay and the fact that he is intended to be heard by the prosecutor or the investigating authority is not known by the accused and the counsel for the defence,

d) the exposure of the identity of the witness would seriously jeopardise the life, limb or personal freedom of either the witness or the relatives thereof.

Personal protection of the participants of criminal proceedings [118]

Section 98 (1) In exceptionally justified cases the chairperson of the panel of the court proceeding in the case, the prosecutor or the investigating authority may initiate that the defendant, the counsel for the defendant, the victim, the other interested party, the representative of the victim and the other interested party, further, the witness, the expert, the advisor, the interpreter, the official witness, or another person in consideration of any of those listed, be protected as specified in a separate piece of legislation[119].

(2) The request may be submitted to the court, prosecutor or investigating authority proceeding in the case, while a verbal request shall be recorded in a report.

(3) The personal protection of the staff of the court, the prosecutor's office, the investigating authority and the penal institution or another person in consideration of the above may be initiated by the president of the court, the head of the prosecutor's office, the head of the investigating authority or the commander of the penal institution, respectively.

(4) The documents pertaining to personal protection shall be kept together with the documents of the criminal case. With the exception of the decision regarding the request and initiation, the documents shall be handled confidentially.

Regulations pertaining to persons participating in the witness protection program [120]

Section 98/A The participation of the defendant, victim and witness in the witness protection program specified in a separate piece of legislation[121] shall not affect their

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[115] The text of Section 96 (2) was established by Section 58 (2) of Act I of 2002.

[116] Section 96 (3) was enacted by Section 58 (3) of Act I of 2002.

[117] The text of Section 97 c) was established by Section 59 of Act I of 2002.

[118] Section 98 and the subtitle thereof were established by Section 60 of Act I of 2002.

[119] Please refer to Government Decree No. 34/1999. (II. 26.).

[120] Section 98/A and the subtitle thereof were enacted by Section 61 of Act I of 2002.

[121] Please refer to Act LXXXV of 2001.

respective rights and obligations related to the criminal proceedings; and in respect of the participants of the program, the provisions of this Act shall apply with the following derogation:

a) persons participating in the program shall be summoned or notified by way of the body responsible for his protection, further, official documents to be served on such persons may only be delivered by way of the body responsible for their protection,

b) persons participating in the program shall state their original personal identification data during criminal proceedings, but give the address of the body responsible for their protection as their place of residence or stay,

c) no one – including the authorities – may be provided with a copy of documents containing the personal data of persons participating in the program and any information regarding such persons, unless they hold the permission by the body responsible for the protection of such persons,

d) costs incurred in connection with the appearance and participation of persons participating in the program may not be accounted for as cost of criminal proceedings,

e) the witness and the defendant may refuse to give testimony regarding data that imply their new identity or new place of residence or stay.

Title IV

THE EXPERT OPINION

Employment of an expert

Section 99 (1) An expert shall be employed if the establishment or evaluation of a fact to be proven requires special knowledge.

(2) It is statutory to employ an expert if

a)[122] if the fact to be proven or the issue to be decided on is the mental disability of a person or the addiction of a person to alcohol or narcotic substances,

b) if the fact to be proven or the issue to be decided on is involuntary medical treatment or the necessity thereof,

c) if the identification is performed by way of biological tests,

d) upon the exhumation of a deceased person.

(3) Experts may be employed the court, the prosecutor and – with the exception of the cases set forth in subsection (2) *a)* and *b)* – by the investigating authority.

Section 100 (1) An expert shall be employed by way of an assignment. The order on the assignment of an expert shall state

a) the subject to be examined by the expert and the issues to be answered by the expert,

b) the documents and objects to be handed over to the expert, or, if this is not possible, the place and time where the documents and objects may be inspected,

c) the deadline for submitting the expert opinion.

(2) An urgent partial examination required for the preparation of the expert opinion may also be performed without an assignment order, upon the verbal instruction of the prosecutor or the investigating authority.

[122] The text of Section 99 (2) a) was established by Section 62 of Act I of 2002.

Section 101 (1) As a rule, one expert shall be employed. If required by the nature of the examination, more than one experts may be employed. In such cases, the order on assignment may designate only the head of the expert team and authorise him to involve other experts.

(2) Two experts shall be employed when the subject of the examination is the cause and circumstances of death or the mental state of a person. The employment of more than one experts may be rendered statutory by law in other cases as well.

The expert

Section 102[123] (1) As an expert, the court, the prosecutor and the investigating authority may assign a forensic expert [124] listed in the register of experts, or, if this is not feasible, a person or institution (ad hoc expert) possessing the adequate knowledge.

(2) The professional issues in which a specific institution or body of experts is entitled to give opinion may be defined in a separate piece of legislation.[125] In the event of the assignment of an institution or body, the head thereof shall designate the expert to act.

(3) The assignor, the defendant, the counsel for the defendant and the victim shall be notified of the assignment of an expert by the assignor, or of the designation of the acting expert by the institution or the head of the expert body within eight days of serving the assignment; and if the expert has been assigned by the court, the court shall also notify the prosecutor.

Exclusion of an expert

Section 103 (1) The following may not act as an expert:

a) those who have participated in the case as a defendant, counsel for the defendant, a victim, complainant or a representative thereof, or who is a relative of the above,

b) those who have acted in the case as a judge, prosecutor or a member of the investigating authority, or who is a relative thereof,

c) those who have participated in the case as a witness,

d) at the examination of the cause and circumstances of the death and at the exhumation the medical doctor having treated the deceased immediately prior to the death thereof and the medical doctor who pronounced the person dead,

e)[126] the expert of an expert institution or a member of an expert body, if the ground for exclusion specified in item *a)* exists in respect of the head of the institution or the expert body,

f) those who have been employed in the case as an advisor,

g) who cannot be expected to form an unbiased expert opinion for other reasons.

(2)[127] The expert shall immediately report the existence of any ground for exclusion to the assignor; in the case of the assignment of an institution or a body, the report shall be made through the head thereof.

(3) The decision on the exclusion of an expert shall be adopted by the court, prosecutor or investigating authority proceeding in the case.

(4) The provisions of Sections 83–84 shall be appropriately applied to experts.

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[123] The text of Section 102 was established by Section 63 of Act I of 2002.

[124] Please refer to Government Decree No. 53/1993. (IV. 2.).

[125] Please refer to Section 11 (3) and Annex No. 3 of Decree No. 2/1988. (V. 19.) IM of the Ministry of Justice.

[126] Section 103 (1) e) was established by Section 64 (1) of Act I of 2002.

[127] Section 103 (2) was established by Section 64 (2) of Act I of 2002.

Professional examination

Section 104 (1) The expert shall be obliged to make a contribution to the case and to give an expert opinion.

(2)[128] For substantial reasons, the expert may be relieved of the assignment by the decision of the court, prosecutor or investigating authority proceeding in the case. The expert – in the event of the assignment of an institution or body, through the head thereof – shall notify the assignor if

a) the professional issue does not fall within the scope of his professional knowledge,

b) pursuant to a separate piece of legislation, specific institution or body is entitled to give an expert opinion on the professional issue,

c) he is materially hindered in performing the expert activity, thus especially by the lack of the conditions for the undisturbed performance of the activity or the partial examinations.

Section 105 (1) The expert shall give an opinion based on a professional examination. The expert shall conduct the examination by using the tools, procedures and methods available according to the present state of science and modern professional knowledge.

(2) The expert shall be obliged and entitled to get acquainted with all data required for the fulfilment of his task, for this purpose, the expert may inspect the documents of the case, be present at the procedural actions, and may request information from the defendant, the victim, the witnesses and the other experts involved in the proceedings. If required for the performance of the tasks, the expert may request further data, documents and information from the assignor. With the authorisation of the assignor, the expert may inspect and test, and take sample of subjects not handed over to him.

(3) In the course of the examination, the expert may examine and ask questions from persons and may inspect and test objects. Upon inspecting an object which changes or is destroyed due to the test, if possible, the expert shall save a part of the object in its original state so that it can still be identified and/or its origin established.

(4) The assignor may specify the examinations to be performed by expert in the presence of the assignor.

(5) The expert shall notify the assignor if any measure or procedural action needs to be performed within the scope of authority of the assignor.

(6)[129] The expert shall be entitled to remuneration for the professional examination, the preparation of the expert opinion and appearance before the court, the prosecutor or the investigating authority based on a subpoena, further, the expert shall be entitled to the reimbursement of the verified out-of-pocket expenses incurred in the course of his actions.[130] The remuneration of the expert shall be established in a decision by the assignor, or the court, prosecutor or investigating authority proceeding in the case, based on the tariff schedule submitted by the expert, after receipt of the expert opinion or – if the expert is heard – the hearing, but not later than within thirty days.

(7) The decision establishing the remuneration of the expert shall be subject to a separate legal remedy.

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[128] The introductory part of the second sentence of Section 104 (2) was established by Section 64 (3)of Act I of 2002.

[129] Section 105 (6) and (7) was enacted by Section 65 of Act I of 2002.

[130] Please refer to Decree No. 3/1986. (II. 21.) IM of the Ministry of Justice.

Obligation to provide assistance during the professional examination

Section 106 (1)[131] Any professional examination affecting the inviolability of the person to be examined may only be conducted upon a separate order by the assignor. The defendant and the victim shall submit themselves to the professional examination or treatment, unless it involves an operation or an examination procedure qualifying as such. The victim shall facilitate the performance of the professional examination in other ways (e.g. by supplying information) as well. Upon a separate order by the assignor, the defendant, the victim and the owner of the object of inspection shall tolerate that the thing in his possession be subjected by the expert to an examination – even if this involves damage to or destruction of the object.

(2) The damage caused by the professional examination shall be subject to indemnification, as specified in a separate legal regulation.

(3) If the defendant fails to fulfil the obligation of assistance, coercive measures may be applied. If the victim fails to fulfil the obligation of assistance, a disciplinary penalty may be imposed.

(4) The provisions of (1)–(3) above pertaining to the victim shall also apply to the witness, however, the provisions of Sections 81 and 82 shall prevail.

Diagnosis of mental state

Section 107 (1) If the expert opinion concludes that assessment of the mental state of the defendant requires a longer time, the court – before the submission of the indictment, at the motion of the prosecutor – shall order the observation of the defendant's mental state. Detained defendants shall be referred to the Forensic Diagnostic and Mental Institution, while defendants at liberty to the psychiatric in-patient institution specified by law[132]. The duration of the observation may be one month; the court may extend this deadline on one occasion by one month upon the opinion of the institution performing the observation.

(2) The appeal submitted owing to the order of a diagnosis of mental state shall not have a delaying effect, unless the defendant is at liberty.

(3)[133] In the course of the observation of the mental state of a defendant at liberty, the personal freedom of the defendant may be restricted in compliance with the provisions of the Act on Health Care [134]. If the defendant evades the observation of his mental state, the psychiatric institution shall forthwith notify the court ordering the diagnosis.

Submission of the expert opinion

Section 108 (1) The expert opinion may be presented in the form of an oral statement by the expert, or submitted in writing, within the deadline set by the court, the prosecutor or the investigating authority.

(2) The expert opinion shall include:

a) information regarding the subject, the procedures and tools of the examination as well as the changes in the subject of the examination (diagnosis),

b) a brief description of the examination method,

c) a summary of professional assessments (professional assessment of facts),

d) conclusions drawn from the professional assessment of facts and the answers given to the questions raised (opinion).

(3) The expert shall provide the expert opinion in his own name.

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[131] The last sentence of Section 106 (1) was enacted by Section 66 of Act I of 2002.

[132] Please refer to Section 52 (3) of Decree No. 2/1988. (V. 19.) IM of the Ministry of Justice.

[133] Section 107 (3) was enacted by Section 67 of Act I of 2002.

[134] Please refer to Chapter X of Act CLIV of 1997.

(4) If several experts have participated in the examination, the name of the expert having performed any given examination shall be indicated in the opinion. If several experts arrive at the same conclusion, they may submit an expert opinion jointly (joint expert opinion). In professional issues covering various fields of expertise, the experts may combine their expert opinions (combined expert opinion).

(5) The written expert opinion shall be signed by the expert. If the assigned expert is an institution or body, the head thereof shall also sign the expert opinion.

(6)[135] Unless the expert needs to be summoned, the expert needs only be notified of subsequent procedural actions, if he requested so concurrently with the submission of the written expert opinion. The expert shall be advised thereon in the assignment order.

(7) The defendant, the witness or the victim may request that in the expert opinion pertaining to the them the part specified in subsection (2) *a)* above be handled confidentially. Such request may also be submitted by the counsel for the defendant and the lawyer acting on behalf of the witness.

(8)[136] The statement of the defendant made in front of the expert concerning the act underlying the proceedings, which constitute a part of the expert opinion under subsection (2) *a)* above, may not be admitted as evidence.

Section 109 If the expert opinion is incomplete, unclear, contradicts itself or it is required for other reasons, the expert shall – at the request of the court, the prosecutor or the investigating authority – provide the relevant information or complement the expert opinion.

Hearing of the expert

Section 110 (1) Before an expert makes an oral statement, his identity and the absence of any reason for his exclusion shall be verified. Ad hoc expert shall be warned of the consequences of providing a false expert opinion. The warning and the response of the expert to the warning shall be included in the records. After the expert has presented the expert opinion, he may be cross-examined.

(2) Prior to stating the expert opinion at a trial, the forensic expert shall be reminded of his oath of service.

(3)[137]

Employment of another expert

Section 111[138] (1) If the information requested from the expert or the complemented expert opinion still fails to bring the desired result, or it is necessary for other reasons, another expert shall be assigned.

(2) In the course of the investigation the defendant and the counsel for the defendant may motion for the assignment of another expert. Decision on the assignment shall fall within the scope of authority of the prosecutor.

(3) In the event of a decision concerning involuntary treatment in a mental institution, another expert shall also be assigned upon a motion by the defendant, the legal representative or spouse, or the co-habitor or counsel for the defendant thereof.

(4) If the prosecutor or the investigating authority has assigned an expert in the course of the investigation and the accused or the defendant thereof submits a motion to this effect within fifteen days following the delivery of the indictment [Section 263 (2)], the court shall

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[135] Section 108 (6) was established by Section 68 (1)of Act I of 2002.

[136] Section 108 (8) was established by Section 68 (2) of Act I of 2002.

[137] Pursuant to Section 308 (2) of Act I of 2002, Section 110 (3) shall be repealed and shall not enter into force.

[138] The text of Section 111 was established by Section 69 of Act I of 2002.

assign another expert to examine the same fact. This provision shall not be applicable, if the court has also assigned an expert in the case, or the involvement of the person (institution, body) invited by the defendant or the counsel as an expert has been permitted by the court or the prosecutor.

(5) If the expert opinions prepared based on the same examination material regarding the same fact to be proven differ on a professional issue which has a substantial bearing on a decision in the case, and such difference cannot be clarified by requesting information from the experts, complementing the expert opinion or hearing the experts in the presence of each other (Section 125), the court, the prosecutor or the investigating authority may order, either ex officio or upon a motion, that a new expert opinion be obtained.

(6) The expert opinion obtained pursuant to subsection (5) shall take a position in respect of the cause of difference among the expert opinions, whether any of the expert opinions should be complemented and whether another expert opinion should be obtained in the case.

Section 112 (1) The defendant and the counsel for the defendant may advise the prosecutor or the court that they intend to obtain and submit an expert opinion.

(2) The decision on the involvement of the person (institution, body) invited by the defendant or the counsel for the defendant to prepare an expert opinion shall fall within the scope of authority of the court or the prosecutor. The expert invited – after having been recognised in his capacity as such – may participate in the professional examinations; in the course of the court procedure, he shall be entitled to the same rights and bound by the same obligations as the expert assigned by the court or the prosecutor.

(3) If the court or the prosecutor refuses to involve the person invited, the opinion prepared may be used according to the rules pertaining to documents.

Consequences of non-compliance with the expert's obligations

Section 113 (1) If the expert refuses to co-operate or provide an opinion for no justified reasons after having been warned of the consequences thereof, in addition to imposing a disciplinary penalty, the expert may be obliged to pay the resulting costs.

(2) A disciplinary penalty may also be imposed on the expert if he delays the submission of the expert opinion for no justified reasons.

(3) If the expert refuses to deliver an opinion by referring to his exemption, the expert shall not be ordered to co-operate until the appeal against the decision denying the exemption is judged.

The interpreter

Section 114 (1)[139] If a person whose native language is not Hungarian, intends to use in the course of the proceedings their native language, or – pursuant to and within the scope of an international agreement promulgated by law – their regional or minority language, an interpreter shall be employed. If the use of the native language involved unreasonable difficulties, the use of another language defined by the person not commanding the Hungarian language as a language spoken Known, shall be provided for by way of an interpreter.

(2) As a rule, deaf or numb persons shall be heard either by way of an interpreter, or by way of written communication.

(3) The provisions of this Act pertaining to experts shall also apply to interpreters, provided that only persons having the qualification stipulated in a separate legal regulation [140] may be employed as an interpreter. The term "interpreter" shall include translators as well.

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[139] The text of Section 114 (1) was established by Section 70 of Act I of 2002.

[140] Please refer to Decree No. 24/1986. (VI. 26.) MT of the Council of Ministers and Decree No. 7/1986. (VI. 26.) IM of the Ministry of Justice on the implementation thereof.

Opinion of the probation officer [141]

114/A. Section (1) Before a punishment or measure is imposed, or the filing of an indictment is postponed, as the case may be, the court and the prosecutor may order that an opinion from the probation officer be obtained. The obligation to obtain an opinion from the probation officer may be stipulated by law. The opinion of the probation officer shall be prepared by the probation officer.

(2) The opinion of the probation officer shall depicts the facts and circumstances characterising the personality and living conditions of the defendant – thus, in particular, the family conditions, state of health, any addictions, dwelling conditions, level of education, skill, place of work or, failing this, data on the employment, income and financial status of the defendant – and presents the relationship between the facts and circumstances revealed and the commission of the criminal offence.[142]

(3) In the opinion the probation officer provides information on possibilities of work suiting the capabilities of the defendant, or on health or welfare institutions which could provide for the defendant, and may also propose that a special rule of conduct be ordered in respect of the defendant.

(4) If the court or the prosecutor orders so, the opinion of the probation officer shall also include whether the defendant agrees to comply with the prospective rules of conduct or obligations and whether the victim agrees with the compensation to be granted.

(5) The probation officer shall be obliged and entitled to learn all data necessary to prepare the opinion, and for this purpose may inspect the documents of the case, and request information from the defendant, the victim, the witnesses and other persons involved in the proceedings. If necessary for the fulfilment of his duty, the probation officer may request further data, documents and information from the prosecutor or the court.

(6) The provisions of this Act pertaining to the expert shall also apply to the probation officer preparing the opinion of the probation officer, provided that Section 105 (6) and (7), Sections 106–107 and Sections 111–113 shall not be applicable to the probation officer.

Title V

PHYSICAL EVIDENCE AND DOCUMENTS

Physical evidence

Section 115 (1) Physical evidence shall be all objects (things) suitable for proving the facts to be proven, thus in particular, objects bearing the marks of the commission of the criminal offence or having been created through the criminal offence, objects used as a tool for the commission of the criminal offence and the subject of the criminal offence.

(2) For the purposes of this Act, physical evidence shall include documents, drawings and any objects recording data by way of a technical, chemical or other methods. The provisions of this Act pertaining to documents shall be construed as pertaining to data media as well.

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[141] Section 114/A and the subtitle thereof were enacted by Section 39 of Act II of 2003.

[142] Please also refer to Chapter II of Decree No. 17/2003. (VI. 24.) IM of the Ministry of Justice.

Documents

Section 116 (1) Document shall mean all means of evidence prepared and suitable for proving that a fact or data is true, that an even has taken place or that a statement has been made.

(2) The provisions pertaining to documents shall also apply to abstracts made from documents and to objects produced in compliance with the method specified in Section 115 (2) for the purpose of verifying that a fact or data is true, that an even has taken place or that a statement has been made.

(3)[143]

Title VI

TESTIMONY OF THE DEFENDANT

Section 117 (1)[144] Prior to the commencement of the questioning of the defendant, his identity shall be verified, therefore, the defendant shall be requested to state the following: his name, date and place of birth, mother's name, place of residence and place of stay, personal identification document number and citizenship The defendant shall be obliged to respond to such questions even if otherwise he refuses to testify.

(2)[145] At the commencement of the questioning, the defendant shall be advised that he is not under the obligation to testify, that he may refuse to testify or to respond to any of the questions in the course of the questioning, but may freely decide to testify at any time even if he has previously refused to do so. The defendant shall also be warned that anything he says or provides may be used as evidence. The warnings and the response of the defendant shall be included in the records. In the absence of such warnings, the testimony of the defendant may not be admitted as a means of evidence.

(3) The questioning of the defendant shall start with questions concerning the occupation, place of work, education, family conditions, income and financial status, further, to former punishments and – depending on the subject of the proceedings – military rank and honours. This is followed by the detailed interrogation of the defendant.

(4)[146] If the defendant refuses to testify, he shall be advised that this fact does not interfere with the continuation of the proceedings. If the defendant chooses to testify, he shall be warned against falsely accusing others with the commission of a criminal offence in the testimony. No further questions may be asked from the defendant in respect of the criminal offence he refused to testify to, and the defendant may not be confronted with the other defendants or the witness, unless he decides to testify beforehand. The refusal to testify shall not affect the right of the defendant to ask questions, or to make objections or motions.

(5) If the defendant wishes to testify, the possibility thereof shall be granted.

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[143] Pursuant to Section 308 (2) of Act I of 2002, Section 116 (3) shall be repealed and shall not enter into force.

[144] The second sentence of Section 117 (1) was enacted by Section 71 (1) of Act I of 2002.

[145] The first and second sentences of Section 117 (2) were established by Section 71 (2) of Act I of 2002.

[146] The third and fourth sentences of Section 117 (4) were enacted by Section 71 (3) of Act I of 2002.

Section 118 (1)[147] The defendant shall be granted the opportunity to state his testimony as a comprehensive whole; thereafter, the defendant may be cross-examined. The cause for any discrepancy from the former testimony of the defendant shall be elucidated.

(2) Unless provided otherwise by this Act, in the event of the defendant admits the commission of the criminal offence, other evidence shall also be obtained.

(3) The defendants shall be heard separately. The defendant may write his testimony with his own hands or otherwise, this shall be attached to the documents of the case.

Title VII

EVIDENTIARY PROCEDURES

Inspection

Section 119 (1) An inspection may be ordered and conducted by the court or the prosecutor, if the elucidation or establishment of a fact to be proven requires the examination of a person, an object or site, or the observation of an object or site.

(2)[148] If deemed necessary, an expert may be involved in the inspection.

(3) During the inspection the conditions material for establishing the criminal offence shall be entered in the records in detail. At the time of the inspection, all physical means of evidence shall be tracked down and gathered, and their proper safe-keeping ensured. Inasmuch as it is possible or necessary, audio and/or video records, drawings or drafts should also be made of the object of the inspection, and they shall be attached to the records.

(4) If the object of the inspection cannot transported to the court, the prosecutor or the investigating authority, or if this would result in significant difficulties or costs, the inspection shall be carried out on the scene.

(5)–(6)[149]

Section 120 (1) The court, the prosecutor or the investigating authority shall question the defendant and the witness on the scene (questioning on the scene), they are required – even after previous hearings – to make a statement on the scene of the criminal offence, and show the spot where the criminal offence took place, other spots having a connection with the criminal offence, physical means of evidence or the course of events during the criminal offence.

(2) Prior to being questioned on the scene, the defendant or the witness shall be asked about the conditions of noticing the given site, act or physical means of evidence and how would they recognise them.

Reconstruction

Section 121 (1) The court or the prosecutor shall order and stage a reconstruction, if they wish to establish or verify whether an event or occurrence could, in fact, take place at a specific place and time, in a specific way or under specific circumstances.

(2) As much as possible, the reconstruction shall take place under the actual or assumed conditions as the investigated event or occurrence happened or might have happened.

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[147] The text of Section 118 (1) was established by Section 72 of Act I of 2002.

[148] The text of Section 119 (2) was established by Section 73 of Act I of 2002.

[149] Pursuant to Section 308 (2) of Act I of 2002, Section 119 (5) and (6) shall be repealed and shall not enter into force.

Presentation for identification

Section 122 (1)[150] The court or the prosecutor shall order and perform a presentation for identification, if this is required to identify a person or an object. The defendant or the witness shall be shown at least three persons or objects for identification. In the absence of other means of identification, the defendant or the witness may be presented a photo or other audio or video records of the person or object.

(2) Prior to the presentation for identification, the person to make the identification shall be questioned in detail concerning the conditions of noticing the given person or object, his relationship with the person or the object, and the known distinguishing marks thereof.

(3) In the event of presentation of persons, individuals not involved in the case and not known by the person to make the identification shall be lined up, who have the same main distinguishing marks – thus, especially, same gender, similar age, built, complexion, personal hygiene level and clothing – as the given person. In the case of objects, the object to be identified shall be placed among similar objects. The positioning of the given persons or objects within the group may not be significantly different than the that of the others or conspicuous.

(4) Even if there are several persons making the identification, the presentation shall take place separately, in the absence of the others.

(5) If required for the protection of the witness, the presentation for identification shall take place under conditions preventing the person presented from identifying or noticing the witness. In the event of an order to handle the personal data of the witness confidentially, this shall be ensured during the presentation for identification as well.

Section 123 (1) The rules pertaining to the inspection shall apply to the reconstruction and the presentation for identification as appropriate.

(2) The court or the prosecutor may also request the co-operation of the investigating authority for performing an inspection, reconstruction and presentation for identification. The investigating authority shall perform the requests of the court by the deadline.

(3) Unless provided for otherwise by the prosecutor, the investigating authority may also order and perform an inspection, reconstruction and presentation for identification.

(4)[151] The defendant, the witness, the victim and other person shall be obliged to submit to the inspection, reconstruction and presentation for identification, and make the object in their possession available for the purpose of inspection, reconstruction and presentation for identification. In order to fulfil these obligations, coercive measures may be applied in respect of the defendant, and disciplinary penalty may be imposed on the victim and other person.

(5) As a rule, the procedure of the inspection, reconstruction and presentation for identification shall be recorded by an audio or video recorder or other equipment. The audio or video recordings shall be attached to the documents of the case; and they may not be used for any other purpose than their intended use.

Confrontation

Section 124 (1) If the testimonies given by the defendant(s) and the witness(es) are contradictory, if necessary, the conflict may be resolved by way of confrontation. Those confronted shall present their statement orally and may be permitted to ask questions from one another.

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[150] The text of Section 122 (1) was established by Section 74 of Act I of 2002.

[151] Section 123 (4) and (5) was enacted by Section 75 of Act I of 2002.

(2)[152] If required for the protection of the witness or the defendant, the confrontation of the witness or the defendant shall be omitted.

(3) Persons under fourteen years of age may only be involved in the confrontation, if it will not cause apprehension.

Concurrent hearing of experts

Section 125 Differences in the opinion of the experts may be clarified by way of a hearing them in the presence of the other experts.

Chapter VIII

COERCIVE MEASURES

Title I

CUSTODY

Section 126 (1) Taking the defendant into custody means a temporary deprivation of the defendant of his freedom.

(2) The custody of the defendant may be ordered upon a reasonable suspicion that the defendant has committed a criminal offence subject to imprisonment – thus, in particular, if the defendant is caught in the act – provided that a probable cause exists to believe that the pre-trial detention of the defendant is to follow.

(3) The defendant may be retained in custody for a period of maximum seventy-two hours. After the lapse of this period, the defendant shall be released, unless the court has ordered his pre-trial detention. The defendant shall be released, if the court has not made a decision concerning his pre-trial detention during the period of the custody.

(4) Unless the conditions have changed, the defendant may not be taken into custody twice for the same criminal offence.

(5) The period of custody shall also include the time spent by the defendant in lawful detention prior to the issuance of the order for taking him into custody.

Section 127 (1) Custody may be ordered and terminated by the court, the prosecutor or the investigating authority.

(2) If the defendant has been taken into custody on the order of the investigating authority, it shall advise the prosecutor thereon within twenty-four hours.

(3) A person caught in *flagrante delicto* may be captured by anyone, however, the capturer shall hand over the delinquent to the investigating authority without delay; or, if this is unfeasible, notify the police.

Section 128 (1) The relative of the defendant designated by the defendant shall be notified of the warrant of custody and the place of detention within twenty-four hours; in the absence of such a relative, notification made be made to another person designated by the defendant.

(2) Children of minor age of the defendant remaining without supervision, or any other person being looked after by the defendant shall be delivered to the care of a relative or an appropriate institution. The settling arrangements for minors shall be made through the Court of Guardians, while in the case of other persons being looked after by the defendant, the

[152] The text of Section 124 (2) was established by Section 76 of Act I of 2002.

notary of the local government. Actions shall be taken to secure the property and home of the defendant left unattended.

(3) When a soldier is taken into custody [Section 122 (1) of the Penal Code] his commanding officer shall also be notified thereof.

Title II

PRE-TRIAL DETENTION

Conditions for pre-trial detention

Section 129 (1) Pre-trial detention means the judicial deprivation of the defendant of his freedom prior to the delivery of the final decision.

(2) The pre-trial detention of the defendant may take place in a proceeding related to a criminal offence punishable by imprisonment, and only under the following conditions:

a)[153] the defendant has escaped, or has attempted to escape, or absconded from the court, the prosecutor or the investigating authority, or another procedure has been launched against the defendant for committing a deliberate criminal offence also punishable by imprisonment,

b) owing to the risk of an escape or hiding, or for other reasons, there is reasonable cause to believe that the presence of the defendant in procedural actions cannot be otherwise ensured,

c) there is reasonable cause to believe that if left at liberty, the defendant would frustrate, obstruct or jeopardise the evidentiary procedure, especially by means of influencing or intimidating the witnesses, or by the destruction, falsification or secretion of physical evidence or documents,

d) there is reasonable cause to believe that if left at liberty, the defendant would accomplish the attempted or planned criminal offence or commit another criminal offence punishable by imprisonment.

Ordering pre-trial detention

Section 130 (1) The decision on ordering pre-trial detention – prior to filing the indictment and at the motion of the prosecutor made in compliance with the procedure set forth in Title VI of Chapter IX – shall fall under the competence of the court.

(2)[154] Instead of pre-trial detention, the court may order home curfew or house arrest as well.

(3) If conducting a criminal proceeding is subject to a private motion, pre-trial detention may not be ordered prior to lodging such private motion.

Term of the pre-trial detention

Section 131 (1)[155] Pre-trial detention ordered prior to filing the indictment may continue up to the decision of the court of first instance during the preparations for the trial, but may never be longer than one month. Pre-trial detention may be extended by the investigating judge by three months on each occasion, but the overall period may still not exceed one year after the order of pre-trial detention. Thereafter, pre-trial detention may be extended by the county court acting as a single judge by two months on each occasion, in compliance with the procedural rules pertaining to investigating judges.

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[153] Section 129 (2) a) was established by Section 77 (1) of Act I of 2002.
[154] Section 130 (2) was established by Section 77 (2) of Act I of 2002.
[155] The last sentence of Section 131 (1) was established by Section 78 (1) of Act I of 2002.

(2) Prior to filing the indictment, the prosecutor shall make a motion to the court for the extension of the pre-trial detention five days before the expiry of the deadline of the pre-trial detention.

(3) The appeal lodged against the decision of the investigating judge shall be adjudicated by the panel of second instance of the county court, while an appeal against the decision of the county court acting as a single judge shall be adjudicated by the panel of the tribunal.

(4)[156] After filing the indictment, pre-trial detention ordered or maintained by the court of first instance may continue up to the announcement of the conclusive decision made by that court, while pre-trial detention ordered or maintained by the court of first instance after the announcement of its conclusive decision, or ordered or maintained by the court of appeal may continue up to the conclusion of the procedure with a final decision, but no longer than the term of imprisonment imposed by the appealable decision. Should the conclusive decision of the court of first instance be repealed and the court of first instance be ordered to conduct a new procedure, pre-trial detention ordered or maintained by the court of appeal may continue up to the decision of the court of first instance delivered in the course of the repeated procedure.

Section 132 (1)[157] If the period of the pre-trial detention ordered or maintained after filing the indictment, its justification shall be reviewed

a) by the court of first instance if such detention exceeds six months and the court of first instance has not delivered a conclusive decision yet,

b) by the court of appeal, if the period of the pre-trial detention has exceeded one year.

(2) After the lapse of the time period specified in subsection (1) b), the justification of the pre-trial detention ordered or maintained after filing the indictment shall be reviewed by the court of appeal at least once in every six months.

(3)[158] When the period of the pre-trial detention reaches three years, it shall terminate, unless it was ordered or maintained after the announcement of the conclusive decision, or unless a repeated procedure is in progress owing to a repeal in the case.

Judgement of a motion to terminate pre-trial detention

Section 133 (1) The court shall examine the motion to terminate the pre-trial detention in its merit, and deliver a decision thereon with the explanation of the reasons. Repeated motions may be rejected by the court without substantial justification, unless the defendant or the counsel for the defendant cites new circumstances.

(2) If three months has elapsed either from the order or the extension of the pre-trial detention, the second sentence of subsection (1) may not be applied.

Measure after ordering pre-trial detention

Section 134 If the measures regulated in Section 128 have not been taken at the time of taking the defendant into custody, they shall be taken without delay by the investigating authority (before the indictment is filed) or the court (if the indictment has been filed) after the questioning of the detainee.

Execution of the pre-trial detention

Section 135 [(1)[159] *Pre-trial detention shall be spent in a penal institution.*

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[156] Section 131 (4) was established by Section 78 (2) of Act I of 2002.

[157] The text of Section 132 (1) and (2) was established by Section 40 of Act II of 2003.

[158] The text of Section 132 (3) was established by Section 79 of Act I of 2002.

[159] Pursuant to Section 308 (4) of Act I of 2002, Section 135 (1) and (2) shall enter into force on January 1, 2005. Up to that time, to the location of the pre-trial detention, Section 116 (1) and (3) of Law–Decree on the Penal service shall apply.

(2) In exceptional cases, prior to the filing of the indictment, the person in pre-trial detention may also be held in a police cell – for a period of maximum thirty days – based on a court decision; and if justified in order to take an investigatory action, based on the decision of the prosecutor on two occasions – for a period of maximum fifteen days in each case.]

(3)[160] The defendant held in pre-trial detention may not be restricted in exercising his procedural rights. The defendant shall be granted the opportunity to contact his defence counsel, and, in the case of foreign citizens, the representative of the consulate of his native country. The defendant held in pre-trial detention may only be subjected to restrictions following from the nature of the criminal proceeding, or required by the rules of the institution executing the detention. The detailed rules of executing the pre-trial detention are specified in separate legal regulations.

(4)[161] If it is provable that after the pre-trial detention has been effectuated the defendant abuses his right to communicate with his defence counsel and

a) prepares to escape,

b) endeavours to obstruct the procedure, by means of influencing or intimidating the witnesses, or by the destruction, falsification or secretion of physical evidence or documents, or

c) solicits for the commission of another criminal offence punishable by imprisonment,

the court – at the motion of the prosecutor prior to filing the indictment – may exclude the defence counsel from the procedure.

Extraordinary procedure, termination of pre-trial detention

Section 136 (1) The court, the prosecutor and the investigating authority shall make all efforts to reduce the term of the pre-trial detention as much as possible. If the defendant is held in pre-trial detention, an extraordinary procedure shall be conducted.

(2)[162] The pre-trial detention shall terminate if its term has expired and has not been extended or maintained, if the procedure has come to a final conclusion, if the investigation has been terminated, if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, or if pressing charges has been postponed; further, it shall be terminated if the cause for ordering the detention has ceased to exist.

(3) Up to the time of filing the indictment, the pre-trial detention may also be terminated by the prosecutor.

Title III

HOME CURFEW AND HOUSE ARREST[163]

Home curfew[164]

Section 137 (1) The home curfew restricts the right of the defendant to free movement and free choice of dwelling; the person subjected to a home curfew may not leave the specified area or district nor may he change his place of residence or stay without permission.

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[160] Section 135 (3) was established by Section 41 (1) of Act II of 2003.
[161] The text of Section 135 (4) was established by Section 80 of Act I of 2002.
[162] Section 136 (2) was established by Section 41 (2) of Act II of 2003.
[163] The text of Title II of Chapter VIII was established by Section 82 (1) of Act I of 2002.
[164] The subtitle of Section 137 was enacted by Section 82 (2) of Act I of 2002.

(2)[165] Home curfew may be ordered when taking into account the nature of the criminal offence, the personal circumstances and family conditions of the defendant – with special regard to the health condition or old age of the defendant – or his conduct during the proceedings, this way the objectives otherwise desired to be attained through pre-trial detention, can also be realised.

(3) The home curfew is ordered by the court. In its decision ordering the home curfew the court may require the defendant to report to the police at specific intervals, and may also make other restrictions to ensure the realisation of the objective of the home curfew.

(4)[166] Adherence to the restrictions ordered in the scope of the home curfew shall be controlled by the police, while compliance with the orders in a home curfew imposed on professional soldiers and soldiers serving under a contract [Section 122 (1) of the Penal Code] shall be controlled by his commanding officer, or in his absence, another superior officer.

(5) If ordered prior to filing the indictment, the home curfew may continue up to the decision of the court of first instance during the preparations for the trial, if ordered or maintained thereafter, it may continue up to the announcement of the conclusive decision of the court of first instance; if ordered or maintained by the court of first instance after the announcement of the conclusive decision, it may continue up to the conclusion of the appeal procedure, while home curfew ordered or maintained by the court of appeal may continue up to the conclusion of the procedure with a final decision.

(6)[167] If the court ordered the home curfew prior to the filing of the indictment, and the prosecutor did not press charges during the subsequent six months, the court shall review the necessity to maintain the curfew at the motion of the prosecutor to be lodged five days prior to the lapse of the deadline.

(7) If during the term of the home curfew, substantial changes in the living conditions of the defendant necessitate his leaving the area or region affected by the prohibition or changing his place of stay or residence, prior to the filing of the indictment the curfew may be partially lifted by the prosecutor or thereafter by the court at the request of the defendant. The decision concerning the partial lift of the home curfew may allow the defendant to leave the area or region affected by the prohibition once, periodically or regularly for a specific reason and to a specific destination, or to change his place of stay or residence.

(8)[168] A home curfew shall terminate if its term has expired and has not been extended, if the investigation has been terminated, if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, or if pressing charges has been postponed or the procedure has been concluded with a final verdict; further, it shall be terminated if the cause for its order has ceased to exist. Up to the time of filing the indictment, the home curfew may also be terminated by the prosecutor.

House arrest[169]

Section 138[170] (1) In the event of a house arrest, the defendant may only leave the dwelling designated by the court and the enclosed area attached to it for the reason, at the time and within the distance specified in the court decision, thus especially, for the purpose of complying with everyday basic necessities or medical treatment.

(2) The order, period, maintenance and termination of house arrest as a coercive measure shall be governed by the provisions pertaining to the order, extension, maintenance and

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[165] Section 137 (2) was established by Section 82 (3)of Act I of 2002.
[166] Section 137 (4) and (5) was established by Section 82 (4).of Act I of 2002.
[167] Section 137 (6)–(8) was enacted by Section 82 (5).of Act I of 2002.
[168] The text of the first sentence of Section 137 (8) was established by Section 42 of Act II of 2003.
[169] The subtitle of Section 138 was enacted by Section 83 of Act I of 2002.
[170] The text of Section 138 was established by Section 83 of Act I of 2002.

termination of pre-trial detention [Section 131, Section 132 (1) and (2), Section 136 (2) and (3)].

(3) The court may also require the police to monitor – with the consent of the defendant – compliance with the provisions of the house arrest with a device tracing the movement of the defendant. Monitoring compliance with the provisions of a house arrest is regulated in a separate legal regulation.[171]

(4) No house arrest may be ordered in respect of a soldier [Section 122 (1) of the Penal Code] throughout the duration of his military service.

Section 139[172] If the defendant violates the rules of the home curfew or house arrest, or fails to attend a procedural action when required by a subpoena without giving sufficient reasons therefor in advance or after the cessation of the obstacle, fails to provide sufficient justification therefor without delay, the defendant may be taken into custody, furthermore, the order for his house arrest may be changed to pre-trial detention, and the order for home curfew to house arrest or pre-trial detention, or, if this is deemed unnecessary, a disciplinary penalty may be imposed.

Title IV

TEMPORARY INVOLUNTARY TREATMENT IN A MENTAL INSTITUTION

Section 140 (1) Temporary involuntary treatment in a mental institution means the judicial deprivation of a mentally disabled defendant of his freedom without a final court decision.

(2) Temporary involuntary treatment in a mental institution may be ordered when there is reasonable cause to assume that an order for the involuntary treatment of the defendant in a mental institution is required.

(3) The order for the temporary involuntary treatment in a mental institution shall be governed by the rules pertaining to ordering pre-trial detention [Section 130 (1)].

Section 141 (1) In the case of pre-trial detainees, concurrently with ordering the temporary involuntary treatment in a mental institution, pre-trial detention shall be terminated.

(2) If the pre-trial detainee required psychiatric treatment, but there is no ground to order a temporary involuntary treatment in a mental institution, the pre-trial detention – at the order of the court – shall be executed in the Forensic Diagnostic and Mental Institution.[173]

Section 142 (1) The temporary involuntary treatment in a mental institution ordered prior to filing the indictment may continue up to the decision of the court of first instance during the preparations for the trial.

(2) If, during the period of six months elapsed from the commencement of the temporary involuntary treatment the prosecutor does not file an indictment, the justification of the temporary involuntary treatment in a mental institution shall be reviewed by the court. The

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[171] Please refer the Joint Decree No. 6/2003. (IV. 4.) IM–BM of the Ministry of Justice and the Ministry of Interior.

[172] The text of Section 139 was established by Section 84 of Act I of 2002.

[173] Please refer to Decree No. 36/2003. (IX. 3.) IM of the Ministry of Justice.

review shall be conducted at the motion to be lodged five days prior to the lapse of the deadline by the prosecutor.

(3)[174] After the lapse of one year following the commencement of the temporary involuntary treatment in a mental institution, its justification shall be reviewed by the county court acting as a single judge, until the indictment is filed in compliance with the procedural rules pertaining to investigating judges. The review shall be conducted at the motion to be lodged five days prior to the lapse of the deadline by the prosecutor.

(4) The appeal against the decision of the court under subsection (2) shall be adjudicated by the panel of second instance of the county court, while an appeal against the decision of the county court under subsection (3) shall be adjudicated by the panel of the tribunal.

Section 143 (1)[175] After filing the indictment, temporary involuntary treatment in a mental institution ordered or maintained by the court of first instance may continue up to the announcement of the conclusive decision made by that court, temporary involuntary treatment ordered or maintained by the court of first instance after the announcement of its conclusive decision may continue up to the conclusion of the appeal procedure, while temporary involuntary treatment in a mental institution ordered or maintained by the court of appeal may last up to the conclusion of the procedure with a final decision.

(2) The review of a temporary involuntary treatment in a mental institution ordered or maintained after filing the indictment shall be governed by the provisions of Section 132 (1) and (2).

Section 144 (1) Temporary involuntary treatment in a mental institution shall be provided in the Forensic Diagnostic and Mental Institution.

(2) To the execution of the order for a temporary involuntary treatment in a mental institution the provisions of Section 135 (3) and (4) shall be applied as appropriate. The person receiving the temporary involuntary treatment may communicate with his legal representative verbally without control, or, if there is reasonable cause to suspect that this would frustrate the proceedings, under control.

Section 145 (1)[176] The temporary involuntary treatment in a mental institution shall terminate if its term has expired, if the investigation has been terminated, if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, or if the procedure has come to a final conclusion; further, it shall be terminated if the cause for ordering the treatment has ceased to exist.

(2) Up to the time of filing the indictment, the temporary involuntary treatment in a mental

institution may also be terminated by the prosecutor.

(3)[177] The order for the temporary involuntary treatment in a mental institution may also be appealed by the spouse and legal representative of the defendant, who will also have the right to lodge a motion for the termination of such involuntary treatment.

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[174] The text of the first sentence of Section 142 (3) was established by Section 85 of Act I of 2002.
[175] The text of Section 143 (1) was established by Section 86 of Act I of 2002.
[176] Section 145 (1) was established by Section 43 (1) of Act II of 2003.
[177] Section 145 (3) was enacted by Section 43 (2) of Act II of 2003.

Title V

CONFISCATION OF THE TRAVEL DOCUMENT [178]

Section 146[179] (1) Up to the time of filing the indictment, in response to the motion of the prosecutor, the court may order the confiscation of the travel document of the defendant, if the criminal offence underlying the procedure is liable to imprisonment for a term of three years of more by law, and the confiscation of the travel document is justified to ensure the presence of the defendant in the procedural actions. With the exception of the cases specified in subsection (3) below, the person whose travel document was ordered to be confiscated by the court shall not be allowed to travel abroad.

(2) When the confiscation of a travel document is ordered, the court, the prosecutor or the investigating authority proceeding in the case shall contact the passport authority specified in the Act on travelling abroad, in order to arrange for the withdrawal of the travel document.[180]

(3) Up to the time of filing the indictment the prosecutor, thereafter the court may, at the justified request of the defendant, consent to the permission of the passport authority granted to the defendant to travel abroad for a specified time period and/or to a specific destination.

(4) The court shall revoke the order for the confiscation of the travel document, if the cause therefor has ceased to exist, or if the criminal proceedings have been concluded with a final decision. If the investigation is terminated, or pressing charges is postponed, or if the cause for the confiscation has ceased to exist prior to the filing of the indictment, ending the confiscation falls under the competence of the prosecutor.

(5) The prosecutor or the court – as appropriate – shall notify the passport authority on ending the confiscation of the travel document. Based on the notification, the passport authority shall return the travel document to the defendant, unless the return of the travel document to the possession of the defendant is regulated otherwise in another legal regulation.

(6) Upon an order to take the defendant into custody, the travel document of the defendant shall be seized, but it shall be returned to the defendant after the termination of the custody. If the defendant was released from custody without an order of pre-trial detention, temporary involuntary treatment in a mental institution, home curfew or house arrest, but the confiscation of his travel document is nevertheless justified pursuant to subsection (1) above, the decision on the confiscation of the travel document shall be made within seventy-two hours after the termination of the custody. Until this decision is adopted, the travel document of the defendant may be retained.

(7) Upon an order for pre-trial detention, temporary involuntary treatment in a mental institution, home curfew or house arrest, the court, the prosecutor or the investigating authority proceeding in the case shall contact the passport authority without delay in order to cause the travel document withdrawn. If the travel document is available, it shall be forwarded to the passport authority together with the notification. The transmission of the travel document to the passport authority shall not be subject to any legal remedy.

(8) Unless the court or the prosecutor permitted the placement of a security deposit, the provisions set forth in subsections (1) to (7) shall also be applied, as appropriate, to the confiscation of the travel document of a foreign defendant, provided that the travel document of a foreign citizen shall be forwarded to the immigration control authority in order to have it retained. [181]

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[178] The text of Title V of Chapter VIII was established by Section 87 of Act I of 2002.
[179] The text of Section 146 was established by Section87 of Act I of 2002.
[180] Please refer to Act XII of 1998.
[181] Please refer to Section 63 of Act XXXIX of 2001.

(9) When a Hungarian citizen also has a travel document issued by a foreign authority, the order for the confiscation thereof shall be made simultaneously with the confiscation of the Hungarian travel document.

Title VI[182]

BAIL

Section 147 (1) In the cases specified in Section 129 (2) *b)* the court may omit the order for the pre-trial detention of the defendant and may terminate the previously ordered pre-trial detention, if – considering the criminal offence and the personal circumstances – it has probable cause to believe that the presence of the defendant in procedural actions may be ensured by the deposit of bail. Bail may be offered and provided by the defendant or another obligor instead of him.

(2)[183]

(3) The motion to accept the bail offered may be submitted by the defendant or the counsel for the defendant to the court competent to make a decision on pre-trial detention. The court shall hold a meeting on the acceptance of the bail offered and hear the prosecutor, the defendant, the counsel for the defendant and the person who offered the bail. If the counsel for the defendant does not attend the meeting despite the notification, the meeting may be held in his absence.

(4)[184] In its decision concerning its acceptance of bail, the court shall determine the amount of bail taking into consideration the personal circumstances and financial status of the defendant. Concurrently with the acceptance of bail, the court may also order a home curfew, house arrest and the confiscation of the travel document of the defendant.

(5) The order for the elimination or termination of the pre-trial detention of the defendant may be appealed by the prosecutor.

(6) Bail accepted the court in a final decision shall be deposited in cash at the court, and thereafter the defendant shall be forthwith released.[185]

(7)[186] In the event that the motion for the acceptance of bail is rejected, the defendant or the counsel for the defence may only lodge a new motion for the acceptance of bail with reference to new circumstances. If the defendant or the counsel for the defendant fails to cite new circumstances in the repeated motion, the court may reject it without substantial justification.

Section 148 (1) The court may order the pre-trial detention of a defendant who is at liberty or was released on bail, if

a) the defendant has failed to attend a procedural action when required by a subpoena without giving sufficient reasons therefor in advance or after the cessation of the obstacle, fails to provide sufficient justification therefor without delay, or

b) after the acceptance of bail, another cause for ordering the pre-trial detention of the defendant has arisen.

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[182] Pursuant to Section 308 (3) of Act I of 2002, the entry into force of Title VI of Chapter VIII should have been regulated by a separate law. However, since the said provision has been repealed, the entry into force of this legal institution was stipulated by Section 88 (2) a) of Act II of 2003.

[183] Pursuant to Section 88 (2) a) of Act II of 2003, Section 147 (2) shall be repealed and shall not enter into force.

[184] The second sentence of Section 147 (4) was established by Section 44 (1) of Act II of 2003.

[185] Please refer to Decrees No. 27/2003. (VII. 2.) IM and No. 9/2002. (IV. 9.) IM of the Ministry of Justice.

[186] Section 147 (7) was established by Section 44 (2) of Act II of 2003.

(2) The amount of bail shall be refunded to the obligor, if

a) the defendant – for a reason other than that provided in subsection (1) *a)* – is arrested,

b)[187] the prosecutor terminated the investigation, if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, or the prosecutor postponed to press charges, or

c) the court concluded the procedure with a final decision.

(3) If a penalty for imprisonment is imposed, bail may be refunded when the execution of the penalty has commenced.

(4) The right of the obligor for the refund of the bail shall be forfeited if the pre-trial detention of the defendant is ordered due to the reason specified in subsection (1) *a)*.

Title VII

SEARCH, A BODY SEARCH AND SEIZURE

Search

Section 149 (1)[188] Search means the search of a house, flat, other premises or an enclosure attached thereto, the vehicles parked there, as well as the examination of a computer system or a computer media containing data recorded by such system; the search is conducted in order to enhance the efficiency of the proceedings.

(2) A search may be ordered when there is reasonable cause to believe that it will result in:

a) apprehending a person having committed a criminal offence,

b) uncover the traces of a criminal offence,

c)[189] finding means of evidence, or property subject to confiscation or forfeiture.

(3)[190] A search may be ordered by the court, the prosecutor or – unless the prosecutor provides for otherwise – the investigating authority; the court and the prosecutor may request the assistance of the investigating authority for conducting the search. In the cases specified in subparagraph (2) *b)* and *c)*, inasmuch as possible, the search warrant shall indicate the means of evidence and the property subject to confiscation or forfeiture, desired to be found during the search.

(4)[191] As a rule, the search shall be conducted in the presence of the person affected, who shall be advised of the warrant prior to the commencement of the search; further – if the purpose of the search is to find a designated or known means of evidence, a property subject to confiscation or a person – the person affected shall be demanded to surrender the property being the subject of the search, to make available the data stored on the computer system or data medium, or to surrender the designated person. If the person affected obeys and surrenders the property being the subject of the search, makes the data stored on the computer system or data medium available, or surrenders the designated person, the search may not be continued unless there is reason to suspect that other means of evidence or other property subject to confiscation or forfeiture could also be found in the course of the search.

(5) If the person affected or his representative or appointed relative is not present during the search, a person – who is reasonably believed to be able to properly protect the interests of

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[187] The text of Section 148 (2) b) was established by Section 45 of Act II of 2003.

[188] Section 149 (1) was established by Section 88 (1)of Act I of 2002.

[189] Section 149 (2) c) was established by Section 88 (2)of Act I of 2002.

[190] The text of the first and second sentences of Section 149 (3) was established by Section 88 (3) of Act I of 2002 and Section 46 of Act II of 2003, respectively.

[191] Section 149 (4)–(7) was established by Section 88 (3) of Act I of 2002.

the person affected by the search – shall be appointed to protect the interest of the person affected b the search.

(6) The search of the office of a notary public [192] a law office[193] or a health institution [194] – unless its sole objective is to apprehend a person having committed a criminal offence [(subsection 2) *a)*] – prior to the filing of the indictment shall be ordered by the court. The search may only be conducted in the presence of the prosecutor.

(7) The prosecutor may direct a search pursuant to subsection (6) above without a court warrant, if the delayed performance of the search jeopardises the realisation of the objectives set forth in subsection (2).

(8) In the case regulated in subsection (7) the court warrant shall be obtained subsequently. Should the court reject the motion, the results of the search may not be admitted as evidence.

Body search

Section 150 (1)[195] Body search means the examination of the clothing and body of the defendant and a person who is reasonably believed to keep in his possession means of evidence, or property subject to confiscation or forfeiture, in order to find such means of evidence, or property subject to confiscation or forfeiture. In the course of the body search, the vehicle, package and other objects being at the disposal of the person subjected to the body search may also be examined.

(2) The body search shall be ordered by the prosecutor or the investigating authority. If the body search is ordered by the prosecutor, the search shall be conducted with the assistance of the investigating authority.

(3)[196] If the objective of the body search is to find a designated object, the person to be searched shall first be demanded to surrender the subject of the search, and if such demand is obeyed, the body search shall be omitted.

(4) The body of the person searched may only be examined by a person of the same gender, moreover, only persons of the same gender may be present during the search. This provision shall not apply to medical doctors participating in the search.

(5) The body search may be attended by a person staying at the site of the search and designated by the person searched, unless the presence of such person jeopardised the interests of the investigation.

Seizure

Section 151 (1)[197] Seizure means divesting the owner of a property of his right of disposal thereover by way of dispossession in order to obtain evidence or ensure confiscation or forfeiture of the property.

(2) The court, the prosecutor or the investigating authority shall order the seizure of the property, computer system or data medium containing data recorded by such system, if it

a) constitutes a means of evidence,

b) may be subject to confiscation or forfeiture of property by law.

(3) Seizure of documents kept in the office of a notary public, a law firm or a health institution shall be ordered by the court.

(4) Seizure of mail and new communication not delivered to the addressee as yet as well as of documents of the editorial office of printed matters shall be ordered prior to filing the

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[192] Please refer to Act XLI of 1991.
[193] Please refer to Act XI of 1998.
[194] Please refer to Section 3 g) of Act CLIV of 1997.
[195] Section 150 (1) was established by Section 89 (1)of Act I of 2002.
[196] Section 150 (3) was established by Section 89 (2)of Act I of 2002.
[197] Section 151 (1)–(4) was established by Section 90 (1) of Act I of 2002.

indictment by the prosecutor, or thereafter the court. Until the decision is made, the consignment may only be subject to retention.

(5) If seizure is ordered by the court or the prosecutor, they may request the assistance of the investigating authority for the execution of the order.

(6)[198] If the prosecutor or the investigating authority is not entitled to order the seizure, but immediate action is required, the property may be taken into custody. In this case, the order for seizure shall be obtained subsequently, as early as possible from the party entitled to issue it. The property shall be released from custody and returned to the owner if seizure is not ordered by the party entitled to issue such order.

Section 152 (1)[199] In order to effectuate the seizure, the owner of the property, computer system or data medium containing data recorded by such system or the data manager shall be demanded to surrender the subject of the seizure or, when appropriate, make the data recorded by a computer system available. Failure to obey the above demand voluntarily may be subject to disciplinary penalty, provided however, that no disciplinary penalty may be imposed on the defendant, a person entitled to refuse to testimony as a witness and persons who may not be heard as a witness. The refusal to surrender the property shall not prevent obtaining the property or data recorded by a computer system by way of a search or body search. The person affected shall be warned of the above.

(2) Letters and other written communication between the defendant and the counsel for the defendant, and the notes of the counsel for the defendant pertaining to the case may not be seized.

(3) Letters and other written communication between the defendant and a person who may refuse to testify as a witness under Section 82 (1) may not be seized, when they are kept by the latter person.

(4) Documents the contents of which may be subject to the refusal of a testimony may not be seized, either, when they are kept by the person who may reuse to testify as a witness. This restriction shall also apply to the papers and properties kept at the official premises of a person who may refuse to testify as a witness pursuant to Section 82 (1) *c)*.

(5)[200] The restrictions set forth in subsections (3) and (4) shall not apply, if

a) the person entitled to refuse to testify as a witness is suspected on reasonable grounds to be an accomplice, an accessory, an abettor, or a receiver in the case,

b) the property to be seized is the instrument of the criminal offence,

c) the person entitled to refuse to testify as a witness voluntarily surrenders the property after being advised of the provisions of subsections (3) and (4).

Section 153 (1) It shall be ensured that the contents of documents are not disclosed to unauthorised persons.

(2)[201] If the prosecutor is not present at the detection of a document in respect of which its holder believes to have the right to refuse to testify as a witness pursuant to Section 82 (1) *b)* and the owner of the document or the defence counsel, representative or appointed representative thereof denies his consent to examine the contents of the document, the data medium containing the document or the document itself shall be handed over in a sealed envelope to the investigating authority, which will then forward the document in the sealed envelope to the prosecutor without examination. If the above solution is not feasible, the investigating authority shall arrange for the safekeeping of the document by applying Section

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[198] Section 151 (6) was established by Section 90 (2) of Act I of 2002.
[199] Section 152 (1) was established by Section 91 (1) of Act I of 2002.
[200] Section 152 (5) was established by Section 91 (2) of Act I of 2002.
[201] The text of Section 153 (2) was established by Section 92 of Act I of 2002.

154 (3) as appropriate. After the examination of the document, the prosecutor shall make a decision on the seizure thereof, or – in the case of documents falling under the scope of Section 151 (3) – on submitting the motion for the seizure thereof to the court. Should the prosecutor or the court not order the seizure, the document may not be admitted as a means of evidence either in that case or in other criminal proceedings.

(3) At the request of the owner of the document, a certified copy shall be issued on the document seized, unless this jeopardises the interests of the procedure.

Section 154 (1)[202] Any property seized shall be deposited; if it is unsuitable for depositing or other important reasons justify it, its safe-keeping shall be arranged in another manner. [203] In the latter case, a document or photograph reflecting the unique features of the property related to the criminal offence shall be attached to the file of the case. In the event of an order for the seizure of real property, seizure shall be effected in compliance with the rules of sequestration.[204]

(2) The property seized shall be listed in a report or other document indicating their quantity, value, condition and other features making them suitable for individual identification.

(3) The property seized shall be kept in a way ensuring that the property is reserved unchanged and easily identifiable, and that prevent the disappearance of any traces of the criminal offence or the exchange of the property seized.

Section 155 (1)[205] Seizure shall be terminated by the court, the prosecutor or the investigating authority, if it does not serve the interests of the procedure any longer; while seizure shall be terminated if the investigation has been terminated, or if its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension. In lieu of the termination of seizure, actions stipulated in another legal regulation shall apply, if the possession of the property seized violates the law. Prior to filing the indictment, seizure ordered by the court may also be terminated by the prosecutor.

(2) Upon terminating seizure, the property shall be returned to the person who can authentically verify having been the owner of the property seized at the time of the commission of the criminal offence.

(3) If no person exists to whom the property shall be returned under subsection (2) and the files of the procedure contain no data thereon, either, the property shall be returned to the person whose announced claim for the property seems justified.

(4) In the absence of a person to whom the property shall be returned under subsection (3), or the files of the procedure contain no data on such claim, the property shall be returned to the person from whom it was seized.

(5) Any property seized may only be returned to the defendant, if no other person exists to whom it may be returned under subsections (2) to (4).

(6)[206] Based on a court decision, the property seized from the defendant shall become state property, if the identity of the person to whom it is due beyond doubt cannot be established. late claimants may claim the return of the property or the amount realised on the sale thereof. The application of the claim shall be decided upon by the court having the competence and jurisdiction under the Code of Civil Procedure.

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[202] The last sentence of Section 154 (1) was enacted by Section 93 of Act I of 2002.

[203] Please refer to Joint Decree No. 11/2003. (V. 8.) IM–BM–PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

[204] Please refer to Act LIII of 1993.

[205] The text of the first sentence of Section 155 (1) was established by Section 47 of Act II of 2003.

[206] Section 155 (6) was established by Section 94 (1).of Act I of 2002.

(7)[207] Upon the termination of seizure, if the property cannot be returned in kind, the amount realised on its preliminary sale, reduced by handling and storage expenses and increased by the prevailing statutory interest computed until the day of refund shall be refunded. In the case of dutiable goods, the amount realised on the sale shall be paid following the settlement specified in the customs regulations. Any excess claims may be enforced by the beneficiary according to the rules of civil law. In the event of unfounded seizure, the amount realised on its preliminary sale may not be reduced by handling and storage expenses. The above shall be stated in the decision of the court, prosecutor or investigating authority making the decision on the termination of seizure.

(8) If the property seized has no value and is not claimed by anyone, it shall be destroyed after the termination of the seizure.

Preliminary sale and confiscation of seized property [208]

Section 156 (1) The court shall order the sale of the property seized, if

a) it is liable to fast deterioration,

b) it is unsuitable for long-term storage.

(2) The court may also order the sale of the property seized, if

a)[209] handling, storage and safekeeping of the property – taking into consideration in particular, the value or the foreseeably long term of the storage thereof – involves unreasonable and high expenses,

b) the value of the property significantly diminished owing to the foreseeably long term of the storage thereof.

(3) If subsections (1)–(2) apply, the property seized may only be sold, if no lawful claim has been received for the return thereof.

(4) The amount realised on the sale of the property seized shall replace the property seized.

(5)[210] If the possession of the seized property threatens public order or violates the law, the court – until the indictment is filed, at the motion of the prosecutor – shall order its confiscation, simultaneously with taking samples therefrom, if deemed necessary.

Retention of seized property

Section 157 (1)[211] The property to be returned to the defendant may be retained to ensure coverage for a fine as main or ancillary penalty, forfeiture of property, costs of criminal proceedings or civil claims imposed on him; such retention shall be regulated in the conclusive decision.

(2) Retention ensuring the satisfaction of a civil claim shall be terminated if the private party failed to request distraint within sixty days following the expiry of the agreed date of performance, or after being instructed to use other legal means to enforce the civil claim, fails to prove within sixty days that he has filed a request for a precautionary measure in a civil suit.

Common rules

Section 158 (1) Measures taken in order to conduct a search, body search and seizure shall be effected with due respect to the person affected, if possible, between the hours of 6:00 A.M. and 24:00 P.M. of the day. Due care shall be exercised in order to prevent the

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[207] Section 155 (7) was enacted by Section 94 (2) of Act I of 2002, which concurrently amended the numbering of the original subsection (7) to subsection (8).

[208] The subtitle of Section 156 was established by Section 95 (1) of Act I of 2002.

[209] Section 156 (2) a) was established by Section 95 (2)of Act I of 2002.

[210] Section 156 (5) was enacted by Section 95 (3)of Act I of 2002.

[211] The text of Section 157 (1) was established by Section 96 of Act I of 2002.

disclosure of private circumstances not connected with the criminal proceedings and unnecessary damage.

(2) The report on the measure shall indicate the place and circumstances where and under which the physical evidence or other property or object was found.

(3) Anyone interfering with the measure taken in order to effect the search, body search or seizure may be forced to tolerate such measures and – with the exception of the defendant – be subject to a disciplinary penalty.

(4) The investigating authority shall execute the orders of the court concerning a search, body search and seizure by the deadline.

Title VIII[212]

ORDER TO RESERVE COMPUTER DATA

Section 158/A (1) Compulsion to reserve data means the temporary restriction of the right of disposal of a person possessing, processing or managing data recorded by a computer system (hereinafter: computer data) over specific computer data, in order to investigate and prove a criminal offence.

(2) The court, the prosecutor or the investigating authority shall order the reservation of computer data constituting a means of evidence or required to trace any means of evidence or the establishment of the identity or location of a suspect.

(3) From the time of being notified of the order, the obliged party shall reserve the data recorded by the computer system designated in the order, and ensure its safe storage, if necessary, separately from other data files. The obliged party shall prevent the modification, deletion, destruction of the computer data, as well as the transmission and unauthorised copying thereof and unauthorised access thereto.

(4) The party ordering the reservation of data may affix its advanced electronic signature on the data to be reserved. If the reservation of the data at its original location considerably hindered the activity of the obliged party to process, manage, store or transmit data, the obliged party may, with the permission of the issuer of the order, ensure reservation by copying the data into another data medium or computer system. After the copy has been made, the issuer of the order may wholly or partially relieve the restrictions concerning the data medium and computer system holding the original data.

(5) While the measure is in effect, the data to be reserved may solely be accessed by the court, prosecutor or investigating authority having issued the order, and – with their respective permission – the person possessing or managing the data. The person possessing or managing the data to be reserved may only be provide information of such data with the express permission of the issuer of the order during the effect of the measure.

(6) The obliged party shall forthwith notify the issuer of the order if the data to be reserved has been modified, deleted, copied, transmitted or viewed without authorisation, or an indication of an attempt of the above has been observed.

(7) After issuing the order for reservation, the issuer shall start to review the affected data without delay, and depending on its findings, and either order the seizure of the data by copying them to the computer system or other data medium, or terminate the order for their reservation.

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[212] Title VIII of Chapter VIII and Section 158/A was enacted by Section 97 of Act I of 2002, which concurrently amended the original numbering of Titles VIII–IX of Chapter VIII to Titles IX–X.

(8) The obligation to reserve data shall be in effect until the seizure of the data, but no longer than for three months. The obligation to reserve the data shall terminate if the criminal proceeding has been concluded. The obliged party shall be advised of the conclusion of the criminal proceeding.

Title IX [213]

SEQUESTRATION AND PRECAUTIONARY MEASURE[214]

Sequestration [215]

Section 159 (1)[216] Sequestration means the suspension of the right of disposal over sequestered assets and property rights. Sequestration may be ordered by the court.

(2)[217] If the proceeding regards a criminal offence where forfeiture of property may be applied, or if a civil claim is enforced and there is reasonable ground to fear that its satisfaction will be frustrated, sequestration may be ordered on the entire property of the defendant, designated part thereof or certain assets in order to ensure coverage for the above. Sequestration may be ordered in respect of the property, property part or individual asset which may be subject to forfeiture of property but which is not in the possession of the defendant. The registration of the sequestration in authentic records shall be arranged for without delay. In the absence of authentic records as specified in a separate legal regulation, the business organisation affected by the sequestration shall be notified.

(3)[218] Sequestration to secure a civil claim enforced by a private party shall be subject to the motion of the private party. In the course of the investigation, sequestration may also be effected at the motion of the victim and the government agency specified in Section 54 (5).

(4) The sequestration shall be released, if

a)[219] the cause for ordering it has ceased to exist, if the investigation has been terminated or its maximum period – including the case regulated in the second sentence of Section 176 (2) – has expired without extension, unless the claimant of the sequestered asset or the right of disposal over property rights initiated civil proceedings to uphold his claim within sixty days thereafter,

b) sequestration was ordered to secure coverage for a specific sum of money, and this amount has been deposited,

c)[220] the proceeding has been concluded without applying forfeiture of property, or the civil claim has been dismissed,

d) upon winning a civil claim, the private party failed to request distraint within thirty days following the expiry of the agreed date of performance,

e) after the civil claim has been referred to other legal ways, the prosecutor or the private party fails to prove the enforcement of their claim within sixty days.

(5)[221] The deadline specified in subsection (4) *a), d)* and *e)* shall be calculated from the communication of the decision on releasing the sequestration, terminating the investigation, awarding the civil claim or referring the claim to other legal way.

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[213] The original numbering of Title VIII was amended to Title IX by Section 97 of Act I of 2002.
[214] The text of this Title was established by Section 98 (1) of Act I of 2002.
[215] This subtitle was enacted by Section 98 (2) of Act I of 2002.
[216] The first sentence of Section 159 (1) was established by Section 98 (3) of Act I of 2002.
[217] The first sentence of Section 159 (2) was established by Section 98 (4) of Act I of 2002.
[218] The second sentence of Section 159 (3) was established by Section 98 (5) of Act I of 2002.
[219] Section 159 (4) a) was established by Section 48 (1)a Act II of 2003.
[220] Section 159 (4) c) was established by Section 98 (6) of Act I of 2002.

(6)[222] The order for the seizure of a real property shall be executed in compliance with the rules of sequestration.

Precautionary measure

Section 160[223] (1) Precautionary measure is taken to effect sequestration, with the aim to temporarily prevent the defendant or other interested party from exercising their right of disposal over their movable or real property, securities representing property rights, funds managed by a financial institution under a contract or due share or ownership interest in a business organisation.

(2) The prosecutor or the investigating authority may apply precautionary measure, if probable cause exists to believe that the conditions for sequestration prevail and the defendant attempts or there is reasonable cause to believe that the defendant has attempted to conceal the property specified in subsection (1), to transfer, alienate or encumber the rights of disposal thereover.

(3) As a precautionary measure, the investigating authority or the prosecutor shall seize the property specified in subsection (1), or requests the authorities listed in Section 61 to take the actions falling under their scope of competence. The authorities shall take immediate action and notify the investigating authority or the prosecutor thereof without delay.

(4) The investigating authority or the prosecutor may also contact agencies and business organisations other than those listed in Section 61 in order to freeze the property of the defendant and to register the precautionary measure. The agencies contacted shall forthwith register the request to effect the precautionary measure, arrange the freezing of the property and notify the requesting investigating authority or the prosecutor thereof.

(5) Precautionary measure may primarily be implemented against a person whose right of disposal would be suspended by the sequestration. However, it may also be implemented against other persons who maintain contact with, or there is reasonable cause to believe that would contact the defendant in order to conceal the property or to transfer or alienate the rights of disposal thereover.

(6) After the registration of the precautionary measure, the subject of the measure shall tolerate the temporary suspension of his right of disposal.

(7) Following a precautionary measure, an order for sequestration shall be motioned for without delay with the notification of the person affected – unless this jeopardises the effectuation thereof. In the absence of a court order for sequestration, the precautionary measure shall be annulled without delay.

Title X [224]

SECURING THE ORDER OF PROCEEDINGS

Disciplinary penalty

Section 161 (1) In the cases specified in this Act, in the interest of maintaining order or due to the violation of procedural obligations, a disciplinary penalty may be imposed in the

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[221] Section 159 (5) was enacted by Section 98 (7) of Act I of 2002, and its text established by Section 48 (2) of Act II of 2003.
[222] Section 159 (6) was enacted by Section 98 (7) of Act I of 2002.
[223] The text of Section 160 was established by Section 99 of Act I of 2002.
[224] The numbering of the original Title IX was amended to Title X by Section 97 of Act I of 2002.

range of one thousand Forints to two hundred thousand Forints, or, in especially grave or recurring cases, up to five hundred thousand Forints.

(2) The amount of the disciplinary penalty shall be established taking into consideration the gravity and consequences of the underlying act.

(3) The decision on the imposition of a disciplinary penalty shall fall in the competence of the court and the prosecutor.

(4) The appeal against the imposition of the disciplinary penalty shall have a dilatory effect.

(5)[225] Upon defaulting the payment of the disciplinary penalty imposed pursuant to Section 69 (1) *b)* or *c)*, (2) and (5), Section 93, Section 106 (3), Section 113 (1) or (2), Section 123 (4), Section 152 (1), Section 158 (3), Section 185 (3), Section 245 (4) and Section 343 (1), it may be replaced by a court to confinement. When replacing disciplinary penalty with confinement, the amounts ranging between one thousand to five thousand Forints shall be converted into one day of confinement each. Confinement effected in lieu of the payment of the disciplinary penalty may not be shorter than one day, nor longer than one hundred days. The obligor shall be warned thereof in the decision imposing the disciplinary penalty.

(6) The decision of the replacement of the disciplinary penalty imposed by the prosecutor shall be made by the investigating judge competent at the seat of the prosecutor's office based on the documents.

(7) The decision on the replacement of the disciplinary penalty with confinement under subsections (5) and (6) may not be appealed. The execution of the confinement shall be governed by the legal regulations pertaining to administrative offences, provided that the confinement may only be postponed or interrupted if the obligor requires hospital treatment and only for the duration thereof. The confinement shall be spent in a penal institution.

Bench warrant

Section 162 (1) Arrest based on a bench warrant is an action restricting personal freedom in order to compel the attendance of the person before the court, the prosecutor or the investigating authority or in a procedural action.

(2) The warrant for the arrest of persons specified by law shall be made by the court, the prosecutor or the investigating authority.

(3)[226] The arrest shall be executed by the police. The arrest may also be executed by another investigating authority acting in its own jurisdiction in the case investigated. The police officer or the investigating authority shall accompany the person affected to the place designated in the bench warrant; in order for this, if necessary, they may apply coercive or other measures in compliance with the law governing their operation.

(4) As a rule, the arrest shall be executed between the hours of 6:00 A.M. and 24:00 P.M. of the day.

(5) Instead of the arrest, the court, the prosecutor or the investigating authority may also order the police officer to oversee that the person affected starts on his way, if there is reasonable cause to believe that the objective of the arrest can thus be attained.

(6) For the arrest of a soldier [Section 122 (1) of the Penal Code], his commanding officer shall be contacted.

(7)[227] The costs of the arrest, as specified in a separate legal regulation [228] shall be borne by the person arrested.

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[225] Section 161 (5)–(7) was enacted by Section 49 Act II of 2003.
[226] Section 162 (3) was established by Section 100 (1)of Act I of 2002.
[227] Section 162 (7) was enacted by Section 100 (2) of Act I of 2002.

Application of bodily force

Section 163 (1) The court, the prosecutor or the investigating authority ordering a procedural action may decide to apply bodily force if there is reasonable cause to believe that this is required in order to ensure a procedural action or to effect an evidentiary action. The application of bodily force may also be ordered by the court, the prosecutor or the investigating authority performing the procedural action or the evidentiary action.

(2) Bodily force may be applied against the defendant, the victim, the witness and other persons obstructing the procedural action.

(3) For the application of bodily force, the court and the prosecutor shall primarily use the police. [229]

(4) In exceptional cases, the prison guard attending the procedural action of the court may also be used to apply bodily force, this however, shall not extend to bodily force applied in the interest of an evidentiary action.

PART TWO

Chapter IX

THE INVESTIGATION

Title I

GENERAL PROVISIONS

Basic provision

Section 164 (1) Unless otherwise provided for in this Act, criminal proceedings shall commence with an investigation.

(2) The aim of the investigation is to conduct an inquiry into the criminal offence, identify the offender, a well as to locate and secure the means of evidence. The facts of the case shall be probed to such an extent that enables the accuser to decide on presenting a case for the prosecution. [230]

The relationship of the prosecutor and the investigating authority

Section 165 (1) The investigation shall be conducted according to the orders of the prosecutor. The prosecutor shall instruct the investigating authority. The prosecutor shall have the right to examine the records of the investigating authorities specified in a separate

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[228] Please refer to Joint Decree No. 2/1986. (IV. 21.) BM–IM–PM of the Ministry of Interior, the Ministry of Justice and the Ministry of Finance.

[229] Please refer to Section 34 of Act XXXIV of 1994 on the Police and Section 53 of Decree No. 3/1995. (III. 1.) BM of the Ministry of Interior on the Police Code of Conduct, and in respect of the law enforcement agencies, Section 13 (4) and Section 18 of Act CVII of 1995 on Law enforcement agencies.

[230] For the detailed rules of investigation, please refer to Joint Decree No. 23/2003. (VI. 24.) BM–IM of the Ministry of Interior and the Ministry of Justice and Joint Decree No. 17/2003. (VII. 1.) PM–IM of the Ministry of Finance and the Ministry of Justice.

legal regulation and to use the data therein. In order to perform certain investigatory actions, the prosecutor may request the help of the investigating authority, even if the investigation is conducted by the prosecutor himself.

(2) The investigating authority shall perform the instructions of the prosecutor regarding the investigation of the case by the deadline and inform the prosecutor verbally or in writing – as instructed – on ordering the investigation and the status of the case. If the investigating authority finds that a procedural action is necessary but the decision thereon falls in the competence of the court or the prosecutor, it shall inform the prosecutor thereof immediately.

(3) The prosecutor may instruct the investigating authority to prepare for his decisions.

(4) The provisions of subsections (1) to (3) shall also be applied if the investigating authority conducts the investigation independently pursuant to Section 35 (2).

(5) The prosecutor may give the instructions and the investigating authority may provide information verbally or in writing. At the request of the investigating authority instructions shall be communicated in writing.

The minutes

Section 166 (1) Unless provided otherwise in this Act, the prosecutor and the investigating authority shall take minutes on the investigatory actions, including the measures implemented by the prosecutor and the investigating authority. The minutes shall be drawn up by the keeper of minutes or a member of the investigating authority.

(2) The minutes shall contain

a) the name of the authority proceeding in the case,

b) the description of the criminal offence underlying the proceeding and the name of the suspect,

c) the place and time of the investigatory action,

d) the name of the prosecutor, the member of the investigating authority, the person participating in the proceeding and the representative thereof, the witness, the lawyer acting on behalf of the witness, the official witness and the keeper of minutes present,

e) the name of the defendant and witness questioned and the expert heard, as well as other personal data specified in this Act.

(3)[231] The minutes shall contain the brief description of the course of the investigatory action so that it can also serve as the basis of verifying compliance with the procedural rules. The testimony of the suspect and the witness as well as motions and observations made during the investigatory action shall be detailed to the necessary extent in the minutes. The person questioned may motion for a word-by-word transcription of his testimony. If the prosecutor or the investigating authority considers the motion unjustified, they may reject it, and shall simultaneously advise the person questioned of the provisions set forth in Section 85 (5) and (6); both the rejection of the motion and the advice shall be included in the minutes.

(4) If the expert presents the expert opinion verbally, the inclusion thereof in the minutes shall be governed by the provisions of subsection (3).

(5) The minutes shall be signed by the prosecutor or the member of the investigating authority performing the investigatory action and the keeper of minutes. The suspect, the witness and the interpreter shall sign each page of the minutes. If the suspect, the witness or the interpreter refuses to sign the minutes, both the fact of the refusal and the stated or known reason therefor shall be included in the minutes.

(6) The request of the suspect, the counsel for the defence, the victim, other interested party, the witness or the lawyer acting on behalf thereof attending the investigatory action request the inclusion of an event or statement related to the procedure in the minutes, this may

[231] Section 166 (3) was established by Section 101 (1) of Act I of 2002.

only be rejected if the prosecutor or the member of the investigating authority is not cognisant of such occurrence.

(7)[232] The minutes shall be corrected or supplemented, as necessary, by the prosecutor or the member of the investigating authority, who shall sign such corrections and supplements and notify those interested thereof. Those who attended the investigatory action may motion for the correction or supplementation of the minutes after learning the contents thereof. The correction shall be noted in the minutes with the indication of the date, or the rejection of the motion shall be entered in the records.

Section 167 (1) The prosecutor and the investigating authority may order the recording of the investigatory action by shorthand, a video or audio recorder or other equipment, at the motion of the suspect, the counsel for the defence or the victim filed simultaneously with an advance payment of the costs. Such recording shall not substitute the minutes, however, in the case of the concurrent voice and video recording made by the prosecutor or the investigating authority the minutes shall only contain the names of those present, and the place, time and other conditions of the recording. [233]

(2) The note of the stenographer, the video or audio record or the recording made of the investigatory action by other means shall be kept according to the provisions of a separate legal regulation.

(3) To the stenographer, the provisions pertaining to experts shall be applied.

The report

Section 168 (1) Unless the prosecutor provides otherwise, the member of the investigating authority may also prepare a report on his investigatory actions in lieu of the minutes. The prosecutor may order the repetition of certain investigatory actions and drawing up minutes thereon.

(2) The report shall contain the data specified in Section 166 (2) *a)–c)* and *e)*, the identification of the procedural actions implemented and the brief description thereof so that it can also serve as the basis of verifying compliance with the procedural rules. The report on the questioning of the suspect and the witness shall contain the gist of their testimony.

(3) The report shall be signed by the member of the investigating authority implementing the action.

The decision

Section 169 (1)[234] The prosecutor or the investigating authority shall make a decision on the following: exclusion (Section 32, Section 39), the dispensation of the counsel for the defendant from the appointment and the establishment of the fee of the appointed defence counsel [Section 48 (6) and (9)], the judgement of the application for justification (Section 66), compulsion to bear the costs resulting from omission or absence (Section 69), the dismissal of the claim of the witness and the expert for exemption [Section 94, Section 113 (3)], the assignment of an expert (Section 100, Section 111), the exclusion of an expert (Section 103), relief of the expert from the assignment (Section 104), the establishment of the expert fee [Section 105 (6)], coercive measures (Chapter VIII) – with the exception of an arrest on bench warrant (Section 162) and the application of bodily force (Section 163) –, the rejection of a complaint (Section 174), the suspension of the proceeding (Section 188), the

[232] The second and third sentences of Section 166 (7) were enacted by Section 101 (2) of Act I of 2002.

[233] For the detailed rules, please refer to Joint Decree No. 23/2003. (VI. 24.) BM–IM of the Ministry of Interior and the Ministry of Justice and Joint Decree No. 17/2003. (VII. 1.) PM–IM of the Ministry of Finance and the Ministry of Justice.

[234] Section 169 (1) was established by Section 102 (1)of Act I of 2002.

termination of the investigation (Section 190, Section 192); further, the prosecutor shall also adopt a decision on the involvement of an expert (Section 112), the extension of the deadline of the investigation (Section 176), the partial omission of the investigation (Section 187) and the evaluation of a protest [Section 195 (4)]. The prosecutor or the investigating authority may adopt other measures in the form of a decision as well.

(2) The decision shall contain the name and the personal data suitable for the identification of person to whom the disposition applies. The decision shall indicate

a) the name of the prosecutor or the investigating authority,

b) a criminal offence underlying the proceeding,

c) the disposition stated in the decision and the underlying legal regulation,

d)[235] whether it is subject to legal remedy, as well as the deadline and the investigating authority, prosecutor's office or court at which it must be filed.

(3) The decision shall be briefly justified by stating the facts leading to the disposition therein.

(4) The decision shall be recorded in minutes or put into writing in another manner, and communicated to the party to whom it concerns as well as to the party whose procedural rights are affected thereby. The counsel for the defence shall also be informed of decisions communicated to the suspect. The decision shall be handed over to those present and also communicated verbally; in other cases it shall be served on the parties concerned.

(5) In the event of a confusion of names or numbers, a calculation error or other clerical errors, the prosecutor or the investigating authority may order the correction thereof both in response to a motion or ex officio. The correction shall be noted in the decision. To the notification of the correction, the provisions of Section 166 (7) shall apply as appropriate.

Title II

INSTITUTING CRIMINAL PROCEEDINGS BY AN INVESTIGATION

The ground for starting an investigation

Section 170 (1) The investigation starts either based on data coming to the cognisance of the prosecutor or the investigating authority within his official competence or the member of the investigating authority in his official capacity, or on a complaint.

(2)[236] The investigation is ordered by the prosecutor or the investigating authority, who/which shall prepare a memorandum thereon. The memorandum shall indicate the underlying criminal offence – if the person against whom the complaint was filed (potentially suspected offender) is known – the subject person of the investigation and the starting date of the investigation. If the investigation is initiated due to a complaint, as a rule, the order of the investigation shall be noted on the document recording the complaint.

(3)[237] The decision on ordering an investigation shall be adopted within three days following receipt of the complaint, unless the complaint is rejected. The investigating authority shall notify the prosecutor of the investigation ordered or complaint rejected within twenty-four hours. If the complaint was not lodged by the victim, but the person of the victim is known, he shall also be informed of the order for the investigation. The persons to receive notification on the order for starting or terminating an investigation in addition to those specified in this Act are stipulated in a separate legal regulation.

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[235] Section 169 (2) d) was enacted by Section 102 (2)of Act I of 2002.

[236] The second sentence of Section 170 (2) was established by Section 103 (1) of Act I of 2002.

[237] The second, third and fourth sentences of Section 170 (3) were enacted by Section 103 (2) of Act I of 2002.

(4)[238] The investigation may commence without an order, if the prosecutor or the investigating authority implements an investigatory action in order to secure the means of evidence, identify the suspect, prevent the suspect from absconding, conclude the criminal offence or commission of a further criminal offence or for other high-priority reasons. The fact and date of starting the investigation shall be recorded in a memorandum subsequently without delay.

(5)[239] The investigatory action stipulated in subsection (4) may be conducted by any investigating authority, however, it shall notify the investigating authority having competence and jurisdiction without delay.

(6) No investigation may be launched due to the forgery of public deeds (Section 274 of the Penal Code), if the forged or falsified travel document or the authentic travel document issued to the name of another person is used by a foreign citizen to enter the territory of the country, provided that an immigration control procedure may be instituted. This provision shall not apply, if an investigation must be started against the same foreign citizen for the commission of another criminal offence as well.

A complaint

Section 171 (1) Anyone may lodge a complaint concerning a criminal offence. It is obligatory to lodge a complaint, if failure to do so constitutes a criminal offence.

(2) Members of the authority and official persons, further, if prescribed by a separate legal regulation, public bodies shall be obliged to lodge a complaint – also identifying the offender, if his person is known – concerning a criminal offence coming to their cognisance within their scope of competence. The means of evidence shall be attached to the complaint, or, if this is not practicable, their safekeeping shall be arranged for.

Section 172 (1) Generally, the complaint shall be made with the prosecutor or the investigating authority verbally or in writing. Verbal complaints shall be recorded in minutes. The complaint shall be forthwith entered into the records.

(2) The complaint may be received by other authorities and the court as well, but they shall forward it to the investigating authority. If the complaint required prompt action, its receipt may not be rejected.

(3) If the complaint was not filed with the prosecutor or investigating authority having competence and jurisdiction in the case, it shall still be taken over and recorded in minutes, and be forwarded to the party entitled to act.

(4) To complaints communicated by way of a telephone or other technical equipment the provisions stipulated in subsection (1) above shall apply as appropriate.

The private motion

Section 173 (1) In the case of a criminal offence which may only be prosecuted based on a private motion, no criminal proceedings can be instituted unless the entitled party lodges a complaint. Any statement of the party putting forward the private motion requiring the offender to be held liable under criminal law shall be regarded as a private motion.

(2) A statement shall be obtained from the party entitled to file a private motion, if it is realised after the start of the investigation that the criminal offence may only be prosecuted based on a private motion.

(3) The private motion shall be put forward within thirty days after the party entitled to make a private motion learnt the identity of the offender. In the case specified in subsection (2) this deadline shall be calculated from the day when the party entitled to make a private

[238] The first sentence of Section 170 (4) was established by Section 103 (3)of Act I of 2002.
[239] Section 170 (5) and (6) was enacted by Section 103 (4) of Act I of 2002.

motion gained cognisance of the request. The relative of a deceased victim may file the private motion during the period until the lapse of the deadline.

(4) An application for the justification for defaulting the deadline putting forward a private motion may only be submitted, if the criminal offence is subject to public prosecution.

Rejection of the complaint

Section 174 (1) The prosecutor shall reject the complaint coming to his cognisance within three days in a decision, if the following can be established from the complaint itself:

a) the action does not constitute a criminal offence,

b) the suspicion of a criminal offence is absent,

c) a ground for the preclusion of punishability exists (Section 22 of the Penal Code),

d) no proceeding may be instituted due to death, statutory limitation or pardon [Section 32 *a)–c)* of the Penal Code],

e) there is no private motion, request or complaint,

f) the action has already been adjudicated by a final decision.

(2) In the cases specified in subsection (1) *a)–b)* and *d)–f)* and when punishability is precluded because the offender is a child [Section 22 *a)* of the Penal Code], the complaint may also be rejected by the investigating authority.

(3) The complaint may not be rejected, if

a) an order for involuntary treatment in a mental institution appears necessary,

b)[240] regardless of punishability, confiscation or forfeiture of property may be applied, unless the evidence to institute a procedure for confiscation or forfeiture of property are available.

(4) The rejection of the complaint shall be notified to the complainant and the party having filed a private motion. The investigating authority shall send its decision on the rejection of the complaint to the prosecutor without delay.

(5)[241] If, at the time of rejecting the complaint pursuant to subsection (1) *c)*, the prosecutor reprimands the defendant (Section 71 of the Penal Code), upon the protest of the reprimanded person an investigation shall be ordered, unless the complaint was rejected on other grounds.

Section 175 (1) If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor or – with the permission of the prosecutor – the investigating authority may reject the complaint, if the person who may be reasonably suspected of having committed the criminal offence co-operates in the investigation of or proving the case or another criminal offence to such an extent that the interests of national security or law enforcement takes priority over the interest to enforce the claim of the state under criminal law.

(2)[242] If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor shall reject the complaint in a decision, if the person who may be reasonably suspected of having committed the criminal offence is an covert investigator [Section 178 (2)], who committed the action in line of duty in the interest of law enforcement, and the latter interest takes precedence over the interest to enforce the claim of the state under criminal law.

(3) Upon rejecting the complaint pursuant to subsections (1) or (2), compensation for the damage imputable to the offender under civil law shall be paid by the state. If compensation is required to be awarded in a civil suit, the legal ground of the claim for compensation shall be assumed.

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[240] Section 174 (3) b) was established by Section 104 (1) of Act I of 2002.

[241] Section 174 (5) was enacted by Section 104 (2) of Act I of 2002.

[242] Section 175 (2)–(4) was established by Section 105 (1)of Act I of 2002.

(4) In a civil suit the state shall be represented by the minister of justice. Prior to the adjudication of the claim, the court proceeding in the civil suit shall obtain the statement of the prosecutor's office which made the decision on the rejection of the complaint concerning the action committed to the injury of the plaintiff and the damage caused by such action. The statement of the prosecutor may not extend to facts which suggest the person of the or the reason for terminating the investigation.

(5)[243] If the complaint is rejected pursuant to subsection (1) or (2), the decision shall comprise a purview and the date. The purview contains the description of the criminal offence, the fact that the complaint was rejected, and information on the methods to enforce a claim for damage sustained in connection with the criminal offence against a state.

(6) The complaint may not be rejected pursuant to subsection (1) or (2), if the person specified in subsection (1) or the covert investigator can be reasonably suspected of having committed a criminal offence involving deliberate murder.

(7) The criminal proceeding instituted against the person specified in subsection (1) or the covert investigator shall be separated from the case in which the evidence uncovered by the person specified in subsection (1) or the covert investigator is intended to be used.

Title III

THE RULES OF INVESTIGATION

Deadline of the investigation

Section 176[244] (1) The investigation shall commence within the shortest possible period and concluded within two months following its order or start. If justified by the complexity or an insurmountable obstacle, the deadline of the investigation may be extended by two months by the prosecutor, and after the lapse of that deadline, by the county prosecutor general up to the lapse of one year from the commencement of the criminal proceedings.

(2) After one year, the deadline of the investigation may be extended by the Prosecutor General. If the investigation is conducted against a specific person, the extension may not be longer than two years following the questioning of the suspect under Section 179 (1).

(3) If the prosecutor conducts the investigation, its deadline may be extended by the head of the prosecutor's office by two months, by the superior prosecutor up to the lapse of one year from the commencement of the criminal proceedings and thereafter by the Prosecutor General up to the deadline specified in subsection (2).

Implementing an investigatory action without a decision

Section 177[245] In urgent cases, the prosecutor and the investigating authority may forthwith implement the coercive measures which they are entitled to otherwise order (Section 126, Section 149, Section 150, Section 151, 158/A Section) and may order evidentiary actions (Section 119, Section 121, Section 122) (high priority investigatory action). The minutes concerning the procedural action shall indicate the fact of urgency and the underlying conditions.

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[243] Section 175 (5)–(7) was enacted by Section 105 (2) of Act I of 2002.
[244] The text of Section 176 was established by Section 106 of Act I of 2002.
[245] The text of Section 177 was established by Section 107 of Act I of 2002.

Other data collecting activities of the investigating authority

Section 178[246] (1) After the commencement of the criminal proceeding, the investigating authority may collect data in order to establish the existence and location of means of evidence; in the course of this activity, it may use the law enforcement databases of the police specified in a separate legal regulation,[247] it may, according to the rules of official requests (Section 71) request documents, data and information from any third party, further, it may request an investigation from the head of the complaining or victim government or local government body, public body, business organisation, foundation, public foundation or civil organisation or the agency entitled to investigate, may inspect the scene of the criminal offence, may employ an advisor, and check the data obtained. In the course of collecting data, the investigating authority may select a person or object by presenting a photograph or picture recorded on another data medium and request information regarding the presented person or object.

(2) In the course of collecting data, the investigating authority may – with the permission of the prosecutor – use a member of the investigating authority who conceals his capacity (covert investigator), and may also perform data collection – according to the law governing its operation – not subject to judicial permit.

(3) The member of the investigating authority having collected the data shall prepare a report on this activity. To the contents of the report, the provisions stipulated in Section 168 (2) and (3) shall apply. The report on data collection under subsection (2) shall be signed by the head of the investigating authority.

(4) If the prosecutor intends to use the result of the data collection activity of the investigating authority, he shall attach the report thereon to the records of the investigation. After the report on the data collection activity of the investigating authority has been attached to the records of the investigation, it may be used as evidence according to the rules pertaining to documents (Section 116).

Section 178/A [248] (1) After ordering the investigation, if deemed necessary owing to the nature of the case, the prosecutor or the investigating authority (with the consent of the prosecutor) may request data – according to the rules of official requests – on the suspect (the person against whom the complaint was filed, the potentially suspected offender) from the tax authority, organisations providing communication services, organisations managing medical and related data, as well as from organisations managing data classified as bank secret, securities secret, fund secret or business secret, in order to uncover the facts of the case. The investigating authority may request data from the road transport register and land register without obtaining the consent of the prosecutor. The supply of data may not be refused.

(2) If reasonable ground exists to suspect that a specific person has committed a criminal offence, the data in the criminal records [249] on this person shall be obtained and – if the conditions specified in a separate legal regulation exist – also the data from the records of the co-ordination centre for the prevention of organised crime. [250]

(3) The investigating authority – with the consent of the prosecutor – may take over personal data specified in a separate legal regulation, produced in the course of the activities

[246] The text of Section 178 was established by Section 108 of Act I of 2002.
[247] Please refer to Act XXXIV of 1994.
[248] Section178/A was enacted by Section 109 of Act I of 2002.
[249] Please refer to Act LXXXV of 1999 and Joint Decree No. 7/2000. (II. 16.) BM–IM of the Ministry of Interior and the Ministry of Justice.
[250] Please refer to Act CXXVI of 2000.

of the prosecutor's office to enforce criminal law and managed in the records of the prosecutor's office, as well as data from the records of the penal service. [251]

(4) The data received pursuant to subsections (1) to (3) may only be used, if the prosecutor presses charges against the person on whom data was collected. If the prosecutor does not press charges, the data received shall be deleted.

Questioning of the suspect

Section 179 (1)[252] If based on available data reasonable ground exists to suspect that a specific person has committed a criminal offence, the prosecutor or the investigating authority (unless the prosecutor provides for otherwise) shall interrogate the suspect in compliance with Sections 117 and 118. Detained suspects shall be interrogated within twenty-four hours. The deadline shall be computed from the time when the suspect was brought before the investigating authority.

(2) At the beginning of the questioning, the suspect shall be informed of the gist of the suspicion as well as of the applicable legal regulations.

(3) The suspect shall be advised of the right to choose a defence counsel or to request the appointment thereof. If the participation of the counsel for the defence in the procedure is obligatory, the suspect shall be warned that upon failing to retain a counsel for the defence within three days, the defence counsel will be appointed by the prosecutor or the investigating authority. If the suspect states his intention of not retaining a defence counsel, the prosecutor or the investigating authority shall forthwith appoint one.

(4)[253]

Section 180 (1) The suspect may not be asked a question containing the answer, the statement of a yet unproven fact, or a promise violating the law.

(2) Without the consent of the suspect, his testimony may not be examined with the help of a polygraph.

Questioning of the witness

Section 181 (1)[254] The witness shall be questioned by the prosecutor or the investigating authority (unless the prosecutor provides for otherwise) in compliance with Sections 79 to 88. The witness may not be asked a question prohibited by Section 180 (1), or a question suggesting the reply.

(2) The complainant may be questioned as a witness. If the complaint contains the statement of the complainant, the questioning of the complainant as witness may be omitted.

(3)[255]

Participation of an advisor

Section 182 (1)[256] The prosecutor and the investigating authority may employ an advisor at investigatory actions, if special knowledge is required for uncovering, obtaining, collecting or recording means of evidence, or the prosecutor or the investigating authority requests information concerning a professional matter.

(2) It is obligatory to employ an advisor, if the testimony of the defendant is examined with the help of a polygraph during the investigation.

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[251] Please refer to Act LXXX of 1994 and Act CVII of 1995.
[252] The last sentence of Section 179 (1) was enacted Section 50 by of Act II of 2003.
[253] Pursuant to Section 308 (2) of Act I of 2002, Section 179 (4) shall be repealed and shall not enter into force.
[254] The text of the second sentence of Section 181 (1) was established by Section 110 of Act I of 2002.
[255] Pursuant to Section 308 (2) of Act I of 2002, Section 181 (3) shall be repealed and shall not enter into force.
[256] Section 182 (1) was established by Section 111 (1)of Act I of 2002.

(3) If in the course of his procedure, the advisor needs to perform acts affecting the inviolability of the body of a person, the prosecutor or the investigating authority shall make a separate decision thereon.

(4) the provisions pertaining the exclusion of the prosecutor and a member of the investigating authority shall apply to the advisor as appropriate.

(5)[257] The contribution of the advisor shall be recorded in minutes which shall be attached to the records of the investigation.

The official witness

Section 183 (1)[258] During the inspection, reconstruction, presentation for identification, seizure, search and body search, and the presentation of the minutes taken during the questioning of an illiterate person, the prosecutor and the investigating authority – in response to the motion of the suspect, the counsel for the defence, the person affected by the inspection, the person subjected to seizure, search or body search and the illiterate person – shall employ an official witness, unless an insurmountable obstacle thereto exists. The parties interested shall be advised of the above. The prosecutor and the investigating authority may also employ an official witness at the above listed procedural actions ex officio. The official witness shall verify the course and results of the investigatory action where he was present.

(2) Prior to the investigatory action the official witness shall be informed of his rights and obligations. The investigatory action shall be conducted in a way that enables the official witness to monitor it. The official witness may make observations regarding the investigatory action.

(3) The official witness employed shall be – if possible – an uninterested party who can conceive and verify the performance of the investigatory action. The prosecutor proceeding in the case and the member of the investigating authority may not be an official witness; the employee of the prosecutor's office or investigating authority proceeding in the case may only participate as an official witness, if there is an insurmountable obstacle to employ another person.

(4) No one may be compelled to participate in the procedural actions as an official witness.

(5) The minutes taken regarding the investigatory action shall indicate the name and address of the official witnesses and whether they are interested or uninterested. If the official witness is an employee of the prosecutor's office or the investigating authority, the minutes shall contain his position or rank instead of the address. Any observation made by the official witness in the course of the investigatory action shall also be noted in the minutes.

(6)[259] The provisions pertaining to the reimbursement of the costs of a witness shall also apply to the official witness.

Presence in investigatory actions

Section 184 (1) In addition to the prosecutor, the member of the investigating authority and the keeper of minutes, only those may be present in an investigatory action whose presence is permitted by this Act.

(2)[260] If the suspect is questioned by the prosecutor or the investigating authority, the defence counsel may be present at the questioning. The counsel for the defence may attend the questioning of a witness if this was motioned for by himself or the suspect he defends, as

[257] Section 182 (5) was enacted by Section 111 (2) of Act I of 2002.
[258] Section 183 (1) was established by Section 112 (1) of Act I of 2002.
[259] Section 183 (6) was enacted by Section 112 (2) of Act I of 2002.
[260] The second and third sentences of Section 184 (2) were established by Section 51 (1) of Act II of 2003.

well as the confrontation held with the participation of such a witness. The counsel for the defence attending the questioning may ask questions from the suspect and the witness.

(3) A detained suspect may consult his defence counsel prior to his questioning.

(4) The investigatory action may be attended by the person on practice as a full-time student of the faculty of law of the department of public administration and law, if his presence permitted by the prosecutor or the investigating authority, and consented to in writing by the suspect, witness or victim present.

(5)[261] The questioning of a foreign citizen as a suspect or witness may be attended by the official of the consulate of his country. [262]

(6) Pursuant to an international treaty promulgated by law, in the event of a procedure instituted

a) against a foreign citizen suspect or

b) due to criminal offence committed to the injury of a foreign citizen victim

the presence of a member of the authority of the foreign state in the investigatory action shall be allowed. Notification may be omitted if any delay would pose a danger. In such a case, the authority of the foreign state shall be notified of the concluded investigatory action subsequently, without delay. [263]

(7)[264] In the case of investigatory actions which may be attended by the counsel for the defence, he may be accompanied or substituted by an apprentice lawyer.

(8) Pursuant to a separate legal regulation or an international treaty, the member of the investigating authority of the foreign state may attend the investigatory actions.

Section 185 (1)[265] The suspect, the counsel for the defence and the victim may attend the hearing of the expert, the inspection, reconstruction and presentation for identification, may make motions and observations, and may ask questions from the expert. The notification of the above persons of the investigatory action may be omitted in exceptional cases, if justified by the urgent nature of the investigatory action. Notification shall be omitted, if it resulted in the disclosure of the confidential data of the witness to the suspect, the counsel for the defence and the victim.

(2) The suspect may be summoned to attend the inspection and reconstruction, in which case these investigatory actions may not be conducted in his absence.

(3) The prosecutor and the investigating authority may remove a person from the site of the investigatory action whose presence obstructs the procedure, and may compel to be present at the site of the investigatory action to facilitate the investigation. Those interfering with the procedural order or fail to be present at the site may be subjected to a disciplinary penalty.

Section 186 (1) Those having the right to be present in the investigatory action may forthwith inspect the minutes taken thereon.

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[261] Section 184 (5) and (6) was enacted by Section 113 of Act I of 2002.

[262] Please refer to Law–Decree No. 13 of 1987 on the Promulgation of the Treaty on Consular Relations signed in Vienna on April 24, 1963.

[263] Please refer to a the Treaty between the governments of the Republic of Hungary and the United States of America concerning the activities of the armed forces of the United States of America in the territory of the Republic of Hungary, and Act XLIX of 1997 on the ratification and promulgation of the implementing Agreements, constituting the enclosure thereof.

[264] Section 184 (7) and (8) was enacted by Section 51 (2) of Act II of 2003.

[265] The first sentence of Section 185 (1) was established by Section 52 of Act II of 2003, and its last sentence was enacted by Section 114 of Act I of 2002.

(2) The suspect, the counsel for the defence and the victim may inspect the expert opinion during the investigation as well, but they may only inspect other documents if this does not injure the interests of the investigation.

(3) The suspect and the counsel for the defence shall be entitled to receive a copy of the documents they may inspect.

(4)[266] The copy of the documents produced, obtained, filed or attached in the course of the investigation and containing the testimony or personal data of the victim or the witness, shall not indicate the personal data of either the victim or the witness. No copy may be issued of the draft decisions of the prosecutor or the investigating authority or of the documents created in the course of communications between the prosecutor and the investigating authority pursuant to Section 165 (1) to (3).

Partial omission of the investigation

Section 187 (1) After the questioning of the suspect, the prosecutor may, in a decision, dispense with further investigation into a criminal offence having no significance for the purpose of liability, due to the commission of another, graver criminal offence.

(2) The decision on the partial omission of the investigation shall be notified to the victim, the complainant and the party who put forward a private motion. If the decision concerns a larger number of people, it may also be communicated with the method specified in Section 67 (3).

Suspension of the investigation

Section 188 (1) The prosecutor shall suspend the investigation in a decision, if

a) the suspect is absconding or is abroad, and the procedure cannot be continued in his absence,

b) the suspect cannot participate in the procedure due to a permanent and grave illness, or a mental disease acquired after the commission of the criminal offence,

c) the identity of the offender cannot be established during the investigation,

d) a decision needs to be obtained on preliminary issues for conducting the procedure,

e) the action of the foreign authority in response to the request of legal aid is required and no further investigatory action needs to be conducted in Hungary,

f)[267] the decision on instituting criminal proceedings needs to be obtained because the criminal offence was committed by a foreign citizen abroad, or

g)[268] in respect of a case falling under its jurisdiction, the international criminal court

requests the Hungarian authority to transfer the criminal proceeding.

(2)[269] The procedure shall be continued if the cause for its suspension has ceased to exist or in the case specified in subsection (1) *g)*, if the act promulgating the charter of the international criminal court or the act on the execution of the obligations arising from such charter provides so.

(3) The prosecutor may set a maximum one year deadline

a) for the return of a person staying abroad,

b) for the submission of the claim of the interested party, in order to decide on the personal status thereof,

c) if the investigation is suspended pursuant to subsection (1) *e)*.

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[266] The text of Section 186 (4) was established by Section 115 of Act I of 2002.
[267] Section 188 (1) f) was established by Section 116 (1)of Act I of 2002.
[268] Section 188 (1) g) was enacted by Section 53 (1) of Act II of 2003.
[269] Section 188 (2) was established by Section 53 (2) of Act II of 2003.

(4) If the deadline set by the prosecutor has elapsed without result, the procedure shall be resumed.

(5) The decision on the suspension of the investigation shall be notified to the suspect if his location is known, the counsel for the defence, the complainant and the victim.

(6)[270] After the suspension of the investigation – with the exception of the case specified in subsection (1) *a)* – investigatory action directly affecting the person of the suspect (offender) may not be conducted.

(7) The period of suspension shall not be calculated in the deadline of the investigation.

Section 189 (1) The investigating authority may suspend the investigation in a decision in the cases stipulated in Section 188 (1) *a), c)* and *e).* The investigating authority shall forward its decision concerning the suspension of the investigation to the prosecutor without delay.

(2) In the case specified in Section 188 (1) *c)* the prosecutor and the investigating authority shall register the case, and upon obtaining further data on the identity of the offender, shall resume the investigation.

Termination of the investigation

Section 190 (1) The prosecutor shall terminate the investigation in a decision, if,

a) the action does not constitute a criminal offence,

b) if, based on the data of the investigation, the commission of a criminal offence cannot be established and continued procedure is not expected to yield any result,

c) if the criminal offence was not committed by the suspect, or based on the data of the investigation it cannot be established whether the criminal offence was committed by the suspect,

d) a ground for the preclusion of punishability exists, unless it appears necessary to order involuntary treatment in a mental institution,

e) due to the death of the suspect, statutory limitation or pardon,

f) due to other grounds for the preclusion of punishability stipulated by law,

g) there is no private motion, request or complaint and they cannot be subsequently submitted,

h)[271] the action has already been adjudicated by a final decision, including the case regulated in Section 6 of the Penal Code,

i) after the lapse of two years from the commencement of an investigation related to a specific person [Section 176 (2)].

(2) In the cases specified in subsection (1) *a), e), g)* and *h)* and if punishability is precluded because the offender is a child [Section 22 *a)* of the Penal Code], the investigation may also be terminated by the investigating authority. The investigating authority shall forward its decision concerning the termination of the investigation to the prosecutor without delay.

(3) Upon the termination of the investigation, the cost of criminal proceedings shall be borne by the state; the suspect shall be compelled to bear the costs incurred due to his defaulted obligations.

(4) The decision on the termination of the investigation shall be notified to the suspect, the counsel for the defence, the victim, the complainant and the person who put forward a private motion.

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[270] Section 188 (6) was established by Section 116 (2) of Act I of 2002.

[271] Section 190 (1) h) was established by Section 53 (3) of Act II of 2003.

Section 191 (1) Unless an exception is made in this Act, the termination of the investigation shall not prevent the subsequent resumption of the proceeding in the same case.

(2)[272] The resumption of the proceeding shall be ordered by the prosecutor, while if the investigation was terminated by the prosecutor, by the superior prosecutor. If the suspect was reprimanded (Section 71 of the Penal Code), the prosecutor and the superior prosecutor, respectively, shall repeal the decision on the termination of the investigation.

(3) If no objection was raised to the termination of the investigation, or the superior prosecutor did not order the resumption of the investigation, this may only be ordered by the court against the person who was the subject of the previously terminated investigation.

(4) If the court has rejected the motion for the resumption of the investigation, a repeated motion requesting the resumption of the investigation on the same ground may not be filed.

(5)[273] If the complaint was rejected pursuant to Section 175 (1) or the investigation terminated pursuant to Section 192 (1), a Section 82 (5), the investigation or the resumption thereof may be ordered by the competent prosecutor.

Termination of the investigation concerning a co-operating suspect and a covert investigator

Section 192 (1) If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor or the investigating authority (with the permission of the prosecutor) may terminate the investigation, if the person who may be reasonably suspected of having committed the criminal offence co-operates in the proving the case or another criminal offence to such an extent that the interests of national security or law enforcement takes priority over the interest to enforce the claim of the state under criminal law.

(2)[274] If there are reasonable grounds to suspect that a criminal offence has been committed, the prosecutor shall terminate the investigation in a decision, if the person who may be reasonably suspected of having committed the criminal offence is a covert investigator [Section 178 (2)], who committed the action in line of duty in the interest of law enforcement, and the latter interest takes precedence over the interest to enforce the claim of the state under criminal law.

(3) The investigation may not be terminated pursuant to subsection (1) or (2), if the person specified in subsection (1) or the covert investigator can be reasonably suspected of having committed a criminal offence involving deliberate murder.

(4) In the event that the investigation is terminated pursuant to subsection (1) or (2), the provisions of Section 175 (3) to (5) shall be applied as appropriate. However, the termination of the investigation shall not prevent the subsequent resumption of the proceeding in the same case. (Section 191).

(5)–(7)[275]

Inspection of the documents of the investigation

Section 193 (1)[276] After the conclusion of the investigation, the prosecutor or (unless the prosecutor provides for otherwise) the investigating authority shall hand over to the suspect

[272] The text of Section 191 (2) was established by Section 117 of Act I of 2002.
[273] Section 191 (5) was enacted by Section 53 (4) of Act II of 2003.
[274] The text of Section 192 (2)–(4) was established by Section 118 of Act I of 2002.
[275] Pursuant to Section 308 (2) of Act I of 2002, Section 192 (5)–(7) shall be repealed and shall not enter into force.
[276] The first sentence of Section 193 (1) was established by Section 53 (5) of Act II of 2003.

and the counsel for the defence the laced documents of the investigation in a room designated for this purpose. The suspect and the counsel for the defence shall be enabled to inspect all documents – with the exception of those treated confidentially – that may serve as the basis for pressing charges.

(2)[277] The deadline for the inspection of the documents shall be notified to the suspect and the counsel for the defence, the detained suspect – at his own request – shall be brought to the designated room by the closing date. The suspect and the counsel for the defence may motion for the supplementation of the investigation, make other motions and observations and request copies of the documents. The suspect shall be advised of this right.

(3) The decision on the motion of the suspect or the counsel for the defence shall be made by the prosecutor or the investigating authority.

(4)[278] The suspect and the counsel for the defence shall be entitled to inspect the documents specified in subsection (1) even after the closing date.

(5) If the procedural action set forth in subsection (1) was conducted by the investigating authority, it shall, within fifteen days thereafter, forward the documents to the prosecutor.

(6)[279] After conducting the procedural action set forth in subsection (1) the victim shall be notified of the possibility to inspect the documents of the investigation and exercise his other rights related to the investigation.

Section 194 (1) The minutes taken regarding the hand-over of the documents of the investigation in compliance with Section 193 (1) shall contain

a) the description of the documents handed over to the suspect and the counsel for the defence, and the time of the start and finish of the inspection,

b) the motions and observations made by the suspect and the counsel for the defence,

c) if applicable, the fact that the suspect or the counsel for the defence has not exercised his right granted under Section 193 (1).

(2)[280]

Title IV

Legal remedies in the course of the investigation

Section 195 (1) Anyone affected by the dispositions in the decision of the prosecutor or the investigating authority may protest it within eight days following its communication.

(2) The decision assigning an expert and the decision permitting the involvement of a person assigned by the suspect or the counsel for the defence to prepare an expert opinion shall not be subject to a protest [Sections 111 and 112].

(3) Unless an exception is provided for in this Act, the protest shall have no dilatory effect. In exceptionally justified cases the party having made the decision or judging the protest may postpone the execution of the decision until the protest is judged.

(4) If the party having adopted the decision does not sustain the protest within three days, it shall be submitted without delay to the party who is entitled to judge it. The protest against the decision of the prosecutor shall be judged by the superior prosecutor, while the protest against the decision of the investigating authority shall be judged by the prosecutor within fifteen days of receipt, or, in the case of a decision on termination, within thirty days in a decision.

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[277] The first sentence of Section 193 (2) was established by Section 119 (1)of Act I of 2002.

[278] Section 193 (4) and (5) was established by Section 119 (2) of Act I of 2002.

[279] Section 193 (6) was enacted by Section 119 (2) of Act I of 2002.

[280] Pursuant to Section 308 (2) of Act I of 2002, Section 194 (2) shall be repealed and shall not enter into force.

(5) The party having filed the protest – in the case of repealing or modifying a decision, those to whom the decision had been communicated – shall be advised of whether the protest was admitted or rejected. With the exception of the cases stipulated in subsection (6), the decision admitting or rejecting the protest may not be subject to further legal remedies.

(6) Against the decision concerning the rejection of the protest against decisions made under Section 149 (3), Section 150 (2), Section 151 (4) and Section 153 (2), and the decision of the prosecutor adopted under Section 151 (2) a motion for review may be filed with the prosecutor's office having made the latter decisions within eight days of delivery; the prosecutor's office shall forward the motion for review, together with the documents and its own motion to the court within three days.

(7) The legal remedy against an urgent investigatory action shall be governed by the provisions of subsections (1) to (4).

Section 196 Anyone being affected by the measure or omitted measure of the prosecutor or the investigating authority may make an objection thereto. The protest shall be considered as an objection, if it is late or was not written by the entitled person. Based on the objection, the prosecutor or the investigating authority shall take the necessary and justified measures.

Section 197[281] (1) If the prosecutor terminated the investigation pursuant to Section 190 (1) *e)*, because punishability has become precluded owing to a pardon initiated ex officio, the suspect may request the resumption of the investigation within eight days following the communication of the decision concerning the termination of the investigation; in such cases the investigation shall be resumed.

(2) The criminal proceeding shall be resumed if the suspect, in his protest against the decision on the termination of the investigation claims that reprimand has been prejudicial, there was no other reason for terminating the criminal proceeding. The suspect shall be advised thereof in the decision.

Section 198 (1) If the complaint was lodged by the victim, he may file a protest against the decision rejecting the complaint and request an order for the investigation within eight days following the communication of the decision.

(2) If the prosecutor terminated the investigation, the victim may file a protest in order to resume the proceeding within eight days following the communication of the decision.

Section 199 (1) Based on the protest, the prosecutor or the superior prosecutor shall

a) repeal the decision on the rejection of the complaint or on the termination of the investigation, and decides to order or resume the investigation or to press charges, or

b) rejects the protest if it is found unfounded.

(2)[282] After the rejection of the protest, the victim may act as a substitute private accuser, if

a) the complaint was rejected pursuant to Section 174 (1) *a)* or *c)*, or

b) the investigation was terminated pursuant to Section 190 (1) *a)–d)* or *f)*.

(3) The victim may not act as a substitute private accuser, if punishability is precluded because the offender is a child or mentally disabled, or upon the death of the offender.

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[281] The original Section 197 was amended to Section 197 (1) by Section 120 (1) of Act I of 2002, which concurrently inserted a subsection (2) in Section 197.

[282] Section 199 (2) and (3) was established by Section 120 (2)of Act I of 2002.

Title V

COVERT DATA GATHERING SUBJECT TO JUDICIAL PERMIT[283]

General rules

Section 200 (1) In order to establish the identity, locate or arrest the offender or to find means of evidence, from the time the investigation is ordered until the documents thereof are presented, subject to a judicial permit, the prosecutor and the investigating authority may, without informing the person concerned:

a) keep under surveillance and record the events in a private home with a technical device,

b) learn and record with a technical device the contents of letters, other pieces of mail as well as communications made by way of a telephone line or other means of communication,

c) learn and use data transmitted and stored by way of a computer system (hereinafter: covert data gathering).

(2) After the order for the investigation has been issued, the prosecutor and the investigating authority shall perform covert data gathering which is subject to a judicial permit in compliance with this Act.

(3) The provisions set forth in this Title shall not apply to covert intelligence gathering performed prior to the order for an investigation, which is subject to a judicial permit or the permit of the minister of justice; such activity shall be conducted by authorised organisations in compliance the rules governing them and separate legal regulations. [284]

(4) If covert intelligence gathering has commenced under a separate legal regulation issued pursuant to a judicial permit or the permit of the minister of justice prior to the order for an investigation, but then an investigation is ordered, thereafter covert intelligence gathering may only be continued in compliance with the provisions of this Act as secret data gathering.

(5) For the purposes of subsection (1) *a)* "private home" means a home, other premises or objects used for dwelling, rooms belonging to the home but not intended to be used for dwelling, the enclosed area attached thereto, as well as any other premises or areas not open for the (general) public.

Section 201 (1) Covert data gathering may be applied if the proceedings are conducted upon the suspicion of a criminal offence, or an attempt of or preparations for a criminal offence which

a) has been committed intentionally and punishable by five years' or more imprisonment,

b) is related to trans-boundary crime,

c) has been committed to the injury of a minor,

d) has been committed repeatedly or in an organised manner (including criminal offences committed for profit, in a criminal organisation and conspiracy),

e) is related to narcotics or substances qualifying as such,

f) is related to counterfeiting of money or securities,

g) has been committed with a weapon.

(2) If the investigation is conducted by the prosecutor [Section 28 (4) *e)*, Section 29, Section 474 (2)–(4)], covert data gathering may also be performed in the case of criminal offences not listed in subsection (1).

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[283] Title V of Chapter IX of the Act and Sections 200–206 were established by Section 121 of Act I of 2002.

[284] Please refer to Act XXXIV of 1994, Act C of 1995, Act CXXV of 1995 and Act XXXII of 1997.

Section 202 (1) The subject of covert data gathering may primarily be the suspect, or the person who may be suspected of having committed the criminal offence based on the available data of the investigation.

(2) Other persons may be subjected to covert data gathering, if data indicate that they have culpable communications with the person specified in subsection (1) or there is reasonable ground to suspect the same. The fact that an outsider is unavoidably affected shall not be an obstacle to covert data gathering.

(3) Covert data gathering may only be conducted in the private home and office of a lawyer acting as the defence counsel in a case, and in connection with the telephone line, other means of communication and correspondence (including electronically transmitted mail) of the lawyer, if there is reasonable ground to suspect that the lawyer has committed a criminal offence related to the case in progress against the defendant.

(4) Covert data gathering may be conducted in the visitors' room for lawyers within a police detention room or the in a penal institution, if there is reasonable ground to suspect that the lawyer has committed a criminal offence related to the case in progress against the defendant.

(5) The provisions set forth in subsections (3) and (4) shall also apply to persons who may not be heard as a witness pursuant to Section 81 (1) *a)* and those who may refuse to testify under Section 82 (1).

(6) Even in the cases specified in Section 201 and subsections (1) to (5), covert data gathering may only be conducted if obtaining evidence by other means reasonably appear to be unlikely to succeed if tried or would involve unreasonable difficulties, and there is probable cause to believe that evidence can be obtained by covert data gathering.

Judicial permit

Section 203 (1) Covert data gathering shall be permitted by the court at the motion of the prosecutor in compliance with the procedure set forth in Title VI of this Chapter.

(2) The motion shall contain the following:

a) the name of the prosecutorial body or investigating authority conducting the investigation, the date of the order for the investigation, the case number, if applicable, the type of covert intelligence gathering conducted prior to the order for the investigation or during the submission of the motion, the name of the organisation conducting or having conducted such covert intelligence gathering and the data having been obtained thereby,

b) the location planned to be subjected to covert data gathering, including, in the case of eavesdropping, the phone number,

c) the name or data suitable for the identification of the person planned to be subjected to covert data gathering, as well as the description of the means and method of covert data gathering to be applied,

d) the duration for which covert data gathering is planned to be maintained, specified in calendar days and hours,

e) detailed description substantiating the conditions for the application as specified in Sections 201 and 202, thus especially the description of the underlying criminal offence and the data establishing suspicion that the criminal offence has been committed, the circumstances justifying that covert data gathering is indispensable, the objective thereof and facts establishing probable cause to believe that the evidence may be obtained by the means or method to be applied in the course of covert data gathering,

f) if applicable, the reason for and the date of an exigent order [subsection (6)].

(3) The supporting documents shall be attached to the motion. Upon the submission of a motion for prolongation, the documents produced since the previous permit shall also be presented.

(4) The court shall adopt a decision within seventy-two hours following the submission of the motion. When the court fully or partially accepts the motion, it shall determine the subject person, the means and methods of covert intelligence gathering and the time period for which the above means and methods may be applied in respect of such subject person.

(5) Covert data gathering may be permitted for a maximum period of ninety days; upon a repeated motion, this period may be extended for a further ninety days on one occasion. If the court accepts the motion and by the time of the permit the starting day of covert data gathering as indicated in the motion has already passed, the actual starting day shall be the date of the permit.

(6) If the permission procedure caused a delay that would jeopardise the success of covert data gathering, the prosecutor may, for maximum period of seventy-two hours, order covert data gathering (exigent order). In this case, simultaneously with the order, the motion for the permit shall also be submitted. If the court has rejected the motion, a new exigent order may not be issued based upon the same facts.

Performance of covert data gathering

Section 204 (1) Covert data gathering is performed by the organisation specified in a separate Act.[285] If the subject of covert data gathering ordered in the course of an investigation conducted by the prosecutor's office is a criminal offence committed by a sworn officer of national security services, the prosecutor may also request the affected national security service to perform covert data gathering.

(2) The organisations forwarding, processing and managing communications services, pieces of mail and computer data shall be obliged to provide for the conditions of performing covert data gathering and co-operate with the authorities authorised to perform covert data gathering. The obligations of organisations providing communications services and forwarding mail and the detailed rules of co-operation are set forth in a separate legal regulation.[286]

(3) Covert data gathering shall be forthwith terminated by the prosecutor or the head of the investigating authority, if

a) in the case of an exigent order, the court has rejected the motion,

b) the objective specified in the permit has been achieved,

c) the time period specified in the permit has lapsed,

d) the investigation has been terminated,

e) its maintenance is unlikely to yield any result.

(4) Within eight days following the end of covert data gathering, the prosecutor or investigating authority having performed covert data gathering shall destroy the data which had been recorded but are of no interest for the objective of thereof, as well as the recorded data of persons not concerned in the case. If subsection (3) *a)* applies, the data recorded so far shall be immediately destroyed.

(5) A report (Section 168) shall be compiled on the performance of covert data gathering, detailing the process thereof, thus especially, the means and methods applied, the time period and location of the application, the natural persons, legal entities and organisations without a legal entity that had been affected by the covert data gathering, and the data obtained in the course of covert data gathering – and not destroyed pursuant to subsection (4) – as well as the method, source, place and time of obtaining the data. The report shall allow to establish whether the provisions in the court permit have been complied with. The report shall also state whether the covert data gathering have achieved its objective, or the reason for failure.

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[285] Please refer to Section 8 of Act CXXV of 1995.

[286] Please refer to Government Decree No. 75/1998. (IV. 24.) Korm.

The report shall be signed by the head of the prosecutorial body or investigating authority having performed the covert data gathering.

Disclosure of the results of covert data gathering

Section 205 (1) Protection of the data produced and recorded during covert data gathering shall be the responsibility of the prosecutor or the investigating authority having performed the covert data gathering, in compliance with the provisions of the Act on State and Official Secrets.

(2) While covert data gathering in progress and thereafter until the report thereon is filed by the prosecutor with the documents, the fact of performing covert data gathering, as well as the data produced and recorded in the course thereof may be disclosed only to the judge having issued the permit, the prosecutor and the investigating authority, further, by superior (senior officer) of the prosecutor and the investigating authority. Court documents related to the permission of covert data gathering may also be disclosed to the administrative superior of the judge having issued the permit, as specified in Section 207 (1).

(3) At the request of the judge having issued the permit, the prosecutor shall present the data obtained by covert data gathering until the time of such request. Should the judge establish that the permit has been misused, he shall, while in the event of other breach of law, he may terminate the covert data gathering. Such decision may not be appealed.

(4) The results of covert intelligence gathering performed prior to the investigation under a separate legal regulation [Section 200 (3)] – until they are used in the criminal proceedings – may be disclosed to the persons specified in separate Acts.

(5) After the conclusion of the covert data gathering, the prosecutor shall inform the person affected by the judicial permit of the fact that covert data gathering had been performed, unless criminal proceedings has been instituted against such person and unless such notification jeopardises the success of thereof.

Using the results of covert data gathering

Section 206 (1) If the prosecutor intends to use the result of covert data gathering as evidence in the criminal proceedings, the motion for the permit of the covert data gathering, the court decision and the report on the performance of covert data gathering shall be attached to the files of the investigation. If the documents are attached after disclosing the files of the investigation (Section 193), the suspect and the defence counsel shall be notified thereof and be allowed to examine the attached documents.

(2) After being attached to the files of the investigation, the report concerning the performance of covert data gathering may be used as evidence in accordance with the rules pertaining to documents (Section 116).

(3)[287] The results of covert data gathering may only be used for the purpose of other criminal proceedings, and the results of covert intelligence gathering performed prior to the order for an investigation subject to a judicial permit or the permit of the minister of justice, may only be used for criminal proceedings – notwithstanding the general rules [Section 76 (2)] – in the following cases:

a) if the conditions set forth in Section 201 also apply to the given, or the other criminal proceedings, and

b) the purpose of using the results corresponds to the original objective of covert data gathering or covert intelligence gathering.

(4) The results of covert data gathering may not be admitted as evidence, if covert data gathering was terminated pursuant to Section 204 (3) *a)* or *e)*, or Section 205 (3), or if the person affected by the covert data gathering – without a court permit – is the defence counsel

[287] The text of Section 206 (3) was established by Section 54 of Act II of 2003.

acting in the case, or a person who may not be heard as a witness or may refuse to testify under Section 82 (1).

Title VI

PROCEDURE OF THE INVESTIGATING JUDGE

Responsibilities of the investigating judge

Section 207 (1)[288] Prior to the filing of the indictment, the responsibilities of the court of first instance are performed by the judge designated by the president of the county court (investigating judge).

(2) The investigating judge shall decide on the following:

a)[289] before the indictment is filed, on motions concerning the coercive measures falling within the competence of the court [Section 129, Section 137, Section 138, Section 140, Section 146, Section 147, Section 149 (6) and (8), Section 151 (2), (3) and (6), Section 153 (2), Section 156, Section 159, Section 483], diagnosis of mental state (Section 107), and on the exclusion of the counsel for the defence [Section 45 (3)][290],

b) permitting and terminating covert data gathering [Section 203 (4) and (6); Section 205 (3)],

c) after the termination of the investigation, on resuming the same [Section 191 (3)],

d) at the motion of the prosecutor, on declaring the witness specially protected (Section 97),

e)[291] on the motion for the review of the decision rejecting the protest against the decisions made under Section 149 (3), Section 150 (2), Section 151 (4) or Section 153 (2) and of the prosecutor's order given according to Section 151 (2), as well as on replacing disciplinary penalty with confinement according to Section 161 (6).

(3)[292] At the motion of the prosecutor, prior to the filing of the indictment, the investigating judge shall hear the specially protected witness and the witness whose life is in imminent danger. The witness and the lawyer acting on behalf of the witness may file a motion for the hearing of the witness with the prosecutor. The investigating judge shall repeatedly hear the specially protected witness, if this is ordered by the court during the preparations or in the course of the hearing [Section 268 (2), Section 305 (3)].

(4) At the motion of the prosecutor, prior to the filing of the indictment, the investigating judge shall hear the witness under the age of fourteen, if there is reasonable ground to believe that questioning at the hearing would adversely affect his personal development. The legal representative, the ward and the lawyer acting on behalf of the witness may file a motion for the hearing of the witness with the prosecutor.

(5)[293] The prosecutor, the suspect and the counsel for the defence may file a motion for an evidentiary procedure, if there is reasonable ground to believe that the means of evidence thus obtained would not be available in the course of the court procedure, or would significantly change by that time, or would lose its quality as a means of evidence. The prosecutor, the suspect, the counsel for the defence, the lawyer acting on behalf of the witness, and the ward

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[288] Section 207 (1) was established by Section 122 (1)of Act I of 2002.

[289] Section 207 (2) a) and b) was established by Section 122 (2) of Act I of 2002.

[290] Pursuant to Section 88 (2) c) of Act II of 2003, in Section 207 (2) a) the words „[Section 45 (4).]" was amended to „[Section 45 (3)]".

[291] The text of Section 207 (2) e) was established by Section 55 of Act II of 2003.

[292] The third sentence of Section 207 (3) was enacted by Section 122 (3) of Act I of 2002.

[293] The second sentence of Section 207 (5) was enacted by Section 122 (4) of Act I of 2002.

and the legal representative of the minor witness may also make a motion for hearing the witness, or, in special cases, the suspect by way of a closed-circuit communications system.

(6)[294] Prior to the filing of the indictment, the procedures for the extension of pre-trial detention to over one year, and the review of temporary involuntary treatment in a mental institution shall be performed by the single judge of the county court in compliance with the provisions set forth in this Title.

Jurisdiction

Section 208 (1) The investigating judge shall proceed in the procedures conducted by prosecutor's offices located within the geographical jurisdiction of the county court, regardless of whether the adjudication of the criminal offence underlying the procedure falls within the competence of the local court or the county court.

(2) The president of the county court may designate an investigating judge at several local courts within the geographical jurisdiction of the county court, in such a case, the jurisdiction of the individual investigating judges is determined by the president of the county court. In the event of performing evidentiary acts, the investigating judge may also act outside his geographical jurisdiction.

General rules of procedure

Section 209 (1) The actions of the investigating judge shall be governed by the general rules pertaining to court procedures, unless provided otherwise in this Title.

(2) Consolidation and severance of the cases shall not be applied.

(3) The costs of the criminal proceedings incurred in the course thereof and advanced by the state according to Section 74 (1) *a)* shall be established by investigating judge but advanced by the prosecutor.

(4) In the event that the investigating judge deems that the investigation should be suspended or terminated, he shall notify the prosecutor thereof.

The session

Section 210 (1) The investigating judge shall hold a session, if the motion pertains to the following subjects:

a)[295] a coercive measure entailing the restriction or deprival of personal freedom (Section 129, Section 137, Section 138, Section 140, Section 146, Section 483),

b) extension of pre-trial detention for over six months after the order thereof,

c) acceptance of bail (Section 147),

d) order for the diagnosis of mental state (Section 107),

e) performance of an evidentiary act [Section 207 (3) to (5)].

(2) The session may be omitted, if the subject of the motion is ordering a diagnosis of mental state and the suspect cannot attend due to his health conditions or is incapable of exercising his rights.

(3) The investigating judge shall make a decision based on the documents

a) in issues not listed under subsection (1),

b) if the session is omitted pursuant to subsection (2),

c) if the motion was filed by a person unauthorised to do so.

(4) If necessary, the investigating judge shall hold a session even in the cases listed under subsection (3).

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[294] Section 207 (6) was enacted by Section 122 (5) of Act I of 2002.

[295] The text of Section 210 (1) a) was established by Section 123 of Act I of 2002.

Section 211 (1)[296] The investigating judge shall determine the date of the session. If the motion was filed by the prosecutor, he shall ensure the attendance of the suspect before the investigating judge and advise the counsel for the defence of the date and venue of the session. If the motion was filed by a party other than the prosecutor, the investigating judge shall arrange that the required documents are obtained and advise the party having submitted the motion, the prosecutor, the suspect and the counsel for the defence of the date and venue of the session.

(2) Should the party having submitted the motion fail to attend the session, the motion shall be deemed to be withdrawn. If the motion pertains to ordering temporary involuntary treatment in a mental institution, and due to his health condition the suspect is unable to attend the session or exercise his rights, the session may not be held in the absence of the counsel for the defence.

(3) At the session the party having submitted the motion shall present the evidence substantiating the motion in writing or orally. Those present shall be granted the opportunity to examine – within the limits set forth in Section 186 – the evidence of the party having submitted the motion. If the notified party does not attend the session, but had submitted his observations in writing, this document shall be presented by the investigating judge.

(4) The investigating judge shall examine whether the statutory requirements related to the motion have been met, whether there are any obstacles to the criminal proceedings and whether the motion is substantial beyond reasonable doubt. In the cases specified in Section 210 (1) *a)* and *b)* this examination shall also extend to the personal circumstances of the suspect.

(5)[297] The investigating judge may also hold the session by way of a closed-circuit communication system. The presence of the counsel for the defence at the session is obligatory, moreover, in the course of the session, the counsel for the defence shall be at the same place as the suspect. Sessions held by using a closed-circuit communication system shall be governed by the provisions stipulated in Sections 244/A-244/D.

Performance of an evidentiary act at the session

Section 212 (1) The party having submitted the motion to perform an evidentiary act shall provide for the conditions required therefor. If the session cannot be held in the official premises of the investigating judge, the motion shall indicate the venue of the session.

(2) At the start of the session, the investigating judge shall decide on the motion regarding the performance of the evidentiary act, giving the reasons for the decision.

Section 213 (1) At the examination of a witness whose life is in imminent danger, or who is believed, on reasonable grounds, to be unable to attend the hearing (Section 87), the suspect and the counsel for the defence, as well as the lawyer acting on behalf of the witness may also be present, unless this is prevented by the state of the witness. In such a case, the suspect and the counsel for the defence shall be advised of the session subsequently, provided that they shall be able to examine the minutes taken during the session at the prosecutor.

(2)[298] In addition to the investigating judge, the keeper of the minutes and – if necessary – the interpreter, the examination of a specially protected witness may only be attended by the prosecutor and the lawyer acting on behalf of the witness. In the course of the examination of a specially protected witness, the investigating judge shall ensure, and if required, verify, either with the help of the investigating authority or otherwise, the creditworthiness of the witness, the reliability of his knowledge and the circumstances that may influence credibility

[296] Section 211 (1) was established by Section 124 (1) of Act I of 2002.
[297] Section 211 (5) was established by Section 124 (2)of Act I of 2002.
[298] The text of Section 213 (2) was established by Section 125 of Act I of 2002.

of the testimony. The data thus obtained shall be indicated in the minutes taken at the examination. Of these minutes, an abstract shall be made which contains only the name of the investigating judge and the prosecutor (of those attending), the fact that the witness has been declared specially protected and the testimony of the specially protected witness. The investigating judge shall ensure that the abstract of the minutes taken on the testimony shall in no way imply the identity and the location of the specially protected witness. The abstract of the minutes shall be forwarded to the prosecutor. It shall be the prosecutor's responsibility to ensure that the abstract of the minutes is kept separately and handled confidentially until the filing of the indictment. The abstract of the minutes may only be disclosed to the prosecutor and the investigating authority prior to the filing of the indictment.

(3) In addition to those listed in subsection (2), the examination of a witness under the age of fourteen may also be attended by the legal representative and the ward of the witness. The suspect and the counsel for the defence shall be advised of the examination of the witness subsequently, provided that they shall be able to examine the minutes taken during the examination at the prosecutor.

(4) Upon a motion, the investigating judge may order the recording of the examination of the witness by an audio or video recorder or other equipment. Such recording shall not substitute the minutes. On the copy of the recording, the individual features of the witness suitable for identification (e.g.: face, voice) may be distorted by technical means. If the recording was made during the examination of a specially protected witness or a witness whose data are handled confidentially, the rules pertaining to confidential treatment shall also apply to such recordings.

The decision

Section 214 (1) Unless provided otherwise in this Act, the investigating judge shall deliver a decision with the explanation of the reasons within three days following the submission of the motion, in which he consents – either wholly or partially – to the motion or rejects the motion. The explanation shall include the substance of the motion, the brief description and classification of the criminal offence underlying the procedure and state whether the statutory requirements related to the motion exist or are absent. If the investigating judge rejects the motion, the motion may not be repeated on identical grounds.

(2) The decision shall be notified to the prosecutor, the party having submitted to the motion and – with the exception of the cases set forth in Section 207 (2) *b)* and (3) – the party to whom the provisions therein apply. The counsel for the defence shall also be informed of the decision notified to the suspect.

(3) The decision shall be communicated at the session by way of an announcement. If the investigating judge has adopted the decision based on documents, the decision shall be served immediately after it is made in writing. In the cases specified in Section 207 (2) *b)* and (3), service shall be governed by the provisions of Section 70 (1) *d)*.

Legal remedy

Section 215 (1) The decision of the investigating judge may be appealed by the party who was notified of such decision. Any appeal against a decision communicated by way of an announcement shall be lodged immediately after the announcement. Those entitled to appeal but have not been present at the announcement of the decision may lodge an appeal within three days following the session. Decisions communicated by way of a service may be appealed by those entitled within three days following the service thereof.

(2) The investigating judge shall forward the appeal against the decision to the county court competent to consider the appeals without delay after the receipt thereof or after the lapse of the deadline for appeals.

(3)[299] The appeal shall be considered by the panel of second instance of the county court.

(4) The following decisions may not be appealed:

a) decisions adopted pursuant to Section 207 (2) *a)* regarding a motion under Section 149 (6) and (8), Section 151 (3) and (6) and Section 153 (2) for a coercive measure falling within the competence of the court prior to the filing of the indictment,

b) decisions pertaining to Section 207 (2) *b)* and *e)* and (3) and (4),

c) decisions adopted under Section 212 (2).

(5) Regardless of an appeal, the order for a coercive measure entailing the restriction or deprival of personal freedom may be executed. The appeal of the prosecutor against the termination of a coercive measure entailing the restriction or deprival of personal freedom – unless termination was motioned by the prosecutor – based on documents shall have a dilatory effect.

(6) The investigating judge may omit the adoption of a decision concerning the consideration of an appeal against decisions listed under subsection (4) and an appeal against final decisions.

Chapter X

INDICTMENT

Measures after the presentation of the documents

Section 216[300] (1) Having performed the procedural action specified in Section 193 (1), or, of the action was performed by the investigating authority, within thirty days after receiving the documents, the prosecutor shall examine the files of the case and based on this, may

a) perform, or order the performance of further investigatory action,

b) may suspend the investigation,

c) may terminate the investigation,

d) may file an indictment, or make a decision on the partial omission of the indictment or on the postponement of an indictment.

(2) In exceptional cases, the deadline specified in subsection (1) may be extended by the head of the prosecutor's office by thirty days. In cases having an extensive scope, at the recommendation of the head of the prosecutor's office, the superior prosecutor may exceptionally permit a longer – but maximum ninety-day – deadline as well. In the case regulated in subsection (1) *a)*, the deadline shall be calculated from the performance of the investigatory action.

(3) If the prosecutor files an indictment after performing the investigatory action according to subsection (1) *a)* above, he shall ensure that prior to this, the suspect and the counsel for the defence may examine, in compliance with the provisions stipulated in Section 193, the documents made on the investigatory action. In other cases the possibility for the examination of the documents shall be granted at the motion of the suspect or the counsel for the defence.

The indictment

Section 217 (1) The prosecutor shall press charges by filing the indictment with the court.

(2) If necessary, the prosecutor may examine the suspect prior to filing the indictment.

(3) The indictment shall contain the following:

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[299] The text of Section 215 (3) was established by Section 126 of Act I of 2002.

[300] The text of Section 216 was established by Section 127 of Act I of 2002.

a) the personal data of the accused listed in Section 117 (1),

b) the description of the act being the subject of the indictment,

c) the classification of the subject of the indictment according to the Penal Code,

d) the existence of the condition required to launch the procedure under separate legal regulations (private motion, complaint, request, suspension of the right to immunity or privilege, consent to launching criminal proceedings),

e)[301] the legal regulations pertaining to the competence and jurisdiction of the court, as well as reference to the rules concerning the competence and jurisdiction of the prosecutor filing the indictment,

f) a proposal for imposing a punishment or applying a measure, if the prosecutor does not attend the hearing,

g) the civil claims announced and other motions,

h) a proposal concerning the persons to be summoned to the hearing and the persons to be notified thereof,

i) description of the means of evidence as well as the facts they prove,

j) a proposal for the order of taking evidence at the hearing.

Section 218 (1)[302] If at the time of filing the indictment a coercive measure entailing the restriction or deprival of personal freedom has been applied against the suspect, and the prosecutor deems the maintenance of such measure justified, the prosecutor shall file a motion to prolong the coercive measure. If the prosecutor motions for the maintenance of pre-trial detention, and the detainee has been subjected to restrictions in the course of the investigation, the motion shall also indicate the restrictions, which, in the opinion of the prosecutor, are justified to be maintained.

(2) If the accused committed a wilful criminal offence to the injury of his child, the prosecutor may recommend the court to terminate the parental right of custody of the accused.

(3) In the indictment, the prosecutor may submit a civil claim against the accused.

(4)[303] If the indictment is filed due to the abuse of narcotic substances (Sections 282-282/C of the Penal Code) and the court suspended the criminal proceedings having been earlier instituted against the suspect under Section 266 (6), the indictment shall also motion for the resumption of the procedure [Section 266 (7)] and the consolidation of the cases.

Section 219 (1)[304] The indictment shall be filed in a number of copies sufficient to make one copy available to the court, all of the accused and counsels for the defence each. To the copy of the indictment filed with the court, all documents supporting the indictment and presented by the prosecutor to the suspect and/or the counsel for the defence at the conclusion of the proceedings as well as all physical evidence.

(2) If the name and the data of the witness are ordered to be handled confidentially, the name and data of the witness to be summoned to the hearing shall be indicated in a separate confidential document instead of the indictment.

(3)[305] If the accused fails to command the Hungarian language, the part of the indictment pertaining to such accused shall be translated into the native, regional or minority language of the accused, or at request, into another language defined by the accused as a language spoken and formerly used in the proceedings, and thus filed with the court.

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[301] The text of Section 217 (3) e) was established by Section 128 of Act I of 2002.

[302] The second sentence of Section 218 (1) was enacted by Section 129of Act I of 2002.

[303] Section 218 (4) was enacted bySection 56 (1) of Act II of 2003.

[304] Section 219 (1) was established by Section 130 (1) of Act I of 2002.

[305] Section 219 (3) was established by Section 130 (2) of Act I of 2002.

(4)[306] If the prosecutor intends to use the testimony of a specially protected witness as evidence in the court procedure, the abstract of the minutes taken at the examination of such specially protected witness to the documents supporting the indictment. If this document has been attached after the disclosure of the files of the investigation (Section 193), both the suspect and the counsel for the defence shall be notified thereof and be granted the possibility to examine the subsequently attached document.

(5) After being attached to the files of the investigation, the abstract of the minutes taken at the examination of the specially protected witness may be used as evidence in compliance with the rules pertaining to documents (Section 116).

(6) The victim shall be notified of the indictment.

Partial omission of the indictment

Section 220 The prosecutor may, in a decision, omit to indict a criminal offence having no significance for the purpose of liability, due to the commission of another criminal offence of greater gravity and being the subject of the indictment. This fact shall be stated in the indictment, and the partial omission of the indictment shall be notified to the victim.

Section 221[307] In the decision the prosecutor may inform the victim of his right to enforce his civil claim by way of other legal means, and that a substitute private accusation may be lodged in respect of the act which have been partially omitted from the indictment.

Postponement of the indictment

Section 222 (1) In the case of criminal offence punishable by a maximum of three years' imprisonment, taking into consideration the gravity of the criminal offence and the extraordinary mitigating circumstances, the prosecutor may decide to postpone the filing of an indictment for a period of one to two years, if this is likely to have a positive impact on the future conduct of the suspect.

(2)[308] If the procedure may be terminated owing to a reason terminating punishability under Section 283 of the Penal Code, the prosecutor shall postpone the filing of the indictment for a period of one year, if the drug user suspect agrees to undergo a treatment for drug addiction, other therapeutic process treating drug users or to participate in preventive education.

(3) The prosecutor may postpone the filing of the indictment related to non-payment of alimony, if this may result in meeting the defaulted obligation.

Section 223 (1) The indictment may not be postponed under Section 222 (1), if the suspect:

a) is a notorious criminal,

b)[309] committed the wilful criminal offence during the probation period of a suspended sentence of imprisonment or after the final sentence of imprisonment imposed due to the wilfully committed criminal offence, prior to the end of the execution of the imprisonment.

(2) If the Penal Code makes the termination of punishability subject to the conduct after the commencement of the procedure, the indictment may only be postponed in the cases set forth in this Act.

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[306] Section 219 (4)–(6) was enacted by Section 130 (3) of Act I of 2002.

[307] The text of Section 221 was established by Section 131 of Act I of 2002. Pursuant to Section 308 (2) of Act I of 2002, the original subtitle of Section 221 shall be repealed and shall not enter into force.

[308] Section 222 (2) was established by Section 56 (2) of Act II of 2003.

[309] The text of Section 223 (1) b) was established by Section 133 of Act I of 2002.

Hearing prior to the postponement of the indictment [310]

Section 224 (1)[311] If the prosecutor deems it necessary to make the postponement of the indictment subject to setting rules of conduct or prescribing obligations, he shall obtain prior to the postponement of the indictment the opinion of the probation officer then hear the suspect. The hearing shall elucidate, taking into account the statements in the opinion of the probation officer as well, whether the suspect agrees to, and can adhere to the prospective rules of conduct and obligations. If necessary, the probation officer may also be heard.

(2)[312] The obligations stipulated in Section 225 (2) *a)* and *b)* may be ordered with the consent of the suspect and the victim, while those listed in items *c)* and *d)* thereof with the consent of the suspect.

(3) In the cases set forth in Section 225 (2) *a)* and *b)* the prosecutor shall also hear the victim; the hearing of the victim may be dispensed with if he had declared his consent earlier. The absence of the consent of the victim shall not be an obstacle to postpone the indictment by the prosecutor without prescribing an obligation for compensation or amends payable to the victim, provided that the conditions thereof otherwise exist.

Establishment of rules of conduct upon the postponement of the indictment [313]

Section 225 (1) In the decision concerning the postponement of the indictment, the prosecutor shall order the supervision of the suspect by a probation officer, and may also set rules of conduct or other obligations to be adhered to by the suspect. Adherence to the rules of conduct and obligations shall be supervised and assisted by the probation officer in compliance with the legal regulations pertaining to the performance of supervision by probation officers. In order to fulfil these tasks, the provision officer may request the assistance of other organs and organisations.

(2) The prosecutor may oblige the suspect

a) to fully or partially compensate the victim for the damage caused by the criminal offence,

b) ensure the compensation of the victim of another way,

c) make a financial contribution to a specific purpose or perform community service (make amends for the general public),

d) undergo a psychiatric treatment or treatment for alcohol addiction.

(3)[314] The prosecutor may combine the rules of conduct and obligations specified in subsection (2), and may set other rules of conduct and obligations as well.

(4)[315] In the case of Section 222 (2), prescribing the obligation of participating in a treatment for drug addiction, other therapeutic process treating drug users or preventive education shall be compulsory.[316]

(5) The decision on the postponement of the indictment shall be notified to the victim, the complainant and the party having filed a private motion as well. The victim may appeal the decision concerning the postponement of the indictment.

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[310] The subtitle was established by Section 134of Act I of 2002.
[311] The text of Section 224 (1) was established by Section 57 of Act II of 2003.
[312] Section 224 (2) and (3) was established by Section 134 of Act I of 2002.
[313] Section 225 and the subtitle thereof were established by Section 135 of Act I of 2002.
[314] Section 225 (3) was established by Section 58 (1) of Act II of 2003.
[315] Section 225 (4) was established by Section 58 (2) of Act II of 2003.
[316] Please refer to Joint Decree No. 26/2003. (IV. 9.) ESzCsM-GyISM of the Ministry of Health, Social and Family Affairs and the Ministry of Youth and Sports.

Procedure after the postponement of the indictment

Section 226 (1) The prosecutor shall terminate the procedure within thirty days after the lapse of the postponement period of the indictment, if the result expected therefrom has been achieved during this period.

(2)[317] The procedure shall also be terminated prior to the postponement period of the indictment, if the drug addict suspect verifies that he has participated in a treatment for drug addiction, other therapeutic process treating drug users or preventive education for a period of at least six successive months, or, if the person suspected of the misdemeanour of non-payment of alimony, has performed his obligation.

Section 227 (1) The prosecutor shall file an indictment, if

a) the suspect protests the decision and the conditions to terminate the investigation are absent,

b) an indictment was filed against the suspect due to a wilful criminal offence committed during the postponement period of the indictment,

c) the suspect gravely violates the rules of conduct or fails to meet his obligations,

d)[318] it is established during the postponement period of the indictment, that either of the grounds set forth in Section 223 excluding the postponement of the indictment exist.

(2)[319] In the case specified in Section 222 (3) indictment may only be filed if the obligation stipulated therein is not fulfilled.

(3) If the indictment was filed for a reason specified in subsection (1) *c)*, the prosecutor shall hear the suspect before filing the indictment.

(4)[320] If the indictment was postponed under Section 222 (2), the indictment shall be filed, if

a) the suspect fails to verify with a document that within one year following the postponement of the indictment he has participated in a treatment for drug addiction, other therapeutic process treating drug users or preventive education for a period of at least six successive months, or

b) during the postponement period of the indictment, another criminal proceedings has commenced against the suspect due to abuse of narcotic substances and the suspension or termination of the investigation do not apply.

Legal remedy

Section 228 (1) Anyone affected by the dispositions in the decision of the prosecutor may protest it within eight days following its communication.

(2) If the prosecutor does not grant the protest within three days, the protest shall be forthwith submitted to the superior prosecutor.

(3) The superior prosecutor shall make a decision on the protest within fifteen days of receipt. If the protest is deemed well-founded, the superior prosecutor may modify or repeal the decision, and order the same prosecutor to adopt a new decision; in an adverse case, the superior prosecutor shall reject the protest. The protest shall also be rejected if it is late or was lodged by a non-entitled party.

(4) The party having lodged the protest – and in the event of repealing or modifying a decision, those to whom the decision had been communicated – shall be informed of the

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[317] The text of Section 226 (2) was established by Section 59 of Act II of 2003.

[318] Section 227 (1) d) was enacted by Section 137 (1) of Act I of 2002.

[319] Pursuant to Section 88 (2) c) of Act II of 2003, in Section 227 (2) the words "Section 222 (2)–(3)" were amended to "Section 222 (3)".

[320] Section 227 (4) was enacted by Section 137 (2) of Act I of 2002 and its text established by Section 60 of Act II of 2003.

decision on the protest. The decision regarding the judgement of the protest may not be protested against.

(5) The filing of the indictment shall not e subject to an appeal.

(6) To the decisions of the prosecutor the provisions set forth in Section 169 (2) are applicable as appropriate.

Actions of the substitute private accuser

Section 229 (1)[321] If the superior prosecutor has rejected the protest of the victim concerning the dismissal of the complaint or the termination of the investigation, and substitute private accusation may be lodged pursuant to Section 199 (2) – unless lodging substitute private accusation is excluded by Section 199 (3) –, and further, if the prosecutor has partially omitted the indictment, within thirty days of the communication of the decision concerning the rejection of the protest, the victim may stand as a substitute private accuser.

(2) After the rejection of the protest, the victim shall be allowed to examine in the official premises of the prosecutor's office the documents pertaining to the criminal offence committed against him.

Section 230 (2)[322] If the victim intends to act as a substitute private accuser, he shall submit, by way of his lawyer, a motion for prosecution to the prosecutor's office of first instance having proceeded in the case before. The prosecutor's office shall forward the motion for prosecution, together with the documents to the court having competence and jurisdiction in the case.

(2) The motion for prosecution shall contain the data set forth in Section 217 (3) *a)* to *c)*, *g)* and *h)*, as well as the substitute private accuser's reasons to motion for conducting the court procedure despite the dismissal of the complaint, the termination of the investigation or the partial omission of the indictment. In the motion for prosecution, the substitute private accuser may also designate the court having jurisdiction at the residence of the defendant as a court of jurisdiction [Section 17 (3)]. In this case, at the request of the substitute private accuser, the prosecutor's office shall forward the documents and the motion for prosecution to the court of jurisdiction.

Section 231 (1) The court shall admit the motion for prosecution if there is no reason for its dismissal.

(2) The court shall dismiss the motion for prosecution, if

a) the substitute private accuser submitted the motion for prosecution after the lapse of the deadline set forth in Section 229 (1),

b)[323] if the substitute private accuser is not represented by a lawyer, unless he is a natural person having taken an examination in law [Section 56 (4)],

c) the motion for prosecution was filed by non-entitled party,

d) the motion for prosecution apparently has no factual or legal grounds.

(3) Prior to the lapse of the deadline set forth in Section 229 (1), the substitute private accuser may repeatedly submit the motion for prosecution, if it had been formerly dismissed due to reasons specified in subsection (2) *b)*, *c)* or *d)* and the reason for dismissal do not exist any longer.

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[321] The text of Section 229 (1) was established by Section 138 of Act I of 2002.

[322] Pursuant to Section 88 (2) a) of Act II of 2003, the original Section 230 (1) shall be repealed and shall not enter into force. Pursuant to Section 88 (2) b) Act II of 2003, the numbering of Section 230 (2) and (3) shall be amended to subsections (1) and (2). The text of subsections (1) and (2) re-numbered by this Act was established by Section 139 of Act I of 2002.

[323] Section 231 (2) b) was established by Section 140 (1) of Act I of 2002.

(4) If the court is not competent or has no jurisdiction in the case, it shall transfer the case to the court of competence or jurisdiction.

(5)[324] If the court did not dismiss the motion for prosecution,

a) it shall ensure the availability of the means of evidence at the hearing,

b) it may order the application of a coercive measure.

Section 232 (1) Following the admission of the motion for prosecution, the accused shall be entitled to examine the files of the investigation.

(2) Documents handled separately from the files of the case and confidentially may not be disclosed to the substitute private accuser.

Section 233 (1) The decision dismissing the motion for prosecution may not be appealed.

(2) The dismissal of the motion for prosecution shall not prevent an order for the resumption of the investigation (Section 191).

PART THREE

Chapter XI

GENERAL RULES OF COURT PROCEDURE

Forms of court procedure

Section 234 (1) The court shall hold a trial when obtaining evidence to establish the criminal liability of the accused.

(2) In the cases specified in this Act, the court shall hold a public session, session or a panel session.

(3) Unless provided otherwise in this Act, public sessions shall be governed by the provisions pertaining to trials.

(4) Sessions shall be attended by the members of the court, the keeper of the minutes, the accuser and – unless provided otherwise in this Act – the accused and the counsel for the defence. In addition to the parties listed above, on the session the persons having been summoned by the court to attend or notified of the session may be present.

(5) The session of the panel shall be attended by the members of the court and the keeper of the minutes.

The single judge

Section 235 The provisions of this Act pertaining to the court, the panel of the court or the chairperson of the panel shall also apply to the single judge.

The substitute private accuser

Section 236 Unless provided otherwise in this Act, in the course of a court procedure, the substitute private accuser shall exercise the rights of the prosecutor, including the right to motion for a coercive measure entailing the restriction or deprival of personal freedom of the accused. The substitute private accuser may not motion for the termination of the right of the accused to parental custody.

[324] Section 231 (5) was established by Section 140 (2) of Act I of 2002.

The publicity of the trial

Section 237 (1) The trial of the court shall be public. In order to ensure the proper conduct, dignity and security of the trial, or due to lack of space, the presiding judge may determine the number of the audience.

(2) Persons under fourteen years of age may not be among the audience of the trial, and the presiding judge may exclude from the audience youth under eighteen years of age.

(3) The court may, ex officio, or at the motion of the prosecutor, the accused, the counsel for the defence, the victim or the witness, exclude the public from the entirety or a part of the trial in a decision explaining the reasons therefor (in-camera trial) :

a) for ethical reasons,

b) to protect the minor participating in the procedure,

c)[325] to protect the persons participating in the procedure (Chapter V) or the witness,

d) to protect state or official secrets.

(4) The exclusion of the public may be motioned for in any stage of the procedure.

Section 238 (1)[326] The decision concerning the exclusion of the public shall be announced by the court at a public trial. The decision on the exclusion of the public may not be appealed, only contested in an appeal against the conclusive decision.

(2)[327] Regardless of the exclusion of the public, the court may permit the presence of official persons performing tasks related to the administration of justice at the trial. In the event of a procedure instituted against a foreign citizen accused, or due to a criminal offence committed to the injury of a foreign citizen victim, the presence of the representative of the consulate of their native country, or, pursuant to an international treaty promulgated by law, a member of the authority of the foreign state shall be allowed.

(3)[328] In the event that the public has been excluded, a victim having no representative or an accused having no defence counsel may motion for allowing a designated person – with the exception of a person to be examined at the trial – present at the location of trial to attend the trial. If the court excluded the public for the reason specified in Section 237 (3) *d)*, no such motion may be submitted. The decision pertaining to the motion may not be appealed.

(4) In the case of ordering an ex-camera trial, the court shall advise those present that they are prohibited to provide information of the trial, and if necessary also warn of the consequences of violating state and official secrets. The advice shall be included in the minutes.

Section 239 (1) The trial shall be made open to public when the reason for an ex-camera trial has ceased to exist.

(2) The court shall announce its decision publicly even if the public has been excluded from the trial.

Persons participating at the trial

Section 240 (1) The members of the panel shall be present at the trial from the beginning until the end.

(2) If the member of the panel is unavoidably prevented from attending the trial, the conclusive decision may be announced by a panel with different composition.

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[325] The text of Section 237 (3) c) was established by Section 141 of Act I of 2002.

[326] The second sentence of Section 238 (1) was established by Section 142 (1) of Act I of 2002.

[327] The second sentence of Section 238 (2) was enacted by Section 142 (2) of Act I of 2002.

[328] Section 238 (3) and (4) was established by Section 142 (3) of Act I of 2002.

(3) Unless provided otherwise by this Act, no trial may be held in the absence of the keeper of the minutes, the accused, the prosecutor and – if the presence of the counsel for the defence is statutory at the trial – the counsel for the defence.

Section 241 (1) The presence of the prosecutor is obligatory at the trial

a) in the first instance, if the criminal offence is punishable by five years' or more imprisonment by law,

b)[329] in the second instance, if the presence of the prosecutor at the trial of first instance was obligatory, unless the reason for his presence during the procedure of second instance has ceased to exist,

c) the accused is in detention,

d)[330] if the accused – regardless of his legal responsibility – is mentally disabled,

e) if the court obliged the prosecutor to attend the trial,

f) if the prosecutor announces that he would attend the trial.

(2)[331] With the exception of the case specified in subsection (1) *e)*, at the local court prosecution may also be represented by the secretary of the prosecutor's office.

Section 242 (1) The presence of the counsel for the defence is obligatory at the trial

a)[332] before the county court acting as the court of first instance, unless provided otherwise by this Act,

b) at the local court, if the criminal offence is punishable by five years' or more imprisonment by law,

c) at the local court in the cases regulated in Section 46,

d) if there is a substitute private accuser.

(2) If the prosecutor attends the trial, and the accused has not retained a defence counsel, if necessary, the presiding judge may arrange for the appointment of a defence counsel. If requested by the accused, an appointed counsel for the defence shall be designated.

Section 243 Unless provided otherwise by this Act, those attending the trial shall be entitled to lodge motions.

Conducting and preserving the dignity of a trial

Section 244 (1) The trial shall be conducted by the presiding judge who shall establish the order of the actions to be performed in accordance with this Act. The presiding judge shall ensure compliance with the law and advice those participating in the procedure of their respective rights and also ensure that they may exercise such rights.

(2) The presiding judge shall ensure that the dignity of the trial is preserved. With this in view, he shall have removed from the court room those who insult the dignity of the trial by their improper condition or appearance.

(3)[333] Those who are examined before the court and those addressing the court shall speak standing. The presiding judge may make an exemption to this rule.

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[329] Section 241 (1) b) was established by Section 143 (1) of Act I of 2002.

[330] Section 241 (1) d) was established by Section 143 (1) of Act I of 2002.

[331] The text of Section 241 (2) was established by Section 143 (2) of Act I of 2002 and Section 88 (2) a) of Act II of 2003. Pursuant to this latter legislature, the text "*c)* and" shall be repealed and shall not enter into force.

[332] The text of Section 242 (1) a) was established by Section 144 of Act I of 2002.

[333] The text of the second sentence of Section 244 (3) was established by Section 145 of Act I of 2002.

Holding a trial by way of a closed-circuit communication system [334]

Section 244/A (1) At the motion of the prosecutor, the accused, the counsel for the defence, the witness, the lawyer acting on behalf of the witness, the ward or legal representative of a minor witness, or ex officio, the presiding judge may order the examination of the witness, or, in exceptional cases, the examination of the accused by way of a closed-circuit communication system. In the event of an examination via a closed-circuit communication system, direct links between the venue of the trial and the place of stay of the person heard shall be provided by a device simultaneously transmitting oral and visual communication..[335]

(2) The presiding judge may order the use of closed-circuit communication system for the examination

a) of a witness under fourteen years of age,

b) of a witness against whom a criminal offence falling in the scope of criminal offences against life and limb or health (Title I of Chapter XII of the Penal Code), or criminal offences against marriage, family, youth or public morals (Chapter XIV of the Penal Code), or other violent criminal offence was committed,

c) of a witness whose presence at the trial would impose unreasonable difficulties owing to his health condition or other circumstance,

d) of a witness or accused participating in a witness protection program specified in a separate legal regulation and whose protection otherwise justifies this, and

e) of a detained accused or witness whose presence at the trial would endanger public safety.

(3) Examination by way of a closed-circuit communication system may be ordered by the presiding judge in a decision explaining the reasons therefor. The decision concerning examination via a closed-circuit communication system may not be separately appealed, only when the conclusive decision is contested.

(4) The decision shall be communicated to the prosecutor, the accused, the counsel for the defence, the witness to be heard, the lawyer acting on behalf thereof, in the event of a minor witness, the legal representative or ward thereof, and in the event of the examination of a detained person, the relevant institution of detention at least five days prior to the day of the trial. The decision shall be sent to the court providing the separate room for the examination of the accused or the witness, or, when appropriate, the relevant institution of detention.

Section 244/B (1) The witness or accused to be examined via a closed-circuit communication system shall be placed in a separate room (testimonial room) at the court providing for their examination or at the relevant institution of detention. Only the following persons may be present in the testimonial room: the lawyer acting on behalf of the witness, in the case of a minor witness the legal representative or ward thereof, and if required, the expert, the interpreter and the staff operating the closed-circuit communication system. In the case of the examination of the accused via a closed-circuit communication system, the counsel for the defence may be present both in the venue of the trial and the testimonial room.

(2) A judge from the court of jurisdiction at the location of the testimonial room shall also be present in the testimonial room. In the course of opening the trial, after recording those present in the venue of the trial, at the request of the chairperson of the panel the judge establishes the identity of those present in the testimonial room and verifies that no unauthorised person has entered the testimonial room and the witness or the accused are not restricted in exercising their respective procedural rights.

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[334] The subtitle and Sections 244/A–244/D were enacted by Section 146 of Act I of 2002.

[335] For detailed rules, please refer to Decree No. 22/2003. (VI. 25.) IM of the Ministry of Justice.

(3) At the commencement of the examination, the presiding judge advises the witness or accused to be examined via a closed-circuit communication system that they will be examined in this manner.

(4) The responsibilities of the judge of the court having jurisdiction at the location of the examination set forth in this Section may also be performed by the court secretary, in this case the minutes specified in Section 244/D (1) shall also be taken by the court secretary.

Section 244/C (1) In the case of examinations by way of a closed-circuit communication system it shall be ensured that the participants of the criminal proceedings may exercise – with the exception stipulated in subsection (4) below – their rights to ask questions, make objections or motions and other procedural rights in compliance with the provisions of this Act.

(2) In the course of the examination the accused shall be allowed to contact his counsel for the defence. If the counsel for the defence is present in the venue of the trial, a telephone connection shall be provided for between the testimonial room and the venue of the trial to ensure this right.

(3) Those present at the trial shall be allowed to see the witness or accused in the testimonial room as well as all other persons examined or staying there simultaneously with the witness or the accused. While in the testimonial room, the witness and the accused shall be provided with the means to follow the course of the trial.

(4) Witnesses under fourteen years of age examined by way of a closed-circuit communication system may be questioned exclusively by the presiding judge. The members of the panel, the prosecutor, the accused, the counsel for the defence and the victim may propose questions to be asked. With the exception of a confrontation, while in the testimonial room, a witness under fourteen years of age may only hear and see the chairperson of the panel via the transmission device.

(5) Upon the examination by way of a closed-circuit communication system, the individual features of the witness suitable for identification (e.g.: face, voice) may be distorted by technical means during the transmission.

Section 244/D (1) The judge present in the testimonial room shall take separate minutes of the circumstances of the examination by way of a closed-circuit communication system, indicating the persons present in the testimonial room. The minutes shall be attached to the minutes taken at the trial.

(2) Simultaneously with the examination via a closed-circuit communication system, video and audio records shall be taken of the events taking place at the trial and the place of stay of the person examined. The video and audio records shall be attached to the documents.

(3) At the motion of the participants of the criminal proceedings, the presiding judge may order that the video and audio records be played at or outside the trial. Upon playing the video and audio records, it shall be ensured that they cannot be watched and heard, changed, destroyed or copied by unauthorised persons.

Maintaining the order of the trial

Section 245 (1) With the exception of the members of the law enforcement body and the police force on duty, no one may enter the court room carrying a weapon or other tool suitable for the breach of peace. Persons summoned to the trial may not take their weapon in the court room.

(2) Those disturbing the order of the trial are first called to order by the presiding judge, then upon repeated or grave disorderly conduct, may be ordered to leave or be removed. The presiding judge shall sanction persons disturbing the regular course of the trial the same way.

(3) The presiding judge may order the person disturbing the order or regular course of the trial not to return to the court room that day of the trial.

(4)[336] The court may impose a disciplinary penalty on those disturbing the order or regular course of trial, and in the case of an order to leave or removal, take them into custody until the end of the trial on the day of their disorderly conduct.

(5) If the audience repeatedly disturbs the order or regular course of the trial, the presiding judge may exclude it from the trial.

Section 246 (1) Upon disorderly conduct, the prosecutor shall be called to order. If the trial cannot be continued owing to the disorderly conduct of the prosecutor, it shall be suspended by the presiding judge who then requests the head of the prosecutor's office to designate another prosecutor. If the designation of another prosecutor is not practicable immediately, the trial shall be adjourned.

(2) Upon disorderly conduct, disciplinary penalty may be imposed on the counsel for the defence, who, however, may not be either ordered to leave or removed from the trial. If the trial cannot be continued owing to the disorderly conduct of the counsel for the defence, it shall be suspended by the presiding judge. In such a case, the accused may retain another counsel for the defence, or – if the presence of the counsel for the defence at the trial is obligatory – another counsel for the defence shall be appointed. If this is not practicable immediately, the trial shall be adjourned at the cost of the counsel for the defence having shown disorderly conduct.

(3) Upon the disorderly conduct of the representative of the substitute private accuser, the provisions of subsection (2) shall apply as appropriate.

Section 247 (1) The court shall continue the trial in the absence of an accused having been ordered to leave or removed, however, not later than prior to the conclusion of the evidentiary procedure it shall be summoned to the court once again to be informed of the evidentiary actions taken in his absence.

(2) In the case specified in subsection (1), if the accused fails to discontinue the disorderly conduct and thereby prevents holding the trial in his presence, the trial may be continued in his absence as well, in the presence of the counsel for the defence.

Section 248 Decisions made concerning the conduct and maintenance of order of the trial may not be appealed separately, unless they impose a disciplinary penalty, or order the payment of costs or taking a person into custody.

Committing a criminal or disciplinary offence at the trial

Section 249 The presiding judge shall inform the competent authority or the party having disciplinary powers of the disturbance of order at the trial entailing criminal or disciplinary proceedings; in the former case, the court may order that such person be taken into custody. Such custody may last seventy-two hours.

Minutes

Section 250 (1) The keeper of the minutes shall take minutes on the procedure of the court, as a rule, simultaneously therewith. If the accused is deaf, and an interpreter cannot be employed, minutes shall always be taken simultaneously with the procedure.

(2) The minutes shall indicate

a) the name of the court and the case number,

b) the criminal offence being the subject of the indictment and the name of the accused,

[336] The text of Section 245 (4) was established by Section 147 of Act I of 2002.

c)[337] the place of court procedure, the scheduled and actual time of starting the trial, and the reason for the discrepancy therein, if any,

d) the form of the court procedure,

e) whether the procedure was public,

f) the name of the judge, the members of the court, the keeper of the minutes, as well as the prosecutor, accused, counsel for the defence, witness, expert, interpreter present and other persons participating in the procedure,

g) other personal data specified in this Act,

h)[338] whether the minutes were taken simultaneously with the trial, and if not, the date when the minutes were put in writing.

(3) The minutes shall clearly describe the course of actions and all significant formalities of the trial so that compliance with the rules of procedure could also be verified.

(4)[339] The minutes shall be signed by the presiding judge and the keeper of the minutes. If the presiding judge is prevented from signing the minutes, they shall be signed – indicating his capacity as a substitute – a member of the panel. If the events occurring during the procedural action are recorded as specified in Section 252 (2), the employee of the court taking the minutes shall verify with his signature that he has drawn up the minutes in compliance with the notes of the stenographer, or the record taken by an audio or video recording equipment or other device.

(5)[340] No notes may be made between the lines written in the minutes. Texts becoming redundant due to modification or correction shall be deleted by crossing them so that such deleted text could remain legible. Any modifications or corrections made shall be signed by the presiding judge and the keeper of the minutes.

(6) If the minutes contain several pages, they shall be laced together and the case number be indicated on each page.

(7) If the supplementation, modification or correction made before the minutes are duly signed fails to fulfil the formal requirements stipulated in subsection (5), the document may not be signed as minutes but regarded as notes on the trial thereafter.

Section 251 (1) Testimonies, the expert opinion, the result of the inspection, as well as the motions of the prosecutor, the accused, the counsel for the defence, the private accuser, substitute private accuser and the private party shall be described in the minutes in detail.

(2) The part of the testimony or expert opinion identical to that already included in the minutes of an earlier stage of the court procedure needs not be repeatedly recorded in the minutes, instead, reference shall be made to the minutes taken earlier.

(3) If the wording of an expression or statement is of significance, it shall be included in the minutes word-by-word. Upon a motion or ex officio, the court may order that a specific circumstance or statement be recorded in the minutes. If this is motioned by the prosecutor, the accused, the counsel for the defence, the private accuser, the substitute private accuser, the private party or the lawyer acting on behalf of the witness present, such recording may only be dispensed with, if the court has no knowledge of the existence of the circumstance, or of the fact that such expression, declaration or statement has been made.

(4) The decisions adopted in the course of the procedure – with the exception of the conclusive decision – may also be included in the minutes.

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[337] Section 250 (2) c) was established by Section 148 (1) of Act I of 2002.

[338] Section 250 (2) h) was established by Section 148 (1) of Act I of 2002.

[339] The second and third sentences of Section 250 (4) were enacted by Section 148 (2) of Act I of 2002 and Section 61 of Act II of 2003, respectively.

[340] Section 250 (5)–(7) was enacted by Section 148 (3) of Act I of 2002.

(5)[341] Trials scheduled for several days with the same measure and interrupted trials shall be recorded in the same (single) minutes, while separate minutes shall be taken in the case of adjourned trials. The minutes shall indicate that the trial continuous or repeated.

Section 252 (1) If the minutes are not taken simultaneously with the procedural action, or the procedure was recorded in accordance with subsection (3) below, the minutes shall be prepared within eight days following the procedural action at the latest. The notes of the trial made simultaneously with the procedural action shall be attached to the documents.

(2) The court may order that the entirety or a part of the procedure be recorded by shorthand, a video or audio recorder or other equipment. The court shall issue such order at the motion of the prosecutor, the accused, the counsel for the defence or the victim, provided that such motion is submitted in due time and the accused, the counsel for the defence or the victim simultaneously made an advance payment towards the costs.[342]

(3) The notes of the stenographer and other recording methods referred to in subsection (2) shall not substitute the minutes. The notes of the stenographer, the video or audio record or the recording made by other means shall be kept according to the provisions of a separate legal regulation.

(4) To the stenographer the provisions pertaining to the expert shall be applied.

(5)[343] If the verdict of acquittal of the court becomes final on the first instance, abridged minutes may be taken. The abridged minutes shall contain only the data specified in Section 250 (2) and the description of the court procedure according to Section 250 (3).

Section 253 (1) If the minutes have not been prepared within eight days, the presiding judge shall notify the prosecutor, the accused and the counsel for the defence of the date when the minutes will be ready.

(2)[344] Unless provided otherwise by this Act, at request, the documents produced in the course of the criminal proceedings – including the documents obtained by the prosecutor and investigating authority having proceeded in the case as well as the documents submitted or attached by the participants of the criminal proceedings – shall be made available by for reading at the official premises of the court to the prosecutor, the accused, the counsel for the defence and the victim.

(3) The fulfilment of the request made under subsection (2) may not jeopardise the continuity and the work of the court, and may not result in unlacing or damaging the laced documents. On the day of the trial and on the preceding working day, the request may only be fulfilled with the express permission of the presiding judge.

(4) At the request of a detained accused the presiding judge may permit the examination of the documents at the penal institution. Nevertheless, the provisions set forth in subparagraph (3) shall still apply.

(5)[345]

Section 254 (1)[346] Within fifteen days of the preparation of the minutes, the prosecutor, the accused, the counsel for the defence and the other parties having been present during the procedural action may motion for the supplementation or correction of the minutes. If

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[341] Section 251 (5) was enacted by Section 149 of Act I of 2002.
[342] Please refer to Decree No. 14/2003. (VI. 19.) IM of the Ministry of Justice.
[343] The first sentence of Section 252 (5) was established by Section 150 (1) of Act I of 2002.
[344] Section 253 (2) was established by Section 150 (2) of Act I of 2002.
[345] Pursuant to Section 308 (2) of Act I of 2002, Section 253 (5) shall be repealed and shall not enter into force.
[346] The second sentence of Section 254 (1) was established by Section 62 of Act II of 2003, and its third sentence was enacted by Section 151 (1) of Act I of 2002.

necessary, the court shall make the decision thereon after trial the persons who were present during the procedural action; upon rejecting the motion, reference thereto shall be made in the minutes. The presiding judge and the keeper of the minutes shall sign the supplementation and correction.

(2) In the event of an apparent confusion of names or numbers, or other clerical errors, the court may order the correction of the minutes both in response to a motion or ex officio.

Section 255[347] (1) Minutes shall be taken on the session of the panel, if the decision was not adopted unanimously. The preparation of the minutes shall be ordered by the presiding judge. The fact that minutes were taken on the deliberation of the court or a dissenting opinion was made in writing shall be indicated in the minutes of the trial at the time of announcing the decision at the latest.

(2) The minutes of the deliberation of the court and the documents attached thereto according to Section 256 (5) shall be filed among the documents in a closed envelope which may only be disclosed to the court proceeding in respect of the appeal, the court and the prosecutor proceeding in the extraordinary legal remedy procedure, the disciplinary court proceeding in the disciplinary procedure, or, if criminal proceedings are instituted, the court and the prosecutor proceeding in the criminal case.

(3) No copy may be issued of the minutes of the session and the draft decision of the court panel, or the dissenting opinion of the minority thereon.

Deliberation and voting

Section 256 (1) The panel of the court adopts its decision after deliberation by way of voting. If the voting is not unanimous, the vote of the majority shall prevail.

(2) If there are also associate judges on the court panel, prior to the voting, the presiding judge shall provide information concerning the type of decision that may be adopted, the legal regulations required for the decision, the types and extent of punishment and the measures.

(3)[348] Upon the delivery of a verdict, the panel with consideration to the facts established decides whether the accused is guilty, if so, in what criminal offence, then on the punishment or measure to be imposed as well as other provisions.

(4) Younger judges shall cast their vote prior to the senior ones, and the chairperson shall vote last. If the votes concerning the punishment or the measure to be imposed are not unanimous, the majority of votes shall be computed by combining the votes for the strictest legal consequence with those considered the nearest thereto.

(5) Those holding a minority opinion shall be entitled to attach their written dissenting opinion to the minutes taken on the session of the panel.

(6)[349] Both the deliberation and the voting shall be secret. In addition to the chairperson and members of the panel proceeding in the case, only the keeper of the minutes may be present both at the deliberation and the voting.

(7) Issues not affecting the merit of the case which arise in the course of the trial may be deliberated in low voice at the trial as well.

Decisions

Section 257 (1)[350] In the cases stipulated in this Act, the court shall deliver a verdict, while in other cases it shall adopt a decision. In the conclusive decision the court shall make

[347] The text of Section 255 was established by Section 152 of Act I of 2002.
[348] Section 256 (3) was established by Section 153 (1) of Act I of 2002.
[349] Section 256 (6) and (7) was enacted by Section 153 (2) of Act I of 2002.
[350] The second sentence of Section 257 (1) was enacted by Section 154 (1) of Act I of 2002.

a statement on the charges; in the legal adjudication of the case the court shall not be affected by motions.

(2) The court shall deliver its verdict and conclusive decision "IN THE NAME OF THE REPUBLIC OF HUNGARY".

(3) Unless provided otherwise by this Act, the decision shall consist of an introductory part, the disposition, the justification and the date.

(4)[351] The original copy of the decision and the disposition thereof put in writing prior to the announcement thereof shall be signed by all panel members. If the presiding judge or a member of the panel is prevented from signing the decision, it shall be signed – indicating their capacity as a substitute – a member or the chairperson of the panel having proceeded in the case. This provision shall not apply to signing the disposition part of the decision under Section 321 (1).

(5) The decision shall be announced by the presiding judge.

Section 258 (1) The introductory part of the verdict and conclusive decision shall indicate

a) the statement made according to Section 257 (2),

b) the name of the court and the place of the court procedure,

c) the date of the trial (if several trials have been held, the dates of all trials), the place and date of adopting the decision,

d) the form of the court procedure, and

e) whether the procedure was public.

(2) The disposition of the verdict and the conclusive decision shall contain

a) data regarding the pre-trial detention of the accused,

b) the name and personal data of the accused,

c)[352] a declaration of whether the accused was found guilty or having been acquitted of the charges, or that the court terminates the procedure,

d) the description of the criminal offence as well as of the form in which the offender committed the offence and the type of the offence,

e) the punishment or measure imposed and other legal consequences,

f) other provisions and

g) a provision on bearing the costs of the criminal proceedings.

(3) The justification of the verdict and the conclusive decision shall contain, in a running text

a)[353] reference to the charge, its legal classification according to the indictment, if required, the substance of the facts in the indictment,

b) facts established concerning the personal circumstances and data regarding the earlier punishments of the accused,

c) the facts established by the court,

d) the enumeration and evaluation of the evidence,

e)[354] the legal classification of the act according to the facts established by the court; upon the imposition or omission of a punishment or measure the justification thereof, indicating the applied legal regulations, and

f) reasons for the other provisions of the decision and the dismissal of the motions, indicating the applied legal regulations.

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[351] The third sentence of Section 257 (4) was enacted by Section 154 (2) of Act I of 2002.

[352] The second part of Section 258 (2) c) was enacted by Section 155 (1) of Act I of 2002.

[353] Section 258 (3) a) was established by Section 155 (2) of Act I of 2002.

[354] Section 258 (3) e) was established by Section 155 (2) of Act I of 2002.

(4)[355] The contents of decisions regarding custody, pre-trial detention, temporary involuntary treatment in a mental institution, home curfew and house arrest shall be governed by the provisions of subsections (1) *b)* to *d)* and (2) *a)* and *b)*.

Section 259 (1)[356] If the conclusive decision communicated by way of an announcement has not been appealed by either the prosecutor, or the accused, or the counsel for the defence, the justification of the decision may consist merely of the enumeration of the facts and the applied legal regulations. In the justification of a verdict of acquittal, the enumeration of facts may also be omitted. (Abridged justification.)

(2)[357] If the conclusive decision pertains to more than one persons accused, the justification related to the accused against whom the conclusive decision has become final in the first instance, may also be made in writing in the form specified in subsection (1).

Section 260 (1)[358] Interlocutory decisions – i.e. decisions merely establishing the course of actions after the commencement of the trial, without affecting the merit of the case – need not be justified. The reasons for dismissing the motion for evidence shall be described in detail in the conclusive decision.

(2) Unless provided otherwise in this Act, interlocutory decisions may not be appealed. The court may dispense with a decision regarding the consideration of appeals against the scheduling, postponement, adjournment of the trial, or against subpoenas or notifications related to the trial.

(3) Decisions included in the minutes have no introductory part and date.

(4)[359] Unless provided otherwise by this Act, decisions not recorded in the minutes shall be put in writing not later than within thirty days, or, if it requires longer justification, within sixty days of the adoption or announcement thereof. The day when the entire decision is put in writing shall be recorded on the original copy of the decision.

Section 261[360] (1) In the event of an apparent confusion of names or numbers, a computing error or other clerical errors, the court may order the correction of the decision both in response to a motion or ex officio. The decision on the correction may be appealed by the prosecutor and the party to whom either the decision or the correction pertains to; and, if it pertains to the accused by the a counsel for the defence as well.

(2) The correction shall be recorded both on the decision and the estreats. If the erroneous estreat has already been served prior to the correction of the decision, the corrective decision shall be served on those to whom the court has sent the erroneous estreat.

Section 262 (1)[361] The decisions shall be communicated to those whom it concerns; the decision communicated to the accused shall also be communicated to the counsel for the defence, and the conclusive decision to the victim as well. With the exception of decisions related to the conduct and maintenance of order of the trial, decisions shall also be notified to the prosecutor, while decisions pertaining to the transfer of the case, designation of a court and the suspension of the procedure shall be notified to the victim as well. Decisions

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[355] Section 258 (4) was enacted by Section 155 (3)of Act I of 2002.
[356] The third sentence of Section 259 (1), i.e. the sentence in parentheses, was enacted by Section 156 (1) of Act I of 2002.
[357] Section 259 (2) was established by Section 156 (2) of Act I of 2002.
[358] The first sentence of Section 260 (1) was established by Section 157 (1) of Act I of 2002.
[359] Section 260 (4) was enacted by Section 157 (2)of Act I of 2002.
[360] The text of Section 261 was established by Section 158 of Act I of 2002.
[361] The second sentence of Section 262 (1) was established by Section 159 (1) of Act I of 2002.

communicated to the victim and the other interested party may not contain personal data other than those of the victim and the accused.

(2) The decision shall be communicated verbally to those present; in other cases it shall be served on the parties concerned.

(3) During the announcement of the decision, the disposition shall be read out, the substance of the justification shall be made known and explained if required.

(4)[362] The estreat of the conclusive decision containing the justification as well shall be served on the prosecutor, the accused, the counsel for the defence and the victim even if they have been notified, either by way of an announcement or service, of the disposition of the decision; in other cases, the estreat of the decision containing the justification as well shall be served – if the decision was appealed by a party other than those listed above – to the appealing party.

(5) The parties on whom the decision or the notification of the contents of the decision shall be sent to – in addition to those listed in this section – are specified in a separate legal regulation.

(6) If the accused does not command the Hungarian language, after the announcement, the part of the verdict and conclusive decision pertaining to such accused shall be translated into the native, regional or minority language of the accused, or at request, into another language defined by the accused as a language spoken and formerly used in the proceedings, then served on the accused.

Chapter XII

PREPARATION OF A TRIAL

Communication of the indictment

Section 263 (1)[363] Within 15 days – or, in the event of cases having an extensive scope, within thirty days – of receipt of the files, the presiding judge establishes whether the provisions set forth in Section 264 to 271 may be applied.

(2) After the lapse of the deadline stipulated in subsection (1) above, the presiding judge shall forthwith send the indictment to the accused and the defence counsel; requesting both the accused and the defence counsel to state their means of evidence within fifteen days.

(3)[364] Concurrently with serving the indictment, the presiding judge shall advise the accused and the defence counsel, if the prosecutor intends to use the testimony of a specially protected witness as means of evidence, as well as their right to examine the abstract of the minutes containing the testimony of the specially protected witness and to file a motion for asking questions from the specially protected witness in writing and to terminate the specially protected status of the witness. The questions to the specially protected witness may not directly aim to reveal the identity and the place of stay of the specially protected witness.

Transfer

Section 264 If the court has no competence or jurisdiction to adjudicate the case, it shall transfer the case to the court of competence or jurisdiction.

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[362] Section 262 (4)–(6) was established by Section 159 (2) of Act I of 2002.
[363] Section 263 (1) was established by Section 160 (1) of Act I of 2002.
[364] Section 263 (3) was established by Section 160 (2) of Act I of 2002.

Consolidation and severance of cases

Section 265 (1)[365] The court shall decide on the consolidation or severance of cases either ex officio or ex officio or upon a motion (Section 72). The decision concerning consolidation of cases in process at various courts shall be made by the court having competence and jurisdiction for joint examination; should there be more than one such courts, the principle of preceding authority [Section 17 (2)] shall govern. The court shall send the case in process to the court entitled to make a decision concerning the consolidation for consideration.

(2)[366] Upon the commencement of another procedure against a person on probation, due to a criminal offence committed during the probation period or upon the commencement of a procedure against such person during the probation period due to a criminal offence committed prior to the probation period, the cases shall be consolidated and processed by the court having competence and jurisdiction for adjudicated the later case. If the accused was placed on probation by court martial, the cases shall be consolidated by the court having conducted the court martial procedure, unless it was put into effect due to reasons enumerated in Section 470 (3).

(3) The fact that the accused had formerly been placed on probation in a case based on private accusation shall not be an obstacle to consolidation, however, in the new criminal proceedings, the prosecutor, substitute private accuser or another private accuser shall represent the prosecution. If the accused had been put on probation in a case based on public accusation, and the new criminal proceedings are initiated based on private accusation, the cases may be consolidated provided that the prosecutor has taken over the representation of the prosecution from the private accuser. In such a case, the court shall forward the documents of the case to the prosecutor to consider taking over the representation of the prosecution. This restriction shall not apply if in the new case prosecution is represented by a substitute private accuser.

(4) [367] If the court does not establish the guilt of the accused in the new procedure, the consolidated cases shall be severed once again.

(5) Section 175 (7) shall also govern in the case of the court procedures.

(6)[368] The provisions of paragraphs (1) to (4) shall be applied as appropriate if, pursuant to Section 266 (6), the court suspended the criminal proceedings launched formerly against the suspect, but the prosecutor filed a new indictment against the accused due to drug abuse [Section 266 (7)].

Suspension of the procedure

Section 266 (1)[369] The court shall

a) suspend the procedure for reasons specified in Section 188 (1) *a), b)* and *d)*-g*),*

b) suspend the procedure ex officio or upon a motion and initiate the procedure of the Court of Constitution, if the adjudication of the case involves the application of such legal regulation or other means of state governance which are found contrary to the Constitution,

c)[370] suspend the procedure ex officio or upon a motion, if the preparatory inquiry of the European Union is initiated according to the rules set forth in the Treaty establishing the

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[365] The second and third sentences of Section 265 (1) were enacted by Section 161 (1) of Act I of 2002, and the text of the second sentence was established by Section 63 (1) of Act II of 2003.

[366] Section 265 (2) and (3) was established by Section 161 (2)of Act I of 2002.

[367] Section 265 (4) and (5) was enacted by Section 161 (3) of Act I of 2002.

[368] Section 265 (6) was enacted by Section 63 (2) of Act II of 2003.

[369] Section 266 (1) was established by Section 64 (1) of Act II of 2003.

[370] Section 266 (1) c) was enacted by Section 6 of Act XXX of 2003. This provision shall enter into force on the day when the act on the promulgation of the international treaty on Hungary's accession to the European Union enters into force, and shall also apply to to cases in progress at that time. Please also refer to Government

European Union or the Treaty establishing the European Community. In its decision the court specifies the question requiring the preliminary ruling of the European Court of Justice and – to the extent required for answering the question – describes the facts and the Hungarian legal regulations concerned. The decision shall be sent to the European Court of Justice, as well as for the information of the Ministry of Justice.

(2) The court shall also suspend the procedure in the absence of the report required to launch the procedure [Section 236 (1) and Section 240 of the Penal Code]. The procedure may only be suspended up to the final conclusion of the base case.

(3)[371] The court may suspend the procedure, if

a) the accused is abroad for a longer time period,

b) **requested the prosecutor to search for means of evidence or complete an insufficient indictment [Section 268 (1)].**

(4) If the court does not deem the measure set forth in subsection (3) *a)* justified and the place of stay of the accused abroad is known, the court may issue a warrant of arrest and initiate a procedure for the extradition of the accused. Should the extradition of the accused be denied or not possible, the court – if the conditions are met – may initiate the transfer of the criminal proceedings.

(5)[372] The court shall resume the procedure if the reason for suspending the procedure has ceased, or upon suspension pursuant to Section 188 (1) *g)*, if the act promulgating the charter of the international criminal court or the act on the execution of the obligations arising from such charter provides so.

(6)[373] If the procedure may be terminated due to an element terminating punishability stipulated in Section 283 of the Penal Code and the prosecutor did not postpone the indictment under Section 222 (2), the court shall suspend the procedure for a period of one year, provided that the drug user accused agrees to undergo a treatment for drug addiction or other therapeutic process treating drug users or to participate in preventive education.

(7)[374] The procedure shall be resumed if the suspect fails to verify that within one year following the suspension he has participated in a treatment for drug addiction, other therapeutic process treating drug users or preventive education for a period of at least six successive months, or the prosecutor filed a new indictment against the accused due to drug abuse.

(8) Unless the prosecutor postponed the filing of the indictment pursuant to Section 222 (3), procedures launched due to non-payment of alimony (Section 196 of the Penal Code) may be suspended by the court for a maximum of one year, if this may result in meeting

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Resolution No. 2088/2003. (V. 15.) Korm. on the declaration pertaining to the preliminary inquiry procedure of the European Court of Justice.

[371] Section 266 (3) and (4) was established by Section 64 (2) of Act II of 2003.

[372] Section 266 (5) was established by Section 64 (3) of Act II of 2003.

[373] Section 266 (6) was established by Section 64 (4) of Act II of 2003.

[374] Section 266 (7) was enacted by Section 162 (4) of Act I of 2002, which concurrently amended the original numbering of subsection (7) to subsection (8). The text of the subsection was established by Section 64 (4) of Act II of 2003.

the defaulted obligation. The procedure shall be resumed prior to the lapse of the deadline if the accused still fails to fulfil his obligation to pay alimony.

(9)[375] The procedure may be suspended by the court secretary for the reasons listed in subsections (1) *a)* and (2).

Termination of the procedure

Section 267 (1) The court may terminate the procedure,

a) if the action charged in the indictment does not constitute a criminal offence,

b) if the accused is a minor,

c)[376] due to death, statutory limitation or pardon of the accused or the existence of other elements precluding punishability stipulated by law,

d) if the action charged in the indictment has already been adjudicated by a final decision, including the case specified in Section 6 of the Penal Code,

e) if there is no private motion, request or complaint and they cannot be subsequently submitted,

f) if the prosecutor has dropped the charge and substitute private accusation cannot be applied,

g)[377] due to a criminal offence having no significance for the purpose of liability as opposed to the graver criminal offence contained in the indictment,

h) and shall reprimand the accused (Section 71 of the Penal Code) if the criminal offence no longer poses a danger or poses only a marginal danger to the society and therefore, even the mildest punishment or other measure permitted by law is unnecessary,

i)[378] if the procedure has been suspended pursuant to Section 266 (6) or (8) and the accused that he has participated in a treatment for drug addiction, other therapeutic process treating drug users or preventive education for a period of at least six successive months, or, if the person accused of the misdemeanour of non-payment of alimony, has performed his obligation.

(2) The court shall advise the private party of the termination of the procedure as well as of his right to enforce his civil claim by way of other legal means.

(3) If, upon dropping the charges, substitute private accusation may be lodged, the court shall serve on the victim the statement of the prosecutor on dropping the charges. If the victim fails to stand as a substitute private accuser within thirty days, the court shall terminate the procedure. No justification may be admitted for defaulting this deadline. If the victim wishes to act as a substitute private accuser, the motion for prosecution shall be submitted to the court.

(4) The fact that the statement of the prosecutor on dropping the charges could not be served on an absconding victim shall not prevent the termination of the procedure.

(5) Upon a substitute private accusation, the provisions stipulated in Section 229 (2), Section 230, Section 231 and Section 233 shall apply as appropriate.

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[375] Section 266 (9) was enacted by Section 162 (5) of Act I of 2002, and its text established by Section 64 (5) of Act II of 2003.

[376] Section 267 (1) c) and d) was established by Section 65 (1) of Act II of 2003.

[377] Section 267 (1) g) and h) was enacted by Section 163 of Act I of 2002.

[378] Section 267 (1) i) was enacted by Section 65 (2) of Act II of 2003.

Measure to perform a procedural action

Section 268 (1) [379] The court, ex officio or at the motion of the persons participating in the procedure shall arrange the availability of the means of evidence at the trial. To this end, it may contact the prosecutor – by setting a deadline and if necessary, suspending the procedure – and may also order that opinion of the probation officer be obtained. The prosecutor may also be contacted to search for means of evidence or to complete the insufficient indictment.

(2)[380] If the prosecutor intends to use the testimony of a specially protected witness as evidence in the court procedure, the presiding judge shall obtain from the investigating judge the minutes taken at the examination of such specially protected witness and the decision adopted under Section 207 (2) *d)*. The minutes and the decision adopted under Section 207 (2) *d)* may only be examined by the members of the court and no copy may be issued thereof.

(3)[381] If the accused, his defence counsel or the prosecutor filed a motion to ask questions from a specially protected witness [Section 263 (3)], or the presiding judge asks questions from a specially protected witness, simultaneously with returning the minutes on the testimony of the specially protected witness and the decision adopted pursuant to Section 207 (2) *d)*, the court orders the repeated questioning – of the specially protected witness by the investigating judge, who shall put the questions asked by the accused, his defence counsel or the prosecutor. The hearing shall be governed by the provisions of Section 213 (2) and (4).

Decision on coercive measures

Section 269 (1) The court decides on the maintenance, order or termination of a coercive measure entailing the restriction or deprival of personal freedom at the motion of the prosecutor [Section 218 (1)] or ex officio.

(2) The coercive measures maintained or ordered by the court ordering the transfer of the case shall remain effective until the decision of the transferee court adopted in the course of preparing the trial.

Option to reclassify the charge

Section 270[382] (1) The court may reclassify the charge contained in the indictment. At that time, the court may also decide on the transfer, consolidation, severance of the cases as well as on the suspension or termination of the procedure.

(2) If the court establishes that the charge contained in the indictment is a criminal offence which may only be prosecuted based on a private accusation, the statement of the prosecutor on taking over the accusation need not be obtained.

Transfer to a five-member panel

Section 271 The county court may order that the case be tried by a panel consisting of two professional judges and three associate judges, if

a) this is justified by the large number of the persons accused or the exceptionally extensive scope of the case,

b) the criminal offence is punishable by life imprisonment by law.

The preliminary hearing

Section 272 (1) If prior to the adoption of a decision in issues examined in the course of the preparation for the trial it appears necessary to hear the prosecutor or the accused, the

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[379] The first and third sentences of Section 268 (1) was established by Section 164 of Act I of 2002, and its second sentence was established by Section 66 (1) of Act II of 2003.

[380] The second sentence of Section 268 (2) was established by Section 66 (2) of Act II of 2003.

[381] The text of Section 268 (3) was established by Section 164 of Act I of 2002.

[382] The text of Section 270 was established by Section 165 of Act I of 2002.

court shall hold meeting within thirty days after the lapse of the deadline specified in Section 263 (1).

(2)[383] The preparatory hearing is obligatory if the court decides on an order of pre-trial detention, home curfew, house arrest or temporary involuntary treatment in a mental institution, or when the accused or his defence counsel has motioned for the termination of the specially protected status of a witness.

(3) The presiding judge shall notify the prosecutor, the accused and the defence counsel of the date of the preparatory hearing; in the case of subsection (2) and if the accused needs to be heard for another reason, the presiding judge shall summon the accused and – if defence is statutory – the counsel for the defence.

(4) The preparatory hearing may not be held in the absence of the prosecutor, and the summoned accused and defence counsel, unless its subject is an order for pre-trial detention, home curfew, house arrest or temporary involuntary treatment in a mental institution.

(5) At the preparatory hearing the presiding judge presents the case, and the members of the panel, the prosecutor, the accused and the counsel for the defence may motion for the presentation of additional documents.

(6) The presiding judge and the members of the panel may ask questions from the prosecutor and the accused. The accused may also be questioned by the prosecutor and the counsel for the defence, while the accused and the counsel for the defence may motion for asking questions from the prosecutor.

(7)[384] If the accused or the counsel for the defence names or unambiguously identifies the specially protected witness in any other way, the court shall terminate the specially protected status of the witness. In such a case, the witness shall be summoned and questioned according to the general rules; if necessary, the presiding judge may – ex officio or upon a motion – initiate another form of witness protection.

Scope of authority of the court

Section 273 (1)[385] It is either the court panel or the presiding judge that acts in the course of preparation of a trial.

(2) In the issues examined in the course of preparation of a trial, the court shall adopt a decision prior to the lapse of the deadline set forth in Section 263 (1) unless the hearing under Section 272 appears necessary.

(3) It shall fall in the scope of authority of the court panel to adopt a decision on the termination of the procedure and coercive measures entailing the deprival or restriction of personal freedom.

(4)[386] The court panel shall be entitled to decide on all issues which otherwise fall within the scope of authority of the presiding judge.

Scope of authority of the presiding judge

Section 274[387] (1) The presiding judge shall decide on all issues which do not fall within the scope of authority of the court panel under Section 273 (3) and which were not decided by the court panel pursuant to Section 273 (4).

(2) If the court reprimanded the accused in his absence (Section 71 of the Penal Code), the reprimand shall be effected by the presiding judge.

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[383] Section 272 (2)–(4) was established by Section 166 (1) of Act I of 2002.
[384] Section 272 (7) was enacted by Section 166 (2) of Act I of 2002.
[385] Section 273 (1) was established by Section 167 (1) of Act I of 2002.
[386] Section 273 (4) was established by Section 167 (2) of Act I of 2002.
[387] The text of Section 274 was established by Section 168 of Act I of 2002.

Decision after the preparation of the trial

Section 275 (1) After the completion of the preparation of the trial, and setting the date of the trial, issues regulated in a Sections 267 and 269 shall be decided upon by the court at a panel meeting, while issues regulated in Sections 264, 265, 266, 268, 270 and 271 shall be decided upon by the presiding judge.

(2) The presiding judge may postpone the set trial for an important reason. Upon the hindrance of the defence counsel, the trial may be postponed if the accused does not give a power of attorney to another defence counsel, or it is not practicable to appoint another defence counsel, or if the new defence counsel cannot prepare for the defence until the trial due to shortage of time.

Preclusion of legal remedy during the preparation of a trial

Section 276 (1) No appeal may be lodged against

a) the setting and postponement of the trial,

b) the summons to the preparatory hearing and the trial and the notification of the trial,

c)[388] the suspension of the procedure pursuant to Section 188 (1) *a)* or Section 266 (3),

d) the option of reclassification compared to the indictment,

e) reference to the five-member panel or the refusal thereof,

f) termination of the procedure pursuant to Section 267 (1) *f)*,

g) the rejection of the statement on legal remedy made after the acknowledgement of a decision, and

h)[389] the measures of the court specified in Section 268 (1) to (3).

(2) The court may omit the adoption of a decision concerning the consideration of an appeal against decisions listed under subsection (1).

(3) The court may omit the decision concerning the consideration of motions for an appeal against final decisions.

(4)[390] Even though the reprimand received by the accused from the court(Section 71 of the Penal Code) cannot be appealed, within eight days after the communication of the decision, the prosecutor, the accused and the defence counsel thereof may request that a trial be held. Based on the request, the court shall hold a trial. The summons shall be served on the accused five days prior to the trial at the latest.

Scope of authority of the single judge

Section 277 If the local court that acts as a single judge in a case, the decisions falling within the authority of both the court panel and the presiding judge under this Chapter shall be adopted by the single judge.

Setting the trial

Section 278 (1) After the notification of the indictment, the presiding judge establishes the date of the trial, and makes arrangements for the trial, summons and notices.

(2) As a rule, the trial shall be conducted in the official premises of the court. If deemed justified, the court may order another location.

(3) The date of the trial shall be set – taking into consideration the order of arrival of the cases and the order concerning the priority handling of the case – at the closest possible day allowing the court to conclude the case without adjournment.

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[388] Section 276 (1) c) was established by Section 169 (1) of Act I of 2002.
[389] Section 276 (1) h) was established by Section 169 (1) of Act I of 2002.
[390] Section 276 (4) was enacted by Section 169 (2) of Act I of 2002.

Summons and notification

Section 279 (1) The accused, the counsel for the defence (in the case of statutory defence) and all other persons whose presence at the trial is obligatory shall be summoned to attend on the date set. Notification shall be sent to the prosecutor and – unless an exception is provided by this Act – the expert and other persons participating in the criminal proceedings whose presence at the trial is allowed by this Act. If the prosecutor filed a motion to terminate the parental right of custody of the accused, the other parent and the child welfare agency shall also be advised of the trial.

(2) In the summons or notification, the persons participating in the criminal proceedings shall be requested to submit their motions for evidence without delay, prior to the trial. The presiding judge shall arrange for the availability of the means of evidence required for the adjudication of the case at the trial.

(3) The summons shall be served on the accused at least five days prior to the trial.

Section 280 (1) If the witness is a minor under fourteen years of age and he has been heard by the court in the course of the investigation [Section 207 (4)], he may not be summoned to the trial. If such witness has reached the age of fourteen at the time of the trial, he may be summoned to the trial in exceptionally justified cases.

(2) The specially protected witness (Section 97) may not be summoned to the trial.

Chapter XIII

TRIAL OF THE COURT OF FIRST INSTANCE

Title I

COURSE OF EVENTS AT THE TRIAL

Opening the trial

Section 281 (1) The trial is opened by the presiding judge by enumerating the charges in the indictment, requesting the audience to maintain silence and order and warning them of the consequences of disturbing order. The presiding judge states the names of the members of the court, the keeper of the minutes, the prosecutor and the counsel for the defence. The presiding judge records those attending the trial then, depending on whether those summoned and notified are present, establishes whether the trial can be held.

(2) If the duly summoned accused or witness fails to attend, where it is feasible, the presiding judge arranges that they be taken to the court without delay, and also requests the absent prosecutor or expert to appear at the trial; the request to the prosecutor shall be sent through the head of the prosecutor's office.

(3) If the summoned defence counsel does not attend, the accused may assign another defence counsel or – if the presence of the defence counsel at the trial is statutory – another defence counsel shall be appointed. The new defence counsel shall be allowed sufficient time to prepare for the defence. If this is not feasible without delay, the trial shall be postponed at the cost of the defence counsel who has failed to attend.

(4)[391] The trial may be held in the absence of the accused, if the procedure pertains to ordering temporary involuntary treatment in a mental institution, and due to his health condition he is unable to attend the trial or exercise his rights.

[391] Section 281 (4)–(6) was established by Section 170 (1) of Act I of 2002.

(5) If the measure of the presiding judge set forth in subsection (2) is not feasible or failed to bring result, the trial may also be held in the absence of the duly summoned accused who has failed to attend and is at liberty, however, the evidentiary procedure – with the exception of the case specified in subsection (9) below – may not be concluded.

(6) Under the conditions stipulated in subsection (5), if the provisions of subsection (9) cannot be applied, after questioning and hearing those present the trial shall be adjourned and a bench warrant be issued to take the non-attending accused to court on the next date of the trial. If such bench warrant has already been issued in the course of the court procedure due to the non-attendance of the accused, in the case of a criminal offence punishable by imprisonment, a warrant of arrest shall be issued or pre-trial detention ordered. For the accused having no counsel for the defence, one shall be appointed.

(7)[392] If the accused cannot be arrested on a bench warrant on the new date of the trial because he left for an unknown location from his place of residence or if the accused could not be taken to court under the warrant of arrest until the new date of the trial, the court shall establish that the accused is absconding and thereafter act in compliance with the provisions of Chapter XXIV.

(8) If the accused is present at the trial set pursuant to subsection (6), the minutes of the trial having been held in his absence shall be read out after questioning the accused. If required, the court may order to summon witnesses and experts who had already been questioned and heard and to repeatedly question and hear them in the presence of the accused, further, the court may require a written testimony of such witnesses [Section 85 (5) and (6)].

(9) The court may acquit the accused or terminate the criminal proceedings against him in his absence; the notification of the related decision indicating also the clause in the purview concerning the right of appeal (324-Section 325) shall be served on the accused and the defence counsel.

Section 282 (1) If the trial can take place in the absence of a person not attending, the court shall decide on the commencement of the trial after hearing the prosecutor, the accused and the counsel for the defence.

(2) If there is no obstacle to holding the trial, the presiding judge shall request the witnesses – with the exception of the victim – to leave the court room. The presiding judge shall advise such persons of the consequences of unjustified leave. The expert shall only be required to leave if this is deemed necessary by the court, otherwise the expert may be present at the trial from the commencement thereof.

(3)[393] It is not necessary to postpone the trial if the notification period was not kept [Section 279 (3)] provided that the accused and the counsel for the defence unanimously request that the trial be held. If defence is not statutory and the assigned defence counsel fails to attend the trial, the trial needs not be postponed unless requested so by the accused.

(4) If there is an obstacle to holding the trial, the court shall postpone it.

Section 283 (1) Prior to the commencement of the trial, the prosecutor, the accused, the counsel for the defence and the victim

a) may initiate the transfer, consolidation or severance of the case(s),

b) may initiate the exclusion of the presiding judge, a member of the court or the keeper of the minutes, and

c) may indicate other circumstances which hinder the holding of the trial or need to be taken into consideration prior to the commencement of the trial.

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[392] Section 281 (7)–(9) was enacted by Section 170 (2) of Act I of 2002.

[393] Section 282 (3) was enacted by Section 171 of Act I of 2002, which concurrently amended the original numbering of subsection (3) to subsection (4).

(2) Prior to the commencement of the trial, the accused, the counsel for the defence and the victim may motion for the exclusion of the prosecutor.

Commencement of the trial

Section 284 (1) If the presiding judge establishes that there is no obstacle to holding the trial and the witness and expert has left the court room [Section 282 (2)], the court shall commence with the trial.

(2) At the request of the presiding judge

a) the prosecutor shall present the charge,

b)[394] the victim and his representative present shall state whether they intend to enforce a civil claim; if so, the presiding judge shall request the victim to describe his claim and – if the victim has no representative – advise him of the provisions in Section 54 (7); and thereafter,

c) the victim to be questioned as a witness shall leave the court room.

Order of taking evidence [395]

Section 285 (1) In the course of the evidentiary procedure the prosecutor, the accused, the counsel for the defence, the victim, the private party, and in the issues of his concern, the other interested party may make motions and observations.

(2) The evidentiary actions initiated by the prosecutor, the accused and the counsel for the defence and the order thereof shall be decided upon by the presiding judge, taking into consideration the motions of the prosecutor, the accused and the counsel for the defence.

(3) The rejection of the motion for evidence may not be appealed, only contested in an appeal against the conclusive decision.

(4) As a rule, evidence motioned for by the prosecutor shall precede the taking of evidence initiated by the accused and the counsel for the defence.

Section 286 (1) The evidentiary procedure shall start with the questioning of the accused.

(2) Generally, from among the witnesses, the victim shall be questioned first.

(3) When the accused and the witness have been questioned and the expert heard, they may be required to answer the questions of – in addition to the court members – the prosecutor, the accused, the counsel for the defence, the victim, the private party, and in issues of his concern, by the other interested party and the expert.

Continuity of the trial

Section 287 (1) If practicable, the court shall not interrupt an already commenced trial. If required due to the scope of the case or for other reasons, the presiding judge may interrupt the already commenced trial for maximum eight days, and the court – to complement evidence or for other important reason – may adjourn the trial.

(2) In the case stipulated in subsection (1) above, the date of resuming the trial shall be set, unless considering the reason for the adjournment the resumption of the trial within six months does not seem practicable.

(3) Within six months, the trial may be resumed without repetition, unless the composition of the panel has changed; otherwise the trial shall be recommenced anew.

(4) Within six months, the trial may be repeated by presenting the documents of the case, if the person of the professional judge has not changed in the court panel. After the presentation of the documents of the case, the prosecutor, the accused and the counsel for the defence shall be advised that they may make observations on, and request the

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[394] The text of Section 284 (2) b) was established by Section 172 of Act I of 2002.

[395] The subtitles preceding Sections 285, 287, 288, 291, 292, 295 and 296, as well as Sections 285–297 were established by Section 173 of Act I of 2002.

supplementation of the presentation. The advice and the observations shall be entered in the minutes.

(5) Adjourned trial shall be resumed by presenting the minutes taken at the latest session of the trial, if the interruption has lasted for more than eight days and the prosecutor, the accused or the counsel for the defence motions for such presentation. After the presentation of the minutes, the prosecutor, the accused and the counsel for the defence shall be advised that they may make observations on, and request the supplementation of the presentation.

Questioning the accused

Section 288 (1) As a rule, the accused shall be questioned in the absence of the other accused who have not been questioned as yet.

(2) At the motion of the prosecutor, the accused or the counsel for the defence or ex officio, for the duration of questioning the accused, the presiding judge may order the other accused to leave the court room if the presence of the latter disturbed the accused in the course of the questioning.

(3)[396] The presiding judge establishes the identity and the personal data listed in Section 117 (1) of the accused, asks whether the accused has understood the charges and if not, he shall explain the charges. Thereafter, the accused shall be granted the opportunity to briefly summarise his position concerning the charges. The accused or his defence counsel – if they deem this necessary – may also mention the type of evidentiary procedure they intend to motion for in the interest of the defence.

(4)[397] If the accused does not avail himself to the opportunity specified in subsection (3), or his statement is unclear in this regard, the presiding judge shall ask the accused whether he admits his criminal liability.

Section 289 (1) The questioning of the accused shall be governed by the provisions set forth in Section 117 (2) to (5) and Section 118, with the exceptions stipulated in subsection (2).

(2) In addition to those stipulated in Section 117 (2), the presiding judge shall advise the accused that he may ask questions from those questioned in the course of the evidentiary procedure, and may also make motions and observations. The accused shall also be warned that failure of testimony shall be subject to reading out his earlier testimony made as a defendant.

(3) Unless this disturbs the order of the trial, the accused may also consult with his counsel for the defence during the trial, however, during his questioning this shall be subject to the permission of the presiding judge.

Section 290 (1) If the accused wishes to make a testimony after the warning set forth in Section 289 (2), he may present his testimony concerning the charges as a comprehensive whole, including his defence. Thereafter, the presiding judge, then the persons listed in Section 286 (3) – in the order stipulated therein – may ask questions from the accused.

(2) The presiding judge shall ensure that the method of questioning does not injure the human dignity of the accused.

[396] Section 288 (3) was established by Section 67 (1) of Act II of 2003.
[397] Section 288 (4) was enacted by Section 67 (2) of Act II of 2003.

(3) If the question may influence the accused, suggests the reply, irrelevant, has been asked by an unauthorised person, injures the dignity of the trial, or is repeatedly directed to the same fact, the presiding judge may prohibit the reply.

Reading out and presenting the earlier testimony of the accused

Section 291 (1) If the accused does not wish to make a testimony at the trial, and in the case of Section 281 (5) or of an absconding accused, at the motion of the prosecutor, the accused or the counsel for the defence or ex officio, the presiding judge shall either read the testimony of the accused given in the course of the investigation or have it read out by the keeper of the minutes.

(2) If the accused had been questioned as a witness in the course of the investigation, the testimony may only be read out if it is motioned by the accused, or the minutes taken on the testimony clearly indicates the warning and advice specified in Section 85 (3), as well as the reply thereto.

(3) The testimony of the accused given in other criminal proceedings as a suspect or accused may only be read out if the minutes taken on the testimony clearly indicates the warning and advice specified in Section 117 (2), as well as the reply thereto.

(4) At the motion of the prosecutor or the counsel for the defence, or ex officio, the presiding judge may also present parts of the earlier testimonies – i.e. those given in the course of the proceedings as a suspect or accused – of the accused, if the accused has changed his testimony in the meantime.

(5) Parts of the earlier testimony may only be presented, if the accused has been asked about facts and circumstances contained in the presentation, or the accused has given a testimony concerning such facts and circumstances. The presiding judge shall ensure that the extent of the presentation is sufficient to establish the facts of the case.

Questioning the witness

Section 292 (1) The witness shall be questioned in the absence of the other witnesses who have not been questioned as yet. Derogation from this provision is permitted in the case of questioning the victim as a witness.

(2) At the motion of the prosecutor, the accused or the counsel for the defence, or ex officio, for the duration of questioning, the presiding judge may order the accused whose presence may disturb the witness in the course of the questioning to leave the court room.

Section 293 (1) When commencing the questioning of the witness, the presiding judge shall act in compliance with the provisions of Section 85 (2) and (3), then, if there is no obstacle to the testimony, the presiding judge shall question the witness, taking heed of the provisions stipulated in Section 88. At the commencement of the questioning, a victim to be questioned as a witness may also make the statement described in Section 284 (2) *b)*, unless he had already made such a statement earlier.

(2) To the questioning of the witness, the provisions set forth in Section 290 (2) and (3) shall be applied as appropriate.

Section 294 Specially protected witnesses may not be questioned at the trial. If the witness was questioned pursuant to Section 207 (4), he may also be questioned if he has reached the age of fourteen at the time of the trial, and his questioning at the trial is exceptionally justified.

Questioning of the witness by the prosecutor, the accused or the counsel for the defence

Section 295 (1) At the motion of the prosecutor, the accused or the counsel for the defence, the presiding judge may permit the questioning of the witness first by the prosecutor

and the counsel for the defence. In such a case, to the questioning of the witness the provisions of Section 293 shall be applied, with the following derogation:

a) if the questioning of the witness has been motioned for by the prosecutor, the witness shall first be questioned by the prosecutor, then answer to the questions of the accused and the counsel for the defence, and finally, may motion for asking questions,

b) if the questioning of the witness has been motioned for by the accused or the counsel for the defence, the witness shall first be questioned by the accused or the counsel for the defence, then answer to the questions of the prosecutor, and finally, may motion for asking questions,

c) in the next step, that party may ask further questions from the witness who had motioned for questioning the witness, but they may only concern facts and circumstances that have arisen as a result of the questions of the other party,

d) the presiding judge and the court members may ask questions from the witness both after the conclusion of the questioning and after a reply to any of the questions.

(2) If any of the parties asking questions repeatedly violates the provisions Section 290 (3) the presiding judge shall deprive that party from the right of questioning.

(3)[398] The rejection of the motion specified in subsection (1) may not be appealed, only contested in an appeal against the conclusive decision.

Reading out and presenting the earlier testimony of the witness

Section 296 (1) At the motion of the prosecutor, the accused or the counsel for the defence or ex officio, the presiding judge shall either read the testimony of the witness given in the course of the investigation or have it read out by the keeper of the minutes, in the following cases:

a) the witness cannot be questioned at the trial, or his attendance would pose unreasonable difficulties due to his state of health, or would not be possible owing to his long term stay abroad,

b) the witness unlawfully refuses to give testimony at the trial,

c) the trial has to be recommenced pursuant to Section 287 (3),

d) the witness gave a written testimony pursuant to Section 85 (5) and (6) and the court does not deem his questioning at the trial necessary,

e) the court requested a written testimony from the witness pursuant to Section 281 (8).

(2) If the witness exercises his right of exemption at the trial, his earlier testimony may not be read out.

(3) If the person to be questioned at the trial had been questioned as a suspect or accused in the earlier stage of the procedure, his earlier testimony or testimony part subject to the right to exemption granted in Section 82 (1) may only be read out with his consent.

Section 297 (1) At the motion of the prosecutor, the accused or the counsel for the defence, or ex officio, the presiding judge may present parts of the earlier testimony of the witness, if the witness cannot reckon the events or there is a contradiction in his testimonies given at the trial and earlier. The presentation – subject to the provisions set forth in Section 296 (3) – may also extend to the testimony of the witness given in the former stages of the procedure or in another procedure as a suspect or accused.

(2) Parts of the earlier testimony may only be presented, if the witness has been asked about facts and circumstances contained in the presentation, or the witness has given a

[398] Section 295 (3) was enacted by Section 68 of Act II of 2003.

testimony concerning such facts and circumstances. The presiding judge shall ensure that the extent of the presentation is sufficient to establish the facts of the case.

Hearing the expert

Section 298 (1) After giving the warning specified in Section 110 (1), the expert shall be heard by applying, as appropriate, the rules pertaining to the questioning of the witness.

(2) In the course of the hearing, the expert may use his written expert opinion or notes and may also use audio-visual aid.

Reading out the expert opinion

Section 299[399] (1) If the expert fails to attend the trial despite notification, or the court did not notify the expert pursuant to Section 108 (6), the presiding judge shall read out, or has the keeper of the minutes read out the expert opinion having been submitted in writing. Should the hearing of the expert be necessary under Section 109 after reading out the expert opinion, the trial shall be adjourned and the expert be summoned to the set trial.

(2) If the expert fails to attend the trial despite the summons, the court – ex officio or upon a motion – may permit that the expert opinion submitted in writing be read out. Should the prosecutor, the accused, the counsel for the defence, the victim or the private party wish to ask questions after the expert opinion has been read out, the trial shall be adjourned and the expert be summoned again to the set trial.

(3) In addition to the cases mentioned in subsections (1) and (2), the expert opinion may also be read out, if the expert has already been heard at the trial, but the trial shall be recommenced once again pursuant to Section 287 (3).

Assignment of an expert at the trial

Section 300 If the assignment of the expert becomes necessary at the trial, the presiding judge shall immediately summon him to the trial. If this is not feasible, the court shall adjourn the trial and set a deadline for preparing an expert opinion.

Reading out documents and other papers

Section 301 (1) The presiding judge disposes of reading out the documents and the papers used as means of evidence at the trial.

(2) The report of the investigating authority may be read out as a document.

(3) Upon the unanimous motion of the prosecutor, the counsel for the defence and the accused, the presiding judge may permit that instead of reading out a document, only its gist be presented or indicated.

(4)[400] Papers submitted at the trial shall be attached to the minutes of the trial by the presiding judge.

Using audio and video recordings taken at the procedural action

Section 302 (1) The presiding judge may have the records made by an audio or video recorder or other equipment at the procedural action presented at the trial, either ex officio or at the motion of the prosecutor, the accused or the counsel for the defence.

(2) If the recordings referred to in subsection (1) were taken at the questioning of the suspect or the witness, the presentation shall be governed by the provisions of Section 291 to 292 and Sections 296 to 297.

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[399] The text of Section 299 was established by Section 174 of Act I of 2002.

[400] Section 301 (4) was enacted by Section 175 of Act I of 2002.

Judicial inspection

Section 303 (1) At the trial, physical evidence shall be exhibited by the presiding judge. if this is not practicable, a photo of the physical evidence shall be shown and its description be given.

(2) In the course of the trial, the court shall – ex officio or upon a motion – conduct an inspection.

(3) The judicial inspection shall be conducted by the court or a delegated member thereof.

Evidentiary actions by way of a delegated or requested judge

Section 304 (1) If taking evidence is not feasible at the trial, or poses extraordinary difficulties, the court shall delegate its professional judge member (delegated judge) or – if required – request another court (requested court). The prosecutor, the accused and the defence counsel thereof, as well as the victim shall be notified if evidence is taken.

(2)[401] The requested court shall be informed of the name and residence of the accused, the counsel for the defence and the victim, the facts to be elucidated by taking evidence, the name and residence of the persons to be questioned and the circumstances concerning which they should be questioned. The papers or the copies thereof which are required to fulfil the request shall be forwarded to the requested court.

(3) The requested court shall fulfil the request within thirty days. If the requested court does not fulfil the request within thirty days, it shall inform the requesting court of the obstacle to the fulfilment. If the fulfilment of the request partially falls within the jurisdiction of another court, the requested court – after taking the evidence falling within its own jurisdiction – shall transmit the papers to the other court, informing thereof the requesting court.

(4) The minutes taken during the procedure of the delegated and requested courts shall be read out at the trial.

(5)[402] The accused, the counsel for the defence and the victim shall not be notified, if their presence resulted in their learning of the data of the witness handled confidentially pursuant to Section 96. The accused and the counsel for the defence need not be notified when evidence is taken from a witness under fourteen years of age [Section 280 (1)].

Supplementary evidentiary action

Section 305[403] (1) If the court deems the results of the evidentiary procedure insufficient and more thorough investigation necessary, it may, either ex officio or upon a motion order to take or obtain further evidence. If this is not feasible without delay, the court shall adjourn the trial and take evidence on the trial set for the new date.

(2) If it is not feasible to take evidence by way of a delegated judge or requested court (Section 304), further, if supplementary evidence cannot be taken at the trial, the court shall request the prosecutor to seek means of evidence.

(3) Based on the findings of the evidentiary action, the prosecutor, the accused and the counsel for the defence may motion for asking further questions from a specially protected witness. The court may also ask questions from the specially protected witness. In such a case, the provisions in Section 268 (2) and (3) shall apply.

(4) If the accused or the counsel for the defence names or unambiguously identifies the specially protected witness in any other way, either at the trial or after – as a result of – the

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[401] Section 304 (2)–(3) was enacted by Section 176 (1) of Act I of 2002, which concurrently amended to the original numbering of subsections (2) and (3) to (4) and (5).

[402] Section 304 (5) was established by Section 176 (2) of Act I of 2002.

[403] The text of Section 305 was established by Section 177 of Act I of 2002 and amended by Section 88 (2) c) of Act II of 2003. (the words “new evidence” was amended to “further evidence”).

measures set forth in subsection (1) above, the court shall terminate the specially protected status of the witness. In such a case, the witness shall be summoned and questioned according to the general rules; if necessary, the presiding judge may – ex officio or upon a motion – initiate another form of witness protection.

Omission of the evidentiary action [404]

Section 306 The court may omit the evidentiary action due to a criminal offence having no significance for the purpose of liability as opposed to the graver criminal offence contained in the indictment.

Suspension of the procedure

Section 307[405] The procedure may also be suspended after the commencement of the trial (Section 266). If the court has suspended the procedure because the accused became mentally disabled after the commitment of the criminal offence or the accused is absconding, the court may order confiscation or forfeiture of property.

Transfer, consolidation and severance of cases

Section 308 (1) After the commencement of the trial, the case may only be transferred if its adjudication is beyond the competence of the court, is subject to military law, or falls within the jurisdiction of another court pursuant to Section 17 (5) to (6).

(2) Consolidation and severance of the cases may take place even after the commencement of the trial (Section 265).

(3) After the commencement of the trial, the case may not be referred to a five-member panel. (Section 271).

Out-of-trial decisions

Section 309[406] (1) After the adjournment of the trial, if necessary, the court may decide at a panel meeting on the transfer [Section 308 (1)], consolidation or severance [Section 308 (2)] of the cases, the suspension [Section 266 (1) to (3) and (6)] or termination [Section 267 (1) *c)-e)*] of the procedure, a measure to perform a procedural action (Section 268), as well as on a coercive measure entailing the restriction or deprival of personal freedom.

(2) In the issues not listed in subsection (1) above, decision shall be adopted by the presiding judge out of trial.

Amendment of the charge

Section 310 (1)[407] If the prosecutor – with regard to the charge contained in the indictment or the facts related thereto – deems that the accused is guilty of having committed a different or another criminal offence than the subject of the indictment, the prosecutor shall amend or expand the indictment before the panel meeting held pursuant to Section 321 (1), or motion for the adjournment of the trial in order to supplement the indictment.

(2) If the indictment is amended, upon the motion of the prosecutor or – in order to prepare a defence – the accused or the counsel for the defence, the court may adjourn the trial.

(3) If the indictment is expanded, at the joint motion of the accused and the counsel for the defence, the court shall, or ex officio may, adjourn the trial for a period of minimum eight days, or shall separate the case to which the indictment has been expanded.

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[404] The subtitle and Section 306 were established by Section 178 Act I of 2002.
[405] The text of the second sentence of Section 307 was established by Section 179 of Act I of 2002.
[406] The text of Section 309 was established by Section 180 of Act I of 2002.
[407] The text of Section 310 (1) was established by Section 181 of Act I of 2002.

(4) The case shall be transferred if the deliberation of the amended charge exceeds the competence of the court or is subject to procedures against juvenile offenders or the military law.

Dropping the charge

Section 311 (1) Before the panel meeting held pursuant to Section 321 (1), the prosecutor may drop the charge. The prosecutor shall provide justification for dropping the charge.

(2) If the prosecutor took over the representation of the prosecution from the substitute private accuser, he may not drop the charge but may withdraw from the prosecution. In the event that the substitute private accuser and the representative thereof are present, the trial shall be continued; otherwise the court shall adjourn the trial, simultaneously setting a new one, and notifying the substitute private accuser that it is him who represents the prosecution again.

Actions of the substitute private accuser

Section 312 (1) If substitute private accusation is applicable when the charge is dropped, the court adjourns the trial, and serves on the victim the statement of the prosecutor on dropping the charge. If the victim fails to stand as substitute private accuser within thirty days, the court shall terminate the procedure. No justification may be admitted for defaulting this deadline.

(2) After the charge has been dropped, the victim shall be granted the opportunity to examine, in the official premises of the court, the documents related to the criminal offence having been committed against him. Confidential documents handled separately from the files of the case may not be disclosed to the substitute private accuser.

(3)[408] If the victim wishes to act as a substitute private accuser, the motion for prosecution shall be submitted to the court that had proceeded in the case before. Representation of the substitute private accuser by a lawyer shall be obligatory from the time of submitting the motion for prosecution.

(4) The motion for prosecution shall contain the items listed in Section 217 (3) *a)-c), g)* and *h)*, as well as the reasons for requesting the continuation of the court procedure despite the fact that the prosecutor has dropped the charge.

(5) If the substitute private accuser submitted a motion for prosecution, the court shall act in compliance with the provisions set forth in Section 231, provided that the substitute private accuser may repeatedly submit the motion for prosecution prior to the lapse of the deadline specified in subsection (1) above. The decision rejecting the motion for prosecution shall not be subject to an appeal.

(6) If the prosecutor has dropped the charge and there is a substitute private accuser acting in the case, the trial shall be continued. The continuity of the trial shall be governed by the provisions of Section 286.

(7) If the procedure involves several criminal offences and the prosecutor drops the charge in any of them, substitute private accusation may only apply if the case concerning which the charge was dropped is subject to severance. In such a case, the charges shall be severed.

Conclusion of the evidentiary procedure

Section 313 After conducting the evidentiary procedure, if no motion for evidence has been submitted or the motion for evidence has been rejected by the court, the presiding judge shall declare the evidentiary procedure concluded and requests those entitled to make their argument in the case and their addresses.

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[408] The text of the first sentence of Section 312 (3) was established by Section 182 of Act I of 2002.

Closing arguments and addresses

Section 314 (1) The prosecutor shall speak for the prosecution and the defence counsel for the defence, while the accused, the victim, the private party and the other interested party may make an address to the court.

(2)[409] If several counsels for the defence act on behalf of the same accused, it is the counsel of record or the defence counsel designated by him who shall speak for the defence. If the victim, the private party and the other interested party have several representatives, they shall agree on the person to make the address.

(3) While presenting their closing arguments, no one may be called to order.

(4) The closing arguments may not be interrupted unless it includes a term that constitutes a criminal offence, disturbs the order or it is required in order to prevent the procrastination of the procedure.

Section 315 (1) If the prosecutor deems that the guilt of the accused can be established, when speaking for the prosecution, he shall put forward a motion – specifying the relevant legal regulations – to the court

a) for convicting the accused, naming the underlying facts and the criminal offence,

b) for the type of punishment to be imposed or measure to be applied,

c) for other orders to be issued.

(2) The prosecutor may not propose specifically the extent of the punishment or measure.

(3) If the prosecutor deems that the guilt of the accused cannot be established, when speaking for the prosecution, he shall put forward a motion – specifying the relevant legal regulations and giving justification – to the court to acquit the accused.

Section 316[410] Following the prosecutor, the victim, the private party and the other interested parties may make their address. The victim may state if he requests the establishment of the guilt and punishment of the accused. The private party indicates – and may justify – the amount for which he intends to enforce his civil claim; in his absence, the announced claim shall be read out from the documents. The other interested party may make a motion in issues directly affecting his right or rightful interest.

Section 317 (1)[411] The addresses are followed by the speech for the defence. Having heard the closing arguments of the counsel for the defence, the accused may also speak in his own defence. If the accused has no defence counsel, this address shall be governed by the rules pertaining to the closing arguments [Section 314 (3) and (4)].

(2) Should there be several accused, the order of sequence of the speeches for their defence shall be determined by the presiding judge.

Section 318 (1) After the closing arguments and addresses, in the same order of sequence, rebuttals may be made. Such rebuttal may also be rebutted, it is the counsel for the defence, or the accused who shall have the last say.

(2) After the closing arguments, addresses and rebuttals, if the accused is deaf and no interpreter may be employed, the accused shall be granted the opportunity to read the minutes.

The right to the last say

Section 319 Prior to the adoption of the conclusive decision, the accused has the last say.

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[409] The text of Section 314 (2) was established by Section 183 of Act I of 2002.

[410] The text of the second sentence of Section 316 was established by Section 184 of Act I of 2002.

[411] The third sentence of Section 317 (1) was enacted by Section 185of Act I of 2002.

Re-opening the evidentiary procedure

Section 320 Prior to adopting the conclusive decision, the court shall re-open the evidentiary procedure, if deemed necessary based on the closing arguments, addresses, and the last say.

Announcement of the adoption of the decision and the decision

Section 321 (1) After hearing the closing arguments, addresses and the last say of the accused, the court shall withdraw to adopt a decision at a panel meeting. At the panel meeting the purview of the decision shall be recorded and signed by the court members.

(2)[412] The conclusive decision shall be announced immediately after its adoption. The original copy of the purview of the decision made at the trial, signed by the court members, shall be attached to the minutes of the trial. decision adopted at the trial.

(3)[413] The purview of the conclusive decision shall be read out by the presiding judge and heard by those present standing; owing to the state of health of a person present, the presiding judge may grant an exception to this rule. Thereafter, the presiding judge orally presents the gist of the justification.

(4)[414] If prior to adopting the conclusive decision, the court establishes that the charge contained in the indictment should be reclassified, it may adjourn the trial in order to prepare for the defence, and shall hear the prosecutor, the accused and the counsel for the defence present in this regard.

Section 322 (1)[415] If necessary due to the complexity of the case or the extensive scope of the decision or other important reason, the trial may be adjourned for eight – in exceptional cases, for fifteen – days to allow time for adopting and announcing the decision. At the time of adjourning the trial, the new date thereof shall be set.

(2)[416] At the trial set pursuant to subsection (1), the minutes taken at the latest session of the trial needs not be presented. Should the duly summoned accused or the counsel for the defence fail to attend the trial, the decision may be announced in their absence as well. No justification for the absence is allowed.

Statements on legal remedy

Section 323 (1) After announcing the decision, the presiding judge shall asks those who are entitled to appeal whether they intend to exercise this right. The order of sequence of making statements on appeal is as follows: the prosecutor, the private party, other interested parties, the accused and the defence counsel.

(2)[417] The appellant shall indicate the provision in the decision found deleterious and the object of the appeal. Incorrect indication of the cause for the appeal or other mistakes related to the appeal shall not be a reason for rejecting the consideration of the appeal in its merit. The prosecutor shall also indicate if he wishes to lodge an appeal to the detriment of the accused [Section 354 (2)].

(3) The appeal may enumerate a new fact, refer to new evidence and may also motion for an evidentiary action which had been omitted by the court of first instance.

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[412] The second sentence of Section 321 (2) was enacted by Section 186 (1)of Act I of 2002.
[413] The first sentence of Section 321 (3) was established by Section 186 (2) of Act I of 2002.
[414] Section 321 (4) was enacted by Section 186 (3) of Act I of 2002.
[415] The text of Section 322 (1) was established by Section 187 of Act I of 2002.
[416] The text of the first sentence of Section 322 (2) was established by Section 187 of Act I of 2002, and its second and third sentences were established by Section 69 of Act II of 2003.
[417] Section 323 (2) and (3) was established by Section 188 (1) of Act I of 2002.

(4) The justification of the appeal may be made in writing. Prior to the submission of the documents, the justification shall be presented at the court of first instance, and thereafter at the court of appeal, not later than on the eight day preceding the trial.

Parties entitled to appeal

Section 324 (1) The following parties shall be entitled to lodge an appeal against the verdict of the court of first instance:

a) the accused,

b) the prosecutor,

c) the counsel for the defence – even without the consent of the accused,

d) the heir of the accused – against orders granting a civil claim,

e) the legal representative and the spouse of an accused of legal age – even without the consent of the accused – against an order for involuntary treatment in a mental institution,

f) the private party, against a disposition adjudicating a civil claim in its merit,

g) those against whom a disposition has been made in the verdict, in respect of the relevant order.

(2) The prosecutor may lodge an appeal to the detriment of the accused.

Announcement of the appeal

Section 325 (1) Those to whom the verdict has been communicated by way of an announcement shall lodge their appeal immediately, or may request a three-day deadline. No justification may be admitted for defaulting this deadline.

(2) Verdicts communicated by way of a notice served may be appealed within eight days.

(3) If the appeal is not made at the time of the announcement of the verdict, it shall be either submitted to the court of first instance in writing, or recorded in the minutes.

(4) The court of first instance shall notify the accused and the counsel for the defence of the appeal of the prosecutor lodged pursuant to subsection (3).

Section 326 If the court of first instance communicates the non-conclusive decision by way of an announcement, the appeal shall be announced at that time. Otherwise the announcement of appeals against a non-conclusive shall be governed by the provisions set forth in Section 325 (2) to (4).

Decision on a coercive measure and concurrent sentences [418]

Section 327 (1) If the conclusive decision does not become final at the time of its announcement, the court shall immediately make a decision on pre-trial detention, temporary involuntary treatment in a mental institution, home curfew or house arrest.

(2) In the case specified in subsection (1), pre-trial detention may also be ordered – in addition to the reasons stipulated in Section 129 (2) *a), b)* or *d)* – owing to the risk that the accused may escape or hide, taken the duration of the imprisonment imposed in the verdict.

(3) If the accused is acquitted or put on probation, or the procedure is terminated, or if the court did not pronounce a sentence for imprisonment to be enforced, or – in the case of acquittal – did not order involuntary treatment in a mental institution, the court shall terminate the pre-trial detention, home curfew, house arrest or the temporary involuntary treatment in a mental institution, and forthwith arranges the release of the accused.

(4) In the event that the verdict becomes final and the relevant conditions prevail, if practicable, the court shall conduct the concurrent sentencing procedure.

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[418] The subtitle and Section 327 was established by Section 189 of Act I of 2002. The original Section 327 (2) was declared unconstitutional by Resolution No. 19/1999. (VI. 25.) AB of the Constitutional Court, and therefore, it will not enter into force.

Closing the trial

Section 328 After the statements on legal remedy and the adoption of the decisions referred to in Section 327, the presiding judge closes the trial.