Title II

CONCLUSIVE DECISIONS OF THE COURT OF FIRST INSTANCE

The judgement

Section 329 The court shall make a decision concerning the charges by way of a judgement, either convicting or acquitting the accused.

The condemning judgement

Section 330 (1) The court shall convict the accused, if it ascertains that the accused had committed a criminal offence and may be punished.

(2) In the condemning, the court shall

a) impose a punishment,

b) place the accused on probation or reprimand the accused,

c) omit the imposition of a punishment.

(3) When imposing a judgement of probation, in addition to the items listed in Section 258 (2), the purview of the sentence shall contain the rules of conduct established by the court.

(4)[1] If the court establishes the guilt of the accused for a criminal offence committed thereby during or prior to the probation, the court shall repeal the disposition concerning probation and impose concurrent sentences.

The verdict of acquittal

Section 331 (1) The court shall acquit the accused of the charges, if the guilt of the accused cannot be ascertained and the procedure is not terminated.

(2) In the case an accused acquitted from the charges due to mental disability, the court shall order the involuntary treatment of the accused in a mental institution provided that the conditions therefor are fulfilled.

(3) The justification of the verdict shall include, in addition to the items listed in Section 258 (3), the factors having led the court to formulate the verdict, with special regard to the absence of the criminal offence, the absence of evidence for the criminal offence, and reference to the grounds for the preclusion or termination of punishability.

(4)[2] If the verdict of acquittal is based on the grounds for the preclusion or termination of punishability, the court may order confiscation, or forfeiture of property.

Ruling terminating the procedure

Section 332 (1) The court shall terminate the procedure,

a) due to the death, statutory limitation or pardon of the accused,

b) if there is no private motion, complaint or request and they have not been or cannot be subsequently submitted,

c) if the action has already been adjudicated by a final decision,

d) if the prosecutor has dropped the charge and substitute private accusation cannot be applied,

---

1 Section 330 (4) was established by Section 190 (1) of Act I of 2002.

2 Section 331 (4) was established by Section 190 (2) of Act I of 2002.

e)[3] due to other grounds for the preclusion of punishability stipulated by law a [Section 32 *e)* of the Penal Code].

(2) The court shall terminate the procedure concerning a criminal offence having no significance for the purpose of liability as opposed to the graver criminal offence contained in the indictment.

(3)[4] Upon learning of the reasons specified in subsections (1) or (2), the court shall immediately terminate the procedure.

(4)[5] 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.

(5)[6] If the fact that the accused died or was pardoned ex officio becomes known after the announcement of the conclusive decision, but before such decision has become final, and no appeal has been announced against the decision, the court shall repeal the non-final conclusive decision or the disposition concerning the same accused and terminate the procedure.

Section 333 If the prosecutor has dropped the charges and substitute private accusation may be lodged, 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.

Section 334[7] Upon terminating the procedure pursuant to Section 332 (1) *a)*-*b)* and *e)* the court may order confiscation or forfeiture of property. Upon terminating the procedure pursuant to Section 332 (5), the court shall uphold the effect of the dispositions in its earlier conclusive decision regarding confiscation or forfeiture of property.

Adjudication of a civil claim

Section 335 (1)[8] Inasmuch as possible, in the judgement the court shall adjudicate the civil claim in its merit; by either accepting or rejecting it. If this considerably delayed the conclusion of the procedure, or if the accused is acquitted, or if the adjudication of the motion on its merits in criminal proceedings is precluded due to other conditions, the court shall refer the enforcement of a civil claim to other legal means.

(2) If, during the enforcement of the civil claim a different motion is lodged, the court shall consider them based on the higher amount of claim.

Termination of parental right of custody

Section 336 (1) Upon the motion of the prosecutor, the court shall terminate the parental right of parental custody, if it declared the accused guilty in a wilful criminal offence to the injury of his child and establishes that the conditions stipulated in Section 88 (1) of Act IV of 1952 on Marriage, family and guardianship.

(2) In the absence of the conditions specified in subsection (1) the court shall reject the motion.

---

3 Section 332 (1) e) was enacted by Section 191 (1) of Act I of 2002.

4 Section 332 (3) was established by Section 191 (2) of Act I of 2002.

5 Section 332 (4) was enacted by Section 191 (2) of Act I of 2002.

6 Section 332 (5) was enacted by Section 70 of Act II of 2003.

7 The text of the first sentence of Section 334 was established by Section 192 of Act I of 2002, and its second sentence by Section 71 of Act II of 2003.

8 The text of the first sentence of Section 335 (1) was established by Section 193 of Act I of 2002, and its second sentence by Section 72 of Act II of 2003.

(3) The court shall refer the enforcement of a claim to terminate the parental right of custody to other legal means, if the adjudication of the motion considerably delayed the conclusion of the procedure, or if the adjudication of the motion on its merits in criminal proceedings is precluded due to other conditions.

Adjudication of an administrative offence

Section 337 (1) If, based on the results of the hearings, the court finds that the charge in the indictment is an administrative offence, and acquits the accused thereof, the court shall adjudicate the administrative offence.

(2)[9] In the case of subsection (1), the court may order confiscation and adjudicate the civil claim on its merits.

(3)[10] If the accused was indicted due to several criminal offences, and the court establishes that any of the criminal offences in the indictment is an administrative offence, the court may terminate the procedure for this administrative offence if it has no significance for the purpose of liability as opposed to the graver criminal offence in the indictment.

Bearing the cost of criminal proceedings

Section 338 (1) The court shall order the accused to pay the cost of the criminal proceedings, if the accused is declared guilty, or the liability of the accused is established in committing an administrative offence. This provision shall not apply to the cost of criminal proceedings borne by other parties pursuant to the law.

(2) The accused may only be ordered to bear the cost of criminal proceedings incurred in connection with the act or the part of the facts of the case regarding which the guilt or the liability of the accused has been established. The accused may not be ordered to bear the part of the cost of criminal proceedings incurred unnecessarily, for reasons other than the omission of the accused.

(3)[11] The court orders each accused declared guilty to bear the cost of criminal proceedings separately. If the cost of criminal proceedings, or a part thereof cannot be allocated by the accused persons declared guilty, the court shall order all the accused to bear the cost of criminal proceedings jointly and severally.

(4) The court may relieve the accused from paying a part of the cost of criminal proceedings, if such cost is unreasonably high compared to the gravity of the criminal offence.

Section 339 (1) Of the cost of criminal proceedings specified in Section 74 (1) *a)*, the state shall bear the amount which the accused may not be ordered to pay pursuant to Section 338, as well as the costs which the accused needs not reimbursed pursuant to Section 74 (3).

(2)[12] The state shall also bear the cost incurred because the accused is deaf, numb or blind, or cannot command the Hungarian language, or used his regional or minority language in the course of the proceedings.

(3) If prosecution was represented by the prosecutor and the court acquits the accused, within thirty[13] days after the decision has become final, the state shall – to the extent specified in a separate legal regulation – reimburse the out-of-pocket expenses of the accused as well as

---

9 Section 337 (2) was established by Section 194 (1) of Act I of 2002.

10 Section 337 (3) was enacted by Section 194 (2) of Act I of 2002.

11 The text of the second sentence of Section 338 (3) was established by Section 195 of Act I of 2002.

12 The text of Section 339 (2) és (3) was established by Section 196 of Act I of 2002.

13 Pursuant to Section 88 (2) c) of Act II of 2003, in Section 339 (3) the words “within fifteen days” were amended to “within thirty days”.

the fee of his defence counsel not paid in advance during the proceedings and the out-of-pocket expenses of such defence counsel.[14]

(4) Regardless of the acquittal of the accused or the termination of the procedure, the accused shall be ordered to bear the cost incurred due to his omission.

Section 340 (1) The court shall order the accused to pay the out-of-pocket expenses of the private party and the representative thereof and the fee of the latter, if it accepts the civil claim enforced by the private party. In the event of partial acceptance, the accused shall be ordered to pay the proportionate part of such cost; otherwise the cost shall be borne by the private party.

(2) The court shall order the accused to pay the out-of-pocket expenses of the substitute private accuser and the representative thereof and the fee of the latter, if prosecution is represented by the substitute private accuser and the court declares the accused guilty.

Title III

TASKS OF THE COURT OF FIRST INSTANCE AND THE PROSECUTOR

AFTER AN APPEAL

Section 341 (1) Appeals not permitted by law, or lodged by a non-eligible party, or are belated shall be rejected by the court of first instance. The court may omit the adoption of a decision concerning the consideration of an appeal against decisions specified in Section 346 (5), and an appeal against final decisions.

(2) If the deadline to lodge an appeal has lapsed with respect to all entitled parties, the chairperson of the panel of the court of first instance – through the prosecutor working with the court of appeal – shall submit the documents without delay, but not later than within thirty days to the court of appeal.

(3) If the appeal is based on a procedural irregularity the circumstances of which are not clearly specified in the documents, the presiding judge shall provide information thereof in the submission.

(4) The prosecutor working with the court of appeal shall send the documents, together with his motion, to the court of appeal within fifteen days, or, if the case is especially complex or has an extensive scope, within thirty days.

---

[14] Please refer to Joint Decree No. 26/2003. (VII. 1.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

Title IV

TRIAL IN THE ABSENCE OF THE PROSECUTOR

OR THE DEFENCE COUNSEL

Section 342[15] (1) If this Act permits holding the trial in the absence of the prosecutor or the defence counsel, the provisions stipulated in Titles I and II shall be applied with the deviations specified in this Section.

(2) If the prosecutor is not present at the trial, the charges shall be read out from the indictment by the court.

(3)[16]

(4) If the defence counsel is not present at the trial, the accused may speak for the defence.

(5) If the accused and the defence counsel did not lodge an appeal against a conclusive decision communicated by way of an announcement, the court shall notify the prosecutor absent from the trial by way of serving the purview. If the court notifies the prosecutor of its conclusive decision by way of serving the purview, the prosecutor may announce its appeal within five days. No justification may be admitted for defaulting this deadline.

Title V

DEROGATION RELATING TO THE SUBSTITUTE PRIVATE ACCUSER

Section 343 (1) The representative of the substitute private accuser shall be obliged to attend the trial. Should the representative of the substitute private accuser fail to attend the trial without having immediately provided sufficient excuse in advance, the court shall postpone the trial at his expense and may impose disciplinary penalty on the representative.

(2)[17] If the legal representation of the substitute private accuser ceases during the procedure, within eight days of gaining cognisance thereof the court shall request the substitute private accuser to arrange for legal representation within eight days. In the event that the substitute private accuser fails to arrange for a power of attorney within the set deadline, the procedure shall be terminated. The substitute private accuser shall be warned of this fact.

(3) If the substitute private accuser cannot arrange his legal representation, because, based his income and property, he is presumably unable to cover the legal fees, and has certified the above in compliance with the provisions of the relevant legal regulation, upon the request of

---

15 The text of Section 342 was established by Section 197 of Act I of 2002.

16 Section 342 (3) was annulled by Resolution No. 14/2002. (III. 20.) AB of the Constitutional Court, therefore this provision will not enter into force.

17 Section 343 (2)–(4) was enacted by Section 73 of Act II of 2003, which amended the original numbering of subsections (2)–(5) to subsections (5)–(8).

the substitute private accuser the court may grant personal exemption from paying the costs.[18] In the event of a personal exemption from paying the costs

a) at the request of the substitute private accuser, the court appoints a lawyer of a law firm to act as a representative,

b) the substitute private accuser and his appointed representative shall be entitled to the right of prenotation of duty during the one-off issue of the copy of the documents of the criminal case,

c) the fee and verified out-of-pocket expenses of the officially appointed representative is advanced by the state.

(4) To the fee of the appointed representative of the substitute private accuser, the legal regulation pertaining to the appointed defence counsel shall be applied.

(5) The substitute private accuser may not extend the charges.

(6) The closing arguments shall be made by the representative of the substitute private accuser.

(7) The substitute private accuser may not lodge an appeal against the conclusive decision of the court of first instance to the benefit of the accused.

(8) If prosecution is represented by the substitute private accuser at the announcement of the appeal, the court of first instance shall submit the documents directly to the court of appeal.

Section 344[19] If the accused has been acquitted or the procedure against him terminated, the part of the cost of criminal proceedings specified in Section 74 (1) which was incurred after the commencement of the actions of the substitute private accuser, shall be borne by the substitute private accuser.

Chapter XIV

PROCEDURE OF THE COURT OF APPEAL

Title I

GENERAL RULES

Provisions applicable in the course of the appeal proceeding

Section 345 The provisions stipulated in Chapters XI–XIII of this Act shall be applied to the procedures of the court of appeal with the deviations set forth in this Chapter.

---

[18] Please refer to Joint Decree No. 9/2003. (V. 6.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

[19] The text of Section 344 was established by Section 74 of Act II of 2003.

The right of appeal and the effect of the appeal

Section 346 (1) The judgement of the court of first instance may be appealed at the court of appeal. The appeal against the ruling terminating the procedure, issued by the court of first instance based on a trial shall be governed by the rules of the appeal against a judgement.

(2) The appeal against the judgement of the court of first instance may involve any of the dispositions therein or exclusively the justification thereof.

(3) An appeal may be lodged for legal or factual reasons.

(4) An appeal suspends the part of the judgement to become final which is to be reviewed by the court of appeal owing to the appeal.

(5) The following may not be appealed

a) the suspension of the procedure under Section 266 (3),

b) the termination of the procedure under Section 332 (1) *d)*,

c) the rejection of the statement on legal remedy made after the acknowledgement of a decision.

Section 347 (1) The non-conclusive ruling of the court of first instance may be appealed, unless prohibited by this Act. The arrangement of the appeal against the ruling shall be governed by the rules of appeal against a judgement. If evidence is taken, the court of appeal shall adjudicate the appeal against the ruling at a trial, otherwise at a panel session.

(2) The ruling may be enforced regardless of an appeal, unless this Act stipulates that the appeal has a delaying effect. In especially exceptional cases, both the court of first instance and the court of appeal may suspend the enforcement of the ruling.

The scope of the review

Section 348 (1)[20] Unless an exception is provided for in this Act, the court of appeal shall review the judgement contested by the appeal, together with the preceding court procedures. The dispositions of the judgement concerning the substantial facts of the case, the establishment of guilt, the classification of the criminal offence, the imposition of punishment and the application of measures shall be reviewed by the court of appeal regardless of the person of the appellant and the reason for the appeal. The court of appeal shall decide ex officio on the auxiliary issues related to the above, thus, for example, on the dispositions concerning the civil claim and the cost of criminal proceedings.

(2) If the indictment contained charges against the accused for several criminal offences, in the judgement only that disposition concerning acquittal or the termination of the procedure may be reviewed, against which the appeal has been lodged.

(3) If the appeal concerns exclusively the disposition in the judgement concerning the termination of seizure, a civil claim, the termination of a parental right of custody or the cost of criminal proceedings, the court of appeal shall only review the relevant part of the judgement.

(4) In the appeal against the justification of a judgement, only legal or factual statements or other argumentation or evaluative statements may be contested.

Section 349 (1) If the judgement of the court of first instance contains dispositions on several persons accused, the court of appeal shall only review the part of the judgement regarding the accused concerned by the appeal.

(2) The court of appeal shall acquit the accused not concerned by the appeal and – if the classification of the criminal offence is degraded – commute the unlawfully grave punishment

---

[20] The text of the second sentence of Section 348 (1) was established by Section 198 of Act I of 2002.

or the measure imposed in lieu of a punishment, or repeal the dispositions in the judgement of the court of first instance regarding such accused and terminates the procedure against him or orders the court of first instance to conduct a new procedure, if it adopts the same decision regarding the accused whom the appeal concerns.

Section 350 In the event that the judgement is found unsubstantiated, the court of first instance may be ordered to conduct a new procedure pursuant to Section 349 (2), if this may result in the acquittal of the accused not concerned by the appeal, or the commutation of the unlawfully grave punishment of the accused owing to the degraded classification of the criminal offence, or the termination of the procedure.

Restrictions as to the facts of the case in the judgement of the court of first instance

Section 351 (1)[21] The court of appeal shall decide based on the facts of the case established by the court of first instance, unless the judgement of the court of first instance is not substantiated, or the appeal makes statements on new facts or reference to new evidence [Section 323 (3)], and therefore, the court of appeal conducts an evidentiary procedure.

(2) The judgement of the court of first instance shall be regarded unsubstantiated, if

a) the facts of the case are not elucidated,

b) the court of first instance has failed to establish the facts of the case, or established them insufficiently,

c) the established facts of the case are contrary to the contents of the documents,

d) from the facts established, the court of first instance has drawn inaccurate conclusions.

Section 352 (1) In the event of a non-substantiated judgement [Section 351 (2)], the court of appeal

a) shall supplement or correct the facts of the case, if the entirety of, or the correct facts of the case can be ascertained from the contents of the documents, factual conclusions or evidence taken;

b)[22] may ascertain the facts of the case differently than those established by the court of first instance, if the accused may be acquitted or the procedure terminated based on the evidence taken.

(2) The court of appeal shall review the judgement of the court of first instance based on the corrected, supplemented, or different facts of the case.

(3)[23] In the case of subsection (1), the court of appeal may evaluate the proofs differently than the court of first instance only in connection with the facts concerning which it have taken evidence.

Evidentiary procedure by the court of appeal

Section 353[24] (1) In the course of the procedure of the court of appeal, evidence may be taken ex officio for reasons specified in Section 351 (2), and upon a motion pursuant to the provisions of Section 323 (3).

(2) Evidence may be taken in order to remedy the failure of the court of first instance to substantiate its judgement, if the facts of the case have not been elucidated or are insufficient. With the exception of the case stipulated in subsection (3) a trial shall be set for taking evidence.

---

21 The text of Section 351 (1) was established by Section 199 of Act I of 2002.

22 Section 352 (1) b) was established by Section 200 (1) of Act I of 2002.

23 Section 352 (3) was enacted by Section 200 (2) of Act I of 2002.

24 The text of Section 353 was established by Section 201 of Act I of 2002.

(3) Should it be necessary to hear the accused in order to further clarify the conditions of imposing the punishment, the court of appeal shall hold a public session.

Restriction against severity

Section 354 (1)[25] The guilt of an accused having been acquitted by the court of first instance and the punishment or the measure imposed on such accused in lieu of the punishment may only be increased if an appeal was lodged to the detriment of the accused. This provision shall also apply if, the evidence taken by the court of appeal pursuant to Section 353 leads to the establishment of a graver criminal offence.

(2) An appeal lodged to the detriment of the accused shall mean an appeal requesting the establishment of the guilt of the accused, or a graver classification of the criminal offence, or increasing the punishment or a stricter measure imposed in lieu of a punishment, or the imposition of a punishment instead of the said measure.

(3) If the court of first instance – after imposing a punishment or a measure imposed in lieu of thereof for a criminal offence – acquits the accused from the charges pressed for any criminal offence, or terminates the procedure related to such accused, the punishment or the measure imposed in lieu of thereof for a criminal offence may only be increased or made stricter, respectively, if the appeal – lodged to the detriment of the accused exclusively against his acquittal or the termination of the procedure – against the disposition in the judgement concerning the acquittal or the termination of the proceedings succeeds.

(4)[26] Owing to the restriction against severity, in the absence of an appeal to the detriment of the accused, the court of appeal may not impose

a) a punishment on a person whose case had been adjudicated in the first instance by way of an independently applied measure,

b) compulsory labour service or imprisonment instead of a fine, or imprisonment instead of compulsory labour service,

c) imprisonment to be served instead of suspended imprisonment; a longer term of imprisonment instead of imprisonment to be served (even if the former is suspended),

d) suspended imprisonment instead of a fine or compulsory labour service to be effectuated,

e) a fine to be effectuated instead of a suspended fine, a higher amount of fine instead of a fine to be effectuated (even is the former is suspended),

f) an ancillary punishment not applied by the court of first instance,

g) primary punishment instead of the ancillary punishment enforced in lieu of principal punishment in the procedure of first instance.

(5) If the court of first instance made no disposition concerning confiscation or forfeiture of property despite the provisions of law, but the facts of the case contain the data required for the decision, such decision may also be adopted by the court of appeal, even if no appeal has been lodged to the detriment of the defendant.

(6) If the court of first instance applied a legal consequence due to an administrative offence [Section 337 (1)], this legal consequence may only be made stricter in the course of the appeal proceeding, if the appeal was lodged against the disposition of acquittal or requests the imposition of stricter legal consequence for the administrative offence.

Section 355[27] In the case of life-long imprisonment, the extension of the date of the first release on parole or the exclusion of the possibility of granting parole shall be regarded as an

---

25 The second sentence of Section 354 (1) was enacted by Section 202 (1) of Act I of 2002.

26 Section 354 (4)–(6) was enacted by Section 202 (2) of Act I of 2002.

27 The text of Section 355 was established by Section 203 of Act I of 2002.

increase of the punishment and the appeal lodged with this aim shall be regarded as an appeal to the detriment of the accused.

Title II

THE APPEAL PROCEEDING

Comments on the appeal

Section 356 Until the submission of the documents, those concerned by the appeal may make comments regarding the appeal at the court of first instance, and thereafter at the court of appeal.

Withdrawal of the appeal

Section 357 (1) The appellant may withdraw the appeal until the panel session of the court of appeal held for the purpose of making a decision.

(2) After the submission of the documents, the appeal of the prosecutor may be withdrawn by the prosecutor working with the court of appeal. If the prosecutor withdraws the appeal and no one else has lodged an appeal, the prosecutor shall return the documents, together with his statement, to the court of first instance.

(3) The appeal lodged in favour of the accused by another party may only be withdrawn by the appellant with the consent of the accused. This provision shall not apply to the appeal of the prosecutor.

(4) One withdrawn, the appeal may not be submitted again.

Preparations for adjudicating an appeal

Section 358 (1) The chairperson of the panel of the court of appeal

a) takes measures – if necessary – to obtain missing documents or information, supplement documents, obtain new documents, as well as to forward the documents to the prosecutor or request information from the court of first instance,

b) requests the appellant to supplement the appeal within eight days, if the reason for considering the procedure of the court of first instance or the judgement detrimental cannot be clearly established therefrom,

c) returns the documents to the court of first instance, if the appeals have been withdrawn,

d)[28] serves the appeal lodged by another party and the motion of the prosecutor working with the court of appeal on the accused and the defence counsel,

e) sends the justification of the appeal made by the accused or the defence counsel before the court of appeal to the prosecutor working with the court of appeal.

(2) Prior to the trial, the presiding judge may order that evidence be taken and may also adopt the measures required therefor, with special regard to summoning a witness or appointing an expert.

Rejection of the appeal, transfer, suspension of the proceeding

Section 359 (1) The court of appeal shall reject the appeal at the panel session, if the court of first instance omitted the rejection of the appeal in the cases listed in Section 341 (1).

---

[28] The text of Section 358 (1) d) was established by Section 204 of Act I of 2002.

(2) If the court of appeal is not competent or has no jurisdiction in the adjudication of the appeal, it shall transfer the documents to the court of competence or jurisdiction at the panel session.

(3)[29] The court of appeal shall suspend the proceeding at the panel session, if Section 266 (1) is deemed applicable. The proceedings may only be suspended under Section 188 (1) *b)* if the trial cannot be held in the absence of the accused.

Setting a panel session, a public session and a trial

Section 360 (1) The presiding judge shall set a date for a panel session, public session or trial for the adjudication of the appeal, to be held not later than within thirty days after receiving the case.

(2) The presiding judge may set a public session or trial in a case falling in the domain of a panel session, if he deems this indispensable for the adjudication of the appeal.

(3) The court of appeal may adopt the decision that may be made at a panel session also at a public session or trial, if the underlying reason is perceived at the public session or trial.

The public session

Section 361 (1)[30] The court of appeal shall hold a public session, if – in the case of a non-substantiated judgement – the entirety of, or correct facts of the case can be established from the content of the documents or factual conclusions, or if the accused needs to be heard in order to further elucidate the circumstances of the imposition of the punishment.

(2) The court of appeal shall summon those whose hearing it deems necessary to the public session, and arranges for bringing the imprisoned accused to court.

(3)[31] The procedure at public sessions shall be governed by the rules pertaining to holding the trial (Section 366), provided that – unless requested by those present – the presentation of the case may be omitted.

Section 362 (1) The court of appeal shall notify the public session to the prosecutor and – unless they have been summoned – the substitute private accuser, the accused, the defence counsel and the victim.

(2) The prosecutor is not obliged to attend the public session.

The trial[32]

Section 363 (1) In the course of the proceedings by the court of appeal, the provisions set forth in Chapter XIII shall be applied with the deviations set forth hereunder.

(2) With the exception of the case specified in Section 353 (3), a trial shall be set for taking evidence.

Section 364 (1) The accused shall be summoned to the trial, if the court of appeal takes evidence at the trial or deems the presence of the accused necessary. If the accused is detained, the court of appeal shall arrange that the accused is brought to court. The summons shall be served on the accused at least five days before the date of the trial.

(2) In the case of statutory defence, the defence counsel shall be summoned to the trial.

---

29 The text of the second sentence of Section 359 (3) was established by Section 205 of Act I of 2002.

30 Section 361 (1) was established by Section 206 (1) of Act I of 2002.

31 Section 361 (3) was enacted by Section 206 (2) of Act I of 2002.

32 The subtitle and Sections 363–365 were established by Section 207 of Act I of 2002.

(3) The accused shall be notified of the trial, even if he needs not be summoned thereto. An accused who is detained shall be brought to the trial at his own request or the request of his defence counsel.

(4) A notification shall be sent of the trial to the prosecutor, in the case of statutory defence the defence counsel, the victim and all parties who have lodged an appeal. The notification shall be sent leaving sufficient time for its service five days prior to the trial at the latest.

Section 365 (1) The trial may be held in the absence of the accused, if

a) the accused at liberty has been properly notified,

b) the accused has failed to report a change in address and therefore, could not be notified of the trial.

(2) The trial may also be held in the absence of a summoned accused, if the accused had announced in advance that he wished not attend or no appeal had been lodged to the detriment of the accused.

(3) In the cases specified in subsections (1) and (2), no justification may be admitted for not attending the trial.

Section 366[33] (1) At the trial, the judge designated by the presiding judge shall present the case. He shall recite the judgement of the court of first instance, the appeal and the comments thereon, and outline the facts in the documents required to review the case. Unless requested by those present or deemed necessary by the court of appeal, the recital of the justification for the judgement of the court of first instance may be omitted.

(2) The members of the court, the prosecutor, the accused, the defence counsel and the victim may request the supplementation of the recital.

(3) Thereafter, those entitled to appeal [Section 324 (1)] shall be enabled to put forward their propositions and motions.

(4) Evidence shall be taken after the presentation of the case and the motions stipulated in subsection (3).

(5) After the case has been presented and evidence taken, those entitled shall present their closing arguments and give their speech. It is the appellant who shall present his closing argument first. If the prosecutor has also lodged an appeal, the closing argument shall be first presented by the prosecutor.

(6) If the court of appeal establishes prior to the delivery of the conclusive decision that the classification of the act established by the court of first instance may need to be changed, it shall act in compliance with the provisions set forth in Section 321 (4).

Communication of the conclusive decision

Section 367[34] (1) The conclusive decision of the court of appeal shall also be communicated to the appellant.

(2) The court of appeal shall serve its conclusive decision on the prosecutor, the accused, the defence counsel, the victim and to the party concerning whom the decision contains a disposition.

Decision on coercive measure

Section 368[35] In the event that the judgement of the court of first instance is repealed, the court of appeal shall decide on pre-trial detention, home curfew, house arrest, temporary

---

33 The text of Section 366 was established by Section 208 of Act I of 2002.

34 The text of Section 367 was established by Section 209 of Act I of 2002.

35 The text of Section 368 was established by Section 210 of Act I of 2002.

involuntary treatment in a mental institution and withdrawal of the travel document in a repealing ruling.

Measures after the adjudication of the appeal [36]

Section 369 (1) After the adjudication of the appeal, the court of appeal shall serve the estreats of its decision, and the returns the documents of the case, together with the estreat of its decision and the minutes taken at the trial or public session to the court of first instance.

(2) If the court of appeal reprimanded the accused in the absence thereof (Section 71 of the Penal Code), the effectuation thereof shall be arranged by the chairperson of the panel of the court of first instance.

Title III

DECISIONS OF THE COURT OF APPEAL

Section 370 (1) In the cases stipulated by this Act, the court of appeal shall uphold, modify or repeal the judgement of the court of first instance, or rejects the appeal.

(2) Upon modifying the judgement of the court of first instance, the court of appeal shall decide in the form of a judgement, otherwise by way of rulings.

(3) The justification of the decision shall identify the appellant and the reason for the appeal and explain the reasons underlying the decision of the court.

Upholding the judgement of the court of first instance

Section 371 (1)[37] The court of appeal shall uphold the judgement of the court of first instance, if the appeal is not substantiated, or the judgement needs not be repealed otherwise, or needs not be modified or – pursuant to the restriction against severity or the provisions of subsection (2) – may not be modified.

(2)[38] In the event that the facts of the case have not been supplemented or corrected [Section 352 (1) a)] no minor changes may be effected concerning the punishment imposed in the judgement of the court of first instance within the sentence-limits permitted by law.

(3) The ruling of the court of appeal upholding the judgement of the court of first instance shall be a conclusive decision.

(4) The justification of the decision shall briefly describe the reasons for upholding the judgement.

Changing the judgement of the court of first instance

Section 372[39] (1) If the court of first instance misapplied a legal regulation and the judgement needs not be repealed, the court of appeal shall modify the judgement and adopts a decision in compliance with the law.

---

36 The subtitle and Section 369 were established by Section 211 of Act I of 2002.

37 The text of Section 371 (1) was established by Section 212 of Act I of 2002.

38 Section 371 (2) was enacted by Section 212 of Act I of 2002, which concurrently amended the original numbering of subsections (2) and (3) to subsections (3) and (4).

39 Pursuant to Section 213 of Act I of 2002, the numbering of the original Section 372 was amended to subsection 372 (1), and concurrently a new subsection (2) was inserted in Section 372.

(2) The court of appeal may also modify the judgement of the court of first instance, if in compliance with Section 352 or 353, the appeal proceeding remedied the failure of the court of first instance to substantiate its judgement.

Repealing the judgement of the court of first instance

Section 373[40] (1) At the panel session, the court of appeal

I. shall repeal the judgement of the court of first instance and terminate the procedure,

a) upon the death of the suspect, statutory limitation or pardon,

b) if the court of first instance had delivered its judgement in the absence of a private motion, request or complaint required to conduct the procedure,

c) the action has already been adjudicated by a final decision;

II. shall repeal the judgement of the court of first instance and orders the court of first instance to conduct a new procedure, if

a) the court was not lawfully formed,

b) the judgement was delivered with the participation of a judge excluded therefrom by law, or a judge who was not present at the trial from the outset,

c)[41] the court transgressed its competence, adjudicating a case falling within the scope of military justice or the exclusive jurisdiction of another court,

d) the trial was held in the absence of a person whose presence is statutory by law,

e)[42]

III. shall repeal the judgement of the court of first instance, if the court of first instance proceeded in the absence of a legitimate indictment;

IV. shall repeal the judgement of the court of first instance and

a) send the documents to the prosecutor, if the prosecutor had motioned for the procedure specified in Chapter XXV in the absence of the preconditions stipulated by law,

b) order the court of first instance to conduct a new procedure, if the court had conducted the procedure specified in Chapter XXV in the absence of the preconditions stipulated by law.

(2)[43] The judgement needs not be repealed under subsection (1) II. *a)*, if the conclusion of the court of appeal that the case should have been adjudicated by the panel of court of first instance is based on the reclassification of the criminal offence.

(3) Pursuant to subsection (1) II. *d)*,

a) if the court of appeal establishes that – due to the reclassification of the criminal offence – the attendance of the defence counsel should have been statutory at the trial of the court of first instance [Section 242 (1) *b)*], the judgement shall only be repealed, if the prosecutor had originally lodged the indictment due to a criminal offence punishable by five years' or more imprisonment, or in the course of the procedure of the first instance, the court established that the classification may be graver than that indicated in the indictment,

b) the judgement may not be repealed due to the absence of the defence counsel, if the court of first instance erroneously classified the action as criminal offence punishable by five years' or more imprisonment.

Section 374 (1)[44] If the court of appeal terminates the procedure under Section 373 (1) I. *a)*, or suspends the procedure for the reason specified in Section 188 (1) *b)*, the disposition in

---

[40] Pursuant to Section 214 (1) of Act I of 2002, the numbering of the original Section 373 was amended to subsection 373 (1).

[41] Section 373 (1) II. c) was established by Section 214 (1) of Act I of 2002.

[42] Pursuant to Section 308 (2) of Act I of 2002, Section 373 (1) II. e) shall be repealed and shall not enter into force.

[43] Section 373 (2) and (3) was enacted by Section 214 (2) of Act I of 2002.

the judgement of the court of first instance regarding confiscation, forfeiture of property and the establishment of a civil claim

a) shall be upheld, if no appeal has been lodged against such dispositions or the appeal is not substantiated,

b) shall be modified and a lawful decision shall be adopted by the court of appeal, if the court of first instance misapplied a legal regulation in the judgement.

(2) Upon resuming the suspended procedure, the court of appeal shall repeal the disposition adopted under subsection (1).

(3)[45] The verdict of acquittal or the disposition of the judgement on acquittal needs not be repealed pursuant to Section 373 (1) II. *d)*, if the judgement was delivered in the absence of the accused or the defence counsel.

Section 375 (1)[46] The court of appeal shall repeal the judgement of the court of first instance and order the court of first instance to conduct a new procedure, in the event of a procedural irregularity not listed under Section 373 (1) II., which had a significant impact on conducting the procedure or the establishment of guilt, or the classification of the criminal offence, or the imposition of the sentence or application of a measure. Such irregularities are, in particular, if the persons participating in the procedure were prevented from or restricted in exercising their lawful rights, or the court of first instance failed to meet its obligation to provide justification. The court of appeal may also repeal the judgement of the court of first instance and order the court of first instance to conduct a new procedure, if the public was excluded from the trial for no lawful reasons.

(2) The verdict of acquittal or the disposition of the judgement on acquittal needs not be repealed, if the procedural irregularity specified in subsection (1) restricted the accused or the defence counsel in exercising their lawful rights.

(3)[47] The judgement needs not be repealed under subsection (1), if the court failed to hold a preparatory session despite the statutory legal stipulation.

(4) If the court of first instance failed to make a disposition concerning a seized item, confiscation or forfeiture of property despite a legal stipulation thereon, and the data required for such decision cannot be clarified by taking evidence in the course of the appeal proceeding, the court of appeal shall order the court of first instance to conduct the special procedure described in Section 569 (1).

Section 376[48] (1) The court of appeal shall repeal the judgement of the court of first instance and order the court of first instance to conduct a new procedure, if the judgement is unsubstantial and this cannot be remedied in compliance with Section 352, and this had a significant impact on the establishment of guilt, imposition of a sentence or the application of a measure.

(2) The disposition of the judgement on acquittal needs not be repealed, if only a single part of the judgement is unsubstantiated.

Section 377 The court of appeal shall repeal the judgement of the court of first instance and terminate the procedure concerning a criminal offence having no significance for the purpose of liability of the accused.

---

44 The introductory part of Section 374 (1) was established by Section 215 (1) of Act I of 2002.

45 Section 374 (3) was established by Section 215 (2) of Act I of 2002.

46 Section 375 (1) was established by Section 216 (1) of Act I of 2002.

47 Section 375 (3) and (4) was enacted by Section 216 (2) of Act I of 2002.

48 The text of Section 376 was established by Section 217 of Act I of 2002.

Section 378 (1)[49] The justification of the repealing ruling shall contain the reason for the repeal, and guidelines for the court of appeal concerning the repetition of the procedure.

(2) The court of appeal may order that the case be proceeded by another panel of the court of first instance or – in exceptional cases – by another court.

Disposition concerning the civil claim and the ownership right of the other interested party [50]

Section 379 (1) If the court of appeal overrules only the disposition of the judgement of the court of first instance concerning a civil claim, and finds the appeal substantial, it shall modify the relevant part of the judgement. If the adjudication of the civil claim on its merits delayed the procedure, it shall repeal the relevant disposition in the judgement of the court of first instance and refer the civil claim to other legal ways. If the appeal not substantial, the court of appeal shall uphold the judgement of the court of first instance.

(2) The court of appeal may also adjudicate the civil claim on its merits, if – based on the appeal of the prosecutor – it overruled the disposition in the judgement of the court of first instance which referred the civil claim to other legal ways.

(3)[51] If the other interested party lodged an appeal against the disposition in the judgement of the court of first instance concerning confiscation or forfeiture of property and based on this or any other appeal, the disposition in the judgement of the court of first instance concerning confiscation or forfeiture of property – affecting the ownership right of the other interested party –

a) has not been modified or repealed by the court of appeal, the court of appeal shall send the documents to the court having competence and jurisdiction to adjudicate civil case regarding the ownership-related claim of the other interested party in the first instance,

b) has been modified by the court of appeal, without omitting the confiscation or forfeiture of property, the court of first instance shall ensure that the decision of the court of appeal is notified to the other interested party together with the information regarding the right of the other interested party stipulated in Section 55 (3).

(4) If the confiscation or forfeiture of property affecting the ownership right of the other interested party is ordered by the court of appeal, the purview of the decision shall contain the information regarding the right of the other interested party stipulated in Section 55 (3).

(5) In the case specified in subsection (1), the court of first instance proceeding in the civil suit shall adjudicate the ownership claim of the other interested party within the framework of the appeal lodged by the other interested party in the course of the criminal proceedings, in compliance with the Code of Civil Procedure.

Termination of the parental right of custody

Section 380 If the court of appeal overruled only the disposition in the judgement of the court of first instance concerning the termination of the parental right of custody, the provisions of Section 379 (1) shall apply, as appropriate.

Cost of criminal proceedings

Section 381 (1) In its decision, the court of appeal shall establish the costs of criminal proceedings incurred during the appeal proceeding, and if necessary, make a disposition on bearing such costs.

---

49 The text of Section 378 (1) was established by Section 218 of Act I of 2002.

50 The subtitle was established by Section 219 (1) of Act I of 2002.

51 Section 379 (3)–(5) was enacted by Section 219 (2) of Act I of 2002.

(2) The court of appeal may exempt the accused declared guilty from the payment of the entirety or a part of costs of criminal proceedings incurred during the appeal proceeding if the appeal of the accused or the defence counsel was successful.

Title IV

APPEAL AGAINST THE NON-CONCLUSIVE RULING DELIVERED IN THE COURSE OF THE APPEAL PROCEEDING [52]

Section 382 The legal remedy granted against a non-conclusive ruling in the course of the proceeding of the court of appeal, which would be subject to an appeal in a procedure of the first instance, the provisions of Section 326 and Titles I to III shall be applied with the deviations set forth in this Title.

Section 383 (1) A ruling delivered in the course of the proceeding of the court of appeal ordering or terminating a coercive measure, or the review of the period of a coercive measure after more than one year, and a non-conclusive ruling delivered in the course of the appeal proceeding that would be subject to an appeal in a procedure of the first instance, may be appealed

a) at a tribunal, if the ruling was delivered by a county court,

b) at the Supreme Court, if the ruling was delivered by a tribunal.

Section 384 The appeal shall be adjudicated by the tribunal or the Supreme Court at a panel session.

Chapter XV [53]

REPEATED PROCEDURE

General provisions [54]

Section 385[55] In the course of the procedure repeated owing to the real of the decision of the court, the provisions stipulated in Chapter XIII shall be applied with the deviations specified in this Chapter.

Section 386[56] (1) In the repeated procedure, the court shall follow an expedited procedure.

---

52 The text of Title IV and Sections 382–384 were established by Section 220 of Act I of 2002.

53 The indication of “Chapter XV” preceding Section 385 and the wording of the title of this Chapter were enacted by Section 221 (1) of Act I of 2002.

54 The subtitle preceding Section 385 was enacted by Section 221 (2) of Act I of 2002.

55 Sections 385 and 386 were established by Section 221 (2) of Act I of 2002.

56 Pursuant to Section 308 (2) Act I of 2002, the original subtitle of Section 386 shall be repealed and shall not enter into force.

(2) In the repeated procedure the court shall adjudicate the case by taking into

consideration the reasons and comments of the decision repealing the case.

(3) When reviewing the decision delivered in a repeated procedure, the court of appeal shall not be bound by the reasons and comments explained in the repealing decision, even if the facts of the case have remained unchanged.

Title I[57]

REPEATED PROCEDURE OF THE COURT OF FIRST INSTANCE

Section 387[58] (1) After the commencement of the trial, the presiding judge recites the repealing decision of the court of appeal, the repealed decision of the court of first instance and the indictment.

(2) If the prosecutor modified the indictment after the decision of the court of first instance has been repealed, the prosecutor shall recite the modified indictment.

(3) If the accused does not wish to give testimony, the presiding judge may also read out the testimony of the accused given at the trial based on which the repealed decision had been delivered.

Section 388 (1) The questioning of the witness or hearing of the expert may be substituted by reading out the testimony of the witness given at the trial based on which the repealed decision had been delivered, and the minutes taken there on the expert opinion submitted thereto.

(2) Subsection (1) may not be applied if the judgement of the court of first instance was repealed if the judgement was not substantiated and the procedure of the court of appeal could not remedy this.

(3) Subsection (2) shall not be construed as a prohibition of reading out the witness testimony or expert opinion which does not pertain to the unsubstantiated part of the facts of the case in the judgement.

Section 389[59] (1) If no appeal has been lodged to the detriment of the accused, the repeated procedure may not establish the guilt of the acquitted accused, and may not increase the sentence imposed in the repealed judgement or make the measure imposed in lieu of punishment stricter.

(2) The provisions set forth in subsection (1) shall not apply, if

a) the judgement of the court of first instance was repealed for reasons stipulated in Section 373 (1) II. *a)* to *c)* or Section 376 (1),

---

[57] The words “Title I” of Chapter XV preceding Section 387 of this Act and the wording of the Title were enacted by Section 221 (3) of Act I of 2002.

[58] Sections 387–389 were established by Section 221 (4) of Act I of 2002.

[59] Pursuant to Section 308 (2) Act I of 2002, the original subtitle of Section 389 shall be repealed and shall not enter into force.

b) based on new evidence revealed in the course of the repeated procedure the court established a new fact subject to a stricter punishment, provided that the prosecutor lodges a motion therefor,

c) owing to the extension of the indictment by the prosecutor, the guilt of the accused needs to be established in another criminal offence as well,

d) the judgement of the court of first instance was repealed in a review procedure, owing to a motion for review submitted to the detriment of the defendant.

(3) In the case specified in subsection (2), the repeated procedure may not establish the guilt of the accused, and increase the sentence imposed in the repealed judgement or make the measure imposed in lieu of punishment stricter, if the court of appeal repealed the judgement of the court of first instance pursuant to the provisions in Section 349 (2).

Title II[60]

REPEATING THE PROCEDURE OF THE COURT OF APPEAL

Section 390[61] In the event that the Supreme Court repeals the decision of the court of appeal and orders the court of appeal to conduct a new procedure, such new procedure of the court of appeal shall be governed by the provisions stipulated in Title I as appropriate.

Title III[62]

TRIAL UPON THE SUBSEQUENT CONSOLIDATION OF CASES

Section 391[63] (1) The trial set pursuant to Section 568 (3) shall be governed by the provisions stipulated in this Section.

(2) After the commencement of the trial, the presiding judge recites the decision of the court concerning the subsequent consolidation and the decisions adopted in the basic cases.

(3) Based on the trial, the court shall terminate the probation, repeal the disposition concerning the sentence for a criminal offence committed prior to or during the probation and imposes concurrent sentences.

(4) If, based on the trial, the court ascertains that the subsequent consolidation was inappropriate, it shall repeal the ruling ordering the consolidation.

---

60 The words “Title II” preceding Section 390 of this Act and the wording of this Title were enacted by Section 221 (5) of Act I of 2002.

61 Section 390 was established by Section 221 (5) of Act I of 2002.

62 The words “Title III” preceding Section 391 of this Act and the wording of this Title were enacted by Section 221 (6) of Act I of 2002.

63 Section 391 was established by Section 221 (6) of Act I of 2002.

PART FOUR [64]

Chapter XVI

RE-TRIAL

Reasons for re-trial [65]

Section 392[66] (1) An act adjudicated by a final judgement of a court (basic case) may be subject to re-trial, if

a) new evidence is found – whether or not concerning a fact emerged in the basic case – which makes probable that

1. the defendant shall be acquitted, the sentence imposed shall be significantly commuted, or a measure shall be applied instead of a punishment, or the criminal proceedings shall be terminated,
2. the guilt of the defendant shall be established, or a significantly stricter sentence shall be imposed, or punishment shall be applied instead of a measure, or the measure imposed in lieu of punishment shall be made significantly stricter;

b) more than one final judgements have been delivered against the defendant for the same act, or the defendant was not sentenced under his own name;

c) false or falsified evidence was used in the basic case;

d) in the basic case a member of the court, the prosecutor's office or the investigating authority violated their obligation by breaching the penal law;

e) pursuant to Chapter XXIV, the judgement in the basic case was delivered at a trial held in the absence of the defendant.

(2) The cases stipulated in subsection (1) *c)* and *d)*, may only be subject to re-trial, if

a) the commitment of the criminal offence indicated as the reason for re-trial has been established by a final judgement, or the delivery of such judgement is not precluded due to lack of evidence, and

b) the criminal offence influenced the decision of the court.

Section 393 The testimony of a person who, exercising his right of immunity, had refused to testify in the basic case shall also be construed as new evidence under Section 392 (1) *a)*.

Section 394 Re-trial to the detriment of the defendant shall only apply in the life of the defendant and within the statutory limitation. The fact that the sentence of the defendant shall not be an obstacle to the re-trial, while a re-trial to the benefit of the a defendant shall not be precluded because the punishability of the defendant is terminated.

A motion for re-trial

Section 395 (1) A motion for re-trial to the detriment of the defendant may be submitted by

a) the prosecutor,

---

64 The words "PART FOUR" preceding Section 392 of this Act and "Chapter XVI", as well as the wording of the title of this Chapter were enacted by Section 222 of Act I of 2002.

65 The subtitles preceding Sections 392, 395 and Section 397 were established by Section 222 of Act I of 2002.

66 The text of Sections 392–404 were established by Section 222 of Act I of 2002.

b) the substitute private accuser, in order to establish the guilt of an acquitted accused.

(2) A motion for re-trial to the benefit of the defendant may be submitted by

a) the prosecutor,

b) the defendant,

c) the defence counsel, unless this was prohibited by the defendant,

d)[67] the legal representative of a juvenile offender defendant,

e) against an order for involuntary treatment in a mental institution – even without the consent of the defendant – the legal representative and relative of the defendant,

f) after the death of the defendant, a relative in direct line, the brother or sister or the spouse of the defendant.

(3) In the case specified in Section 392 (1) *e)*, re-trial may only be motioned for to the benefit of the defendant and only when the defendant may be summoned from his place of stay.

Section 396 (1) The prosecutor shall not send to the court the motion for re-trial submitted by a non-eligible person, and shall advise him thereof in writing.

(2) A motion for re-trial shall indicate the reason and proofs of the motion. The indistinct indication of the reason shall not be an obstacle to the re-trial.

(3) If any court, other authority or official person acting in their own official competence gains cognisance of a circumstance based on which a motion for re-trial may be submitted, they shall notify thereof the prosecutor acting in the area of the court entitled to decide on the permissibility of a re-trial.

The re-trial procedure

Section 397 (1) The decision of the permissibility of a re-trial shall be adopted by the county court if the basic case was processed by the local court in the first instance and by the tribunal if the same was processed by the county court.

(2) Unless it is submitted by the prosecutor, the motion for re-trial shall be submitted to or recorded in minutes at the prosecutor acting in the area of the court entitled to decide on the permissibility of the re-trial. The prosecutor shall send the motion, together with his statement to the court within thirty days. The substitute private accuser shall submit the motion for re-trial directly to the court entitled to make the decision.

(3) Prior to sending the motion for re-trial, the prosecutor may order an investigation. If the prosecutor orders an investigation, the deadline stipulated in subsection (2) shall be calculated from the conclusion of the investigation.

(4) If the motion for re-trial is submitted pursuant to Section 392 (1) *e)* the re-trial procedure shall be expedited.

Section 398 (1) The court shall obtain the documents of the basic case, and may contact the prosecutor, if required for the decision concerning the permissibility of a re-trial, in order to find the means of evidence indicated by the party having submitted the motion. To the investigation the provisions stipulated in Chapter IX shall be applied as appropriate according to the nature of the re-trial procedure. Pre-trial detention, temporary involuntary treatment in a mental institution, home curfew and house arrest may not be ordered.

(2) The motion for re-trial shall be considered by the panel of second instance of the court at a panel session.

---

[67] Section 395 (2) d) was enacted by Section 75 of Act II of 2003, which amended the numbering of subsections d) and e) to e) and f).

(3)[68] Until the commencement of the panel session under subsection (2), the motion for re-trial may be withdrawn. Should any of the parties listed in Section 395 (2) *b)* to *f)* withdraw the motion for re-trial before the prosecutor has sent it, together with his statement, to the court, the motion for re-trial needs not be forwarded to the court.

Section 399 (1) If court finds the motion for re-trial substantiated, it orders the re-trial and forwards the case to the court of first instance having proceeded in the basic case to repeat the procedure, or transfers the case to a court having competence and jurisdiction to conduct the repeated procedure, and simultaneously may suspend or interrupt the execution of any disposition made in the basic case, or order the necessary coercive measure. In the case specified in Section 392 (1) *b),* the court may terminate the basic procedure itself under Section 332 (1) *c).*

(2)[69] The court shall reject the motion for re-trial if it is not substantiated or was submitted by a non-eligible person. The court shall notify its decision to the party having submitted the motion for re-trial, and, unless it was submitted by the prosecutor, to the prosecutor as well.

(3) The court may omit to make a decision concerning the rejection of a motion submitted repeatedly with unchanged content by the same eligible party or by another party.

(4) In the event that the motion for re-trial is rejected, the cost of criminal proceedings shall be borne by the party having submitted the motion, or, if the motion for re-trial was submitted by the prosecutor, by the state.

Section 400 (1) The order for a re-trial shall not be subject to an appeal, while the rejection of a motion for re-trial may be appealed by the party having submitted the motion. The court may omit to make a decision on the adjudication of an appeal against a final decision.

(2) The appeal against the ruling of a county court shall be considered by the tribunal, while the appeal against the ruling of the tribunal shall be considered by the Supreme Court at a panel session.

Section 401 (1) Upon ordering a re-trial, the provisions of Chapters XI and XIII shall be applied with the deviations due to the nature of re-trial.

(2) Unless served earlier, the ruling ordering the re-trial shall be served on the defendant together with the summons to the trial; at the trial instead of the indictment, the presiding judge shall recite the judgement contested by the re-trial and the ruling ordering the re-trial.

Section 402 (1) If, depending on the outcome of the trial, the court establishes that the re-trial is substantiated, it shall repeal the judgement delivered in the basic case or the part of the judgement contested by the re-trial and delivers a new judgement; but shall reject the re-trial if it is found unsubstantiated.

(2) If a cumulative sentence was imposed in the basic case and the judgement ordering the cumulative sentence also needs to be repealed because the re-trial is substantiated, the court shall also repeal the judgement concerning the cumulative sentence and – if the conditions therefor are met – conducts the procedure for cumulating the sentences, unless this would be beyond competence specified in Section 574 (1); in adverse cases the court shall forward the documents to the court having competence to conduct the procedure for cumulating sentences.

---

[68] Pursuant to Section 88 (2) c) of Act II of 2003, in the second sentence of Section 398 (3) the words “b) to e)” were amended to „b) to f)”.

[69] Pursuant to Section 88 (2) a) Act II of 2003, in Section 399 (2) the following text shall be repealed and shall not enter into force: “ submitted repeatedly with unchanged content by the same eligible party or by another party”.

(3) If the motion for re-trial was submitted to the benefit of the defendant, the judgement may not be modified to the detriment of the defendant.

(4) The decisions adopted after ordering the re-trial shall be subject to legal remedy according to the general rules.

Section 403 In the case of re-trial the civil claim having been adjudicated on its merits shall be adjudicated once again upon the motion of the prosecutor, the defendant or the private party. At the motion of the prosecutor or the defendant, a new decision shall be adopted in respect of the termination of the parental right of custody. However, re-trial (new procedure) concerning exclusively a civil claim or parental right of custody may only be held (conducted) by a court proceeding in civil suits, in compliance with the relevant conditions and procedural rules.

Section 404 The provisions stipulated in this Chapter shall also be applied as appropriate, if the motion for re-trial was submitted against the ruling of the court terminating the procedure or the ruling delivered without holding a trial.

Chapter XVII[70]

JUDICIAL REVIEW

Reasons for the judicial review [71]

Section 405 (1)[72] The final conclusive decision by the court may be subject to judicial review, if

a) the defendant was acquitted or the procedure terminated, the criminal liability of the defendant established or the involuntary treatment in a mental institution ordered in violation of the substantive law,

b) an unlawful punishment was imposed due to the unlawful classification of the criminal offence or the violation of other rules of criminal law, or an unlawful measure was applied, or the execution of the punishment was suspended despite the grounds for exclusion stipulated in Section 90 of the Penal Code,

c) the court adopted its decision by a procedural irregularity specified in Section 373 (1) II to IV,

d) the court adopted its decision by violating the restriction against severity [Sections 354 and 355, Section 389 (1) and (3), Section 549 (4)].

(2) No judicial review shall apply if the breach of law can be remedied by conducting a special procedure (Titles I to II of Chapter XXVIII).

---

70 The words " Chapter XVII" and the title of the Chapter in this Act was enacted by Section 223 of Act I of 2002.

71 The subtitles preceding Sections 405, 408, 413 and 425 were established by Section 223 of Act I of 2002.

72 The text of Section 405 was established by Section 223 of Act I of 2002; the original numbering of Section 405 was amended to Section 405 (1) by Section 76 of Act II of 2003, which concurrently inserted a new subsection (2) in 405.

Section 406[73] (1) Judicial review may take place to the benefit of the defendant in the following cases as well:

a) the Court of Constitution ordered the review of the criminal proceedings concluded by a final decision, unless the defendant has already been relieved from the detrimental consequences relating to his criminal record, or the sentence imposed or measure applied has been completely executed or their enforceability ceased,

b)[74] a body for the protection of human rights, created by way of an international treaty established that the conduct of the procedure or the final decision of the court has violated a provision of the international treaty promulgated by law, provided that the Republic of Hungary has submitted herself to the jurisdiction of the international body for the protection of human rights and the violation of law may be remedied by way of a judicial review,

c) owing to the harmonised decision of the Supreme Court, the disposition – not affected by the harmonised decision – of the final court decision establishing the defendant criminal liability is unlawful.

(2) Further, judicial review may be applied to the benefit of the defendant, if the criminal liability was established, the sentence imposed or a measure applied under a criminal statute which was declared unconstitutional by the Court of Constitution, but the defendant the defendant has already been relieved from the detrimental consequences relating to his criminal record, or the sentence imposed has been completely executed or its enforceability ceased, or the defendant is no longer subject to the effect of the measure. In such a case the motion for review may be submitted within six month following the communication of the decision of the Court of Constitution.

Section 407 No judicial review shall apply against the decision of the Supreme Court delivered based on a procedure for appeals on legal grounds, or a harmonisation procedure.

The motion for review

Section 408 The motion for review may be submitted by

I. to the detriment of the defendant:

a) the prosecutor,

b) in the case of acquittal or the termination of the procedure, the private accuser or the substitute private accuser,

II. to the benefit of the defendant:

a) the prosecutor,

b) the defendant,

c) the defence counsel, unless this was prohibited by the defendant,

d) the legal representative of the juvenile offender defendant,

e) against an order for involuntary treatment in a mental institution – even without the consent of the defendant – the legal representative and the spouse of the defendant of legal age,

f) after the death of the defendant, a relative in direct line, the brother or sister or the spouse of the defendant.

Section 409 (1) In the cases listed in Section 406 (1), the Prosecutor General shall submit the motion for review ex officio.

(2) Any court, other authority or official person acting in their own official competence gaining cognisance of a violation of law – as specified in Sections 405 or 406 – to the

---

73 The text of Sections 406–429 was established by Section 223 of Act I of 2002.

74 Section 406 (1) b) was supplemented with Section 77 of Act II of 2003.

detriment of the defendant in a criminal proceeding, shall notify the Prosecutor General thereof.

Section 410 (1) The motion for review to the detriment of the defendant may be submitted within six months following the communication of the final conclusive decision.

(2) With the exception of the case specified in Section 406 (2), there is no deadline for the submission of a motion for review to the benefit of the defendant. The fact that the punishment of the defendant has been executed or the punishability of the defendant has ceased shall not be an obstacle to submitting the motion.

(3) Each entitled person may only submit a motion for review on one occasion, unless the new motion for review is submitted pursuant to under Section 406 (1) *b)*.

Section 411 With regard to the disposition of final decisions delivered in a criminal case concerning exclusively a civil claim or the termination of parental right of custody, a request for review may be submitted in compliance with the rules set forth in the Code of Civil Procedure.

Section 412 (1) The A motion for review may be withdrawn prior to the panel session held by the court for the purpose of making a decision thereon.

(2) The defence counsel may only withdraw his motion for review with the consent of the defendant.

(3) If the motion for review is withdrawn, the court shall terminate the review procedure.

The review procedure

Section 413 (1) The motion for review, indicating the reason and the purpose therefor, shall be submitted in writing to the court of first instance having proceeded in the basic case.

(2) Within thirty days, the court shall submit the motion for review, together with the documents of the basic case to the court having competence for conducting the review procedure.

Section 414 (1) With the exception of the case specified in subsection (2), the motion for review shall be considered by the panel of the Supreme Court, or, if it contests a decision of the Supreme Court, the panel of the Supreme Court consisting of five professional judges.

(2) If the motion for review was submitted due to the procedural irregularity specified in Section 405 *c)* against a conclusive court decision which has become final in the first instance, the motion for review shall be considered by the panel of the tribunal.

Section 415 To the review procedure the rules pertaining to the procedure of the court of appeal shall apply, with the deviations set forth in this Chapter.

Section 416 (1) The presiding judge shall request the party having submitted the motion to supplement the motion within thirty days, if the reason for considering the decision detrimental cannot be clearly established therefrom, or the motion refers to a reason other than those prompting a review.

(2) The participation of a defence counsel shall be statutory in the review procedure. If the defendant has no defence counsel, the presiding judge shall appoint one and if necessary, requests him to compile the motion for review.

(3) If the appointed defence counsel fails to submit the motion within thirty days, or the submitted motion is not complete, a disciplinary penalty may be imposed.

Section 417 (1)[75] Motions precluded by law or submitted by a non-entitled person, as well as belated motions shall be rejected by the court proceeding on the basis of the motion for review. With the exception of the case specified in Section 416 (3), the same applies to motions for review not submitted or submitted incompletely despite the request.

(2) The court proceeding on the basis of the motion for review may omit to make a decision concerning the rejection of a motion submitted repeatedly with unchanged content by the same eligible party or by another party.

Section 418 (1) If the motion for review is not subject to rejection, the presiding judge shall send the motion, together with the documents of the basic case, to the office of Prosecutor General and/or the office of the chief prosecutor for appeals.

(2) If the motion for review contests a decision delivered in a procedure based on the accusation of a private accuser or substitute private accuser, the statement of the office of the prosecutor needs only be obtained if the motion was not submitted by the prosecutor.

(3) The prosecutor shall return the documents, together with his statement, to the court proceeding on the basis of the motion for review within fifteen days.

Section 419 (1) The presiding judge shall send the statement of the prosecutor to the party having submitted the motion for review.

(2) The defendant and his defence counsel shall receive the motion for review submitted by other parties and the statement of the prosecutor made thereon.

(3) Motions for review contesting a decision delivered in a procedure based on the accusation of a private accuser or substitute private accuser shall also be sent to the private accuser or the substitute private accuser.

(4) When sending the motion for review and the statement of the prosecutor, the presiding judge shall advise the eligible party to make comments within fifteen days of receipt.

Section 420 (1) In the review procedure, the facts of the case established in the final decision shall prevail.

(2) With the exception of the case specified in subsection (3), the motion for review shall be adjudicated in compliance with the legal regulations in effect at the time of the delivery of the contested decision.

(3) In the cases specified in Section 406, the motion for review shall be considered in compliance with the legal regulations in effect of the adjudication, however, if the review takes place due to the reasons stipulated in Section 406 (1) *b)*, the motion shall be adjudicated disregarding the legal regulation contrary and harmonisation decision to an the international treaty promulgated by law.

(4) With the exception of the case specified in subsection (5), the court proceeding on the basis of the motion for review shall review only the part of the decision contested by the motion for review and only for the reasons specified therein; however, in the case of a motion for review submitted to the detriment of the defendant the court may modify the contested decision to the benefit of the defendant.

---

[75] Pursuant to Section 88 (2) a) of Act II of 2003, in Section 417 (1) the text " a motion submitted repeatedly with unchanged content by the same eligible party or by another party" shall be repealed and shall not enter into force.

(5) The Supreme Court shall review the contested decision under Section 405 *c)*, even if the motion was not submitted for this reason.

Section 421 The motion for review has no delaying effect, however, the court proceeding on the basis of the motion for review may suspend or interrupt the execution of the contested decision until the motion is adjudicated.

Section 422 (1) With the exception of the cases specified in subsection (2), the court shall adjudicate the motion for review at a public session.

(2) The court shall adopt a decision at a panel session, if

a) the motion may be rejected under Section 417,

b) the procedure shall be terminated under Section 412 (3),

c)[76] the motion was submitted under Section 405 (1) *c)*.

(3) The presiding judge may refer a case falling in the domain of a panel session to a public session, if he deems this indispensable for the adjudication of the motion.

(4) The public session may only be held in the presence of the Prosecutor General, or the chief prosecutor for appeals or the representative thereof, and the defence counsel.

Section 423 (1) The defendant and the eligible parties listed in Section 408 I. *b)* and II. *d)* to *f)* shall be advised on the public session. If the defendant is detained, he shall be brought to court in order to attend the public session.

(2) The notification shall be sent leaving sufficient time for its service five days prior to the public session at the latest. The fact that the notification could not be served on an absconding addressee shall not prevent holding the public session.

Section 424 (1) After opening the public session, the judge designated by the presiding judge shall recite the motion for review, the contested decision and the contents of the documents inasmuch as necessary to adjudicate the motion for review.

(2) After the presentation of the case, the party having submitted the motion for review, the prosecutor, the defence counsel and other eligible parties listed in Section 408 may make their addresses on the subject of the motion for review. The addresses are followed by replies thereto. The last address shall be made by the defendant.

(3) With regard to opening, adjourning, continuity of the public session as well as the maintenance of order and the communication of the decision, the provisions set forth in Chapters XI and XIII shall be applicable as appropriate. Minutes shall be taken at the public session.

Decision adopted on the basis of the review procedure

Section 425 (1) The court proceeding on the basis of the motion for review shall repeal the contested decision, and

a)[77] order the court that had proceeded in the case to conduct a new procedure, if the court delivered its conclusive decision in violation of substantive law specified in Section 405 (1) *a)* or *b)*,

---

[76] In Section 422 (2) c) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

[77] In Section 425 (1) a) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

b) order the court having competence and jurisdiction to conduct a new procedure, if the decision was delivered by committing the procedural irregularity specified in Section 373 (1) II,

c) send the documents to the prosecutor and order the court of first instance to conduct a new procedure, if the decision was delivered by committing the procedural irregularity specified in Section 373 (1) IV,

d) [78] orders the court that had proceeded in the case to conduct a new procedure, if the decision was delivered by committing the procedural irregularity specified in Section 405 (1) *d)*.

(2) The court proceeding on the basis of the motion for review shall repeal the contested decision, if it was delivered by committing the procedural irregularity specified in Section 373 (1) III.

Section 426 (1) If the defendant may be acquitted, the involuntary treatment in a mental institution omitted, the procedure terminated or the sentence or other measure commuted,

a)[79] in the case of violation of law specified in Section 405 (1) *a)* and *b)* the Supreme Court,

b)[80] in the case of the procedural irregularities specified in Section 405 (1) *c)* and *d)* the court proceeding on the basis of the motion for review

may adopt a decision in compliance with the law.

(2) The Supreme Court itself may adopt a decision in compliance with the law, if the court had suspended the execution of the sentence despite the grounds for exclusion stipulated in Section 90 of the Penal Code.

(3) Upon establishing the existence of the reasons for review specified in Section 406, the Supreme Court itself may adopt a decision in compliance with the law, if this is possible based on the documents. Should the delivery of a lawful decision require a new procedure, the Supreme Court shall repeal the contested decision and order the court that had proceeded in the case to conduct a new procedure.

(4) If the court proceeding on the basis of the motion for review repeals the final conclusive decision and the defendant is detained, the court shall decide on the issue of detainment.

Section 427 If the court proceeding on the basis of the motion for review rejects the motion for review, it shall uphold the effect of the contested decision.

Section 428 If the motion for review is rejected – unless it has been initiated by the prosecutor – the cost of criminal proceedings incurred in the course of the review procedure, including the fee of the defence counsel appointed to compile the motion for review, shall be borne by the party having submitted the motion. In other cases the cost of criminal proceedings shall be borne by the state.

Section 429 (1) After the adjudication of the motion for review, the court having proceeded on the basis thereof shall serve the estreats of its decision, and return the documents of the case, together with the estreat of its decision and the minutes taken at the

---

78 In Section 425 (1) d) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

79 In Section 426 (1) a) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

80 In Section 426 (1) b) the words “Section 405” were amended to “Section 405 (1)” by Section 88 (2) c) of Act II of 2003.

session to the court having delivered the contested decision or the court ordered to conduct a new procedure or conduct the procedure.

(2) If the Supreme Court orders the court of appeal to conduct a new procedure, it shall send the documents to the court of appeal, which shall then serve the decision of the Supreme Court.

Chapter XVIII [81]

APPEAL ON LEGAL GROUNDS

Section 430[82] Lodging an appeal on legal grounds shall be governed by the provisions set forth in Chapter XVII, with the deviations stipulated in this Chapter.

Request for appeal on legal grounds [83]

Section 431 The Prosecutor General may lodge an appeal on legal grounds at the Supreme Court against the unlawful and final decision of the court, unless the final decision may be contested by other means of legal remedy.

Section 432 No deadline is set for lodging an appeal on legal grounds, and it has no delaying effect on the execution of the decision.

Section 433 No appeal may be lodged on legal grounds if the decision has been delivered by the Supreme Court.

Procedure in the case of an appeal on legal grounds

Section 434 (1) The appeal on legal grounds shall be adjudicated by the panel of the Supreme Court at a public session.

(2) The Prosecutor General, the defendant and the defence counsel thereof shall be advised of the public session. If the defendant had no defence counsel in the basic case, the Supreme Court shall appoint a defence counsel for the defendant.

(3) The defendant and the defence counsel may make comments on the appeal on legal grounds.

Section 435 (1) The public session may not be held in the absence of the Prosecutor General or the representative thereof.

(2) In respect of the public session, the provisions set forth in Chapter XIV shall apply as appropriate. At the public session, the Prosecutor General or the representative thereof, the defendant and his defence counsel may make an address and – according to the nature of the procedure – may put forward motions.

---

81 The words “Chapter XVIII” preceding Section 430 of this Act and the text of the title of the Chapter were enacted by Section 224 of Act I of 2002.

82 The text of Sections 430–438 was established by Section 224 of Act I of 2002.

83 The subtitles preceding Sections 431, 434 and 436 were established by Section 224 of Act I of 2002.

Decision concerning the appeal on legal grounds

Section 436 If the Supreme Court finds the appeal on legal grounds substantiated, it shall state in its decision that the contested decision is unlawful; in adverse cases, it shall reject the appeal in a ruling.

Section 437 Upon establishing the violation of law, the Supreme Court may acquit the defendant, omit the involuntary treatment in a mental institution, terminate the procedure, commute the sentence or the measure or repeal the contested decision to facilitate the adoption of such decision, and if necessary, may order the court having proceeded in the case to conduct a new procedure; in other cases the decision of the Supreme Court may only establish the fact of unlawfulness.

Section 438 The cost of criminal proceedings incurred in the course of the appeal proceeding shall be borne by the state.

Chapter XIX

HARMONISATION PROCEDURE

Section 439[84] (1) Harmonisation procedure shall be applicable, if

a) in order to develop legal practice or ensure uniform sentencing policy a harmonisation decision is required in a matter of doctrine,

b) a panel of the Supreme Court intends to deviate from the decision of another adjudication panel of the Supreme Court with respect to a legal issue.

(2) Under subsection (1) *a),* a harmonisation procedure shall apply in order to ensure a uniform sentencing policy in particular, when the tribunal, the county court or local court delivered a final decision deviating from an earlier final court decision in a matter of doctrine and the president of the Supreme Court or the Prosecutor General deems a decision on the matter of doctrine necessary.

Section 440 (1) Harmonisation procedure shall be conducted,

a) if it is initiated by the President or the head of the criminal division of the Supreme Court, or the Prosecutor General, and

b) in the case specified in Section 439 *b).*

(2) For the reason specified in subsection (1) *b),* the harmonisation procedure is initiated by the panel of the Supreme Court.

(3)[85] If the outcome of the harmonisation procedure may have an impact on another special remedy procedure in progress before the Supreme Court, the Supreme Court shall suspend the special remedy procedure until the harmonisation decision is adopted.

Section 441 (1) The motion for harmonisation shall indicate the matter of doctrine (legal issue) to be decided, as well as the proposal of the party submitting the motion concerning the decision. The estreat of the court decisions affected by the motion shall be attached to the motion.

---

[84] Section 225 of Act I of 2002 amended the original numbering of Section 439 to subsection 439 (1) and concurrently inserted a new subsection (2) in Section 439.

[85] The text of Section 440 (3) was established by Section 226 of Act I of 2002.

(2) The motion for harmonisation shall be adjudicated by the harmonisation panel of the Supreme Court consisting of five professional judges.

(3) The presiding judge of the panel shall be the president or the head of the criminal division of the Supreme Court. The person having submitted the motion for harmonisation may not be either the presiding judge or a member of the harmonisation panel.

(4) No one may be a member of the harmonisation panel who had participated in the delivery of the court decision affected by the motion for harmonisation.

Section 442 (1) The harmonisation procedure shall be prepared by the presiding judge, who shall set a panel session or a session to discuss the case.

(2) The harmonisation panel shall make a decision at a panel session, if

a) it rejects the motion not permitted by law, or lodged by a non-eligible party without adjudication on its merits,

b) it terminates the harmonisation procedure owing to the withdrawal of the motion for harmonisation.

(3) If the harmonisation panel adjudicates the motion on its merits, it shall make a decision at a session. The motion for a harmonisation decision – unless it was submitted by the Prosecutor General – shall be sent by the presiding judge, together with the estreat of the court decision affected by the motion for harmonisation, to the Prosecutor General. The Prosecutor General shall send his statement on the motion for harmonisation to the Supreme Court within fifteen days of receiving the motion.

(4) The session shall be chaired by the presiding judge, who may designate one or two presenting judges in the procedure.

(5) After opening the session, the presenting judge shall summarise the motion for harmonisation and the gist of the matter of doctrine to be decided, and presents the opinion of the panel members. The Prosecutor General and the party having submitted the motion may address the session.

(6) The harmonisation panel may adjourn the session for important reasons.

Section 443 (1) The decision of the harmonisation panel adopted at the session shall either accept or reject the motion; the harmonisation panel shall announce the harmonisation decision "IN THE NAME OF THE REPUBLIC OF HUNGARY".

(2) The purview of the decision accepting the motion for harmonisation shall contain guidelines on the a matter of doctrine being the subject of, or closely related to the harmonisation procedure.

(3) If the guidelines concerning the matter of doctrine render the disposition of the final court decision (affected by the harmonisation decision) establishing the criminal liability of the defendant unlawful, the harmonisation panel shall repeal the unlawful disposition and acquits the defendant and/or terminates the procedure. If the defendant is detained, the panel shall terminate the detainment.

(4) The justification of the harmonisation decision shall identify the party having submitted the motion for harmonisation, the subject of the motion and the affected court decisions. It also describes the various opinions formed in the matter of doctrine to be decided, and if necessary, the gist of the facts of the case established in the affected court decision, and explains the reasons for the guidelines set forth in the purview. The justification of the decision shall also explain the reasons for acquitting the defendant and terminating the procedure.

Section 444 The harmonisation panel shall reject the motion for harmonisation, if it deems the adoption of a harmonisation decision unnecessary. The justification of the decision shall contain the reasons for rejection.

Section 445 (1) The harmonisation panel shall announce its decision without delay, and within fifteen days thereafter it notifies thereof the party having submitted the motion and – unless the motion was submitted by the Prosecutor General – the Prosecutor General. The defendant who is acquitted or against whom the procedure was terminated shall also be notified of the decision. If the prosecution was represented by a private accuser or a substitute private accuser in the basic case, they shall also be notified of the decision.

(2) The presiding judge shall arrange for the publication of the harmonisation decision in the Official Gazette.

PART FIVE

Chapter XX

CRIMINAL PROCEEDINGS AGAINST JUVENILE OFFENDERS

Section 446 In the criminal proceedings against juvenile offender [Section 107 (1) of the Penal Code], the provisions set forth in this Act shall be applied with the deviations stipulated in this Chapter.

General provisions

Section 447 (1) The proceedings against a juvenile offender shall be conducted by taking into account the characteristics of his age and in a way that promotes the respect of the juvenile offender for the laws.

(2) In the course of the criminal proceedings – when necessary, or under the provisions of the relevant legal regulation – protective and precautionary measures should be initiated in the interest of the juvenile offender, as well as actions against the person having neglected to educate, car for or supervise the juvenile offender.[86]

Juvenile court [87]

Section 448 (1) The case of juvenile offenders falling within the competence of the local court shall be processed by the court at the seat of the county court, and in the territory of the Metropolitan Court the Pest Central District Court, in the case of juvenile offenders, the jurisdiction of such courts shall extend to the territory of the county or Budapest, respectively.

(2) In the first instance, the presiding judge (single judge), while in the second instance, a member of the panel shall be the judge designated by the National Judiciary Council.

(3) At the court of first instance, one of the associate judges on the panel shall be a teacher.

(4) The juvenile court shall also adjudicate the case of a defendant of legal age, if it is related to the case of a juvenile offender.

---

86 Please refer to Section 17 of Act XXXI of 1997.

87 Section 448 and the subtitle thereof were established by Section 227 of Act I of 2002.

The prosecutor

Section 449 (1) The powers of the prosecutor shall be exercised by the prosecutor (prosecutor for juvenile offenders)designated by a superior prosecutor.[88]

(2) Criminal proceedings against a juvenile offender may only be based on a public accusation. No substitute private accusation shall apply against a juvenile offender, it is the prosecutor's task to proceed in the cases of criminal offences subject to prosecution based on private accusation.

Defence counsel

Section 450 The participation of a defence counsel is statutory in the proceedings against a juvenile offender.

The legal representative

Section 451[89] The legal representative may inspect the documents of the case after the conclusion of the investigation. In the course of the investigation, he may also inspect the documents prepared on procedural actions he had the right to attend. In other respects, the rights of the legal representative to be present, to request information, submit motions and request legal remedy shall be governed by the rights of the defence counsel.

Section 452 (1)[90] Before the filing of the indictment at the request of the prosecutor, thereafter at the request of the court, the court of guardians shall appoint an ad hoc supervisor, if

a) the legal representative committed the criminal offence together with the juvenile offender, or the interests of the legal representative are otherwise in conflict with the interests of the juvenile offender,

b) the legal representative is prevented from exercising his rights,

c) the juvenile offender has no legal representative, or the legal representative cannot be identified.

(2)[91] In the case specified in subsection (1) *a)* before the filing of the indictment the prosecutor, thereafter the court may exclude the legal representative from the proceedings until the appointment of the ad hoc supervisor.

(3) During the proceedings, the ad hoc supervisor shall act as a legal representative.

Means of evidence

Section 453 (1) In order to elucidate the conditions characteristic to the personality, intellectual capacity and life conditions of the juvenile offender, the person responsible for the juvenile offender (parent or guardian) shall be heard as a witness. The immunity stipulated in Section 82 (1) shall not extend to providing information of the above.

(2)[92] The age of the juvenile offender shall be proven by way of a public deed. A study of living conditions shall be obtained, and the profile of the juvenile offender from his school or workplace. The study of living conditions shall be prepared by the probation officer.[93] The

---

88 Please refer to a 14/2003. (ÜK. 7.) LÜ utasítást.

89 The text of Section 451 was established by Section 228 of Act I of 2002.

90 The introductory part of Section 452 (1) was established by Section 229 (1) of Act I of 2002.

91 Section 452 (2) was enacted by Section 229 (2) of Act I of 2002, which concurrently amended the numbering of the original subsection (2) to subsection (3).

92 The text of the second sentence of Section 453 (2) was established by Section 27 of Act XIV of 2003.

93 Please refer to a Decree No. 17/2003. (VI. 24.) IM of the Ministry of Justice.

probation officer may request the co-operation of the police in the preparation of the study of living conditions.

(3) The testimony of the juvenile offender defendant may not be tested by a polygraph.

Pre-trial detention

Section 454 (1) Even in the cases specified in Section 129 (2), the pre-trial detention of a juvenile offender may only be applied if this is necessary due to the gravity of the criminal offence.

(2) The pre-trial detention of the juvenile offender shall be executed in

a) detention home or

b) penal institution.

(3) The place of pre-trial detention shall be decided upon by the court, taking into consideration the personality of the juvenile offender and the nature of the criminal offence he is charged with.

(4) During the period of the pre-trial detention, the court may change the place of pre-trial detention at the motion of the prosecutor, the defendant or the defence counsel. Prior to the decision during the preparations for the trial, the decision thereon shall be adopted by the court ordering pre-trial detention, and thereafter the court proceeding in the criminal case.

(5) If the pre-trial detention of the juvenile offender is executed in a detention home, and the court decides on the temporary custody of the juvenile offender in a penal institution or a police holding cell, the competence and jurisdiction of the court shall be governed by the provisions of subsection (4).

(6) In the course of pre-trial detention, juvenile offenders shall be separated from offenders of legal age.

Section 455[94] After the lapse of two years after the commencement of the execution of pre-trial detention ordered against a juvenile offender, the pre-trial detention shall be terminated, unless the pre-trial detention was ordered or maintained after the announcement of the conclusive decision, or unless a repeated procedure is in progress in the case due to repeal.

Ordering coercive measure prior to the indictment

Section 456 (1) Prior to the filing of the indictment, in the procedure related to coercive measures (Sections 210 and 211), the session may not be held in the absence of the defence counsel.

(2) The legal representative and the person responsible for the juvenile offender shall also be advised of the session.

Section 457 The legal representative and the person responsible for the juvenile offender may address the session.

Communication of the decision

Section 458 The decision delivered in the course of the proceedings shall be notified to the legal representative, while the conclusive decision and the decision concerning a coercive measure restricting personal freedom shall also be notified to the person responsible for the juvenile offender.

---

94 The text of Section 455 was established by Section 230 of Act I of 2002.

Postponement of the indictment

Section 459 (1) In the case of a criminal offence punishable by a maximum of five years' imprisonment, if the conditions for an indictment are met, the prosecutor may decide to postpone the filing of an indictment, if this is likely to have a positive impact on the future development of the juvenile offender.

(2) In his decision concerning the postponement of the indictment, the prosecutor shall oblige the juvenile offender to keep certain rules of conduct or fulfil other obligations. The obligations specified in Section 224 (2) *c)*[95] may not be imposed on juvenile offenders.

The trial

Section 460 (1) The general public shall be excluded from the trial even in cases not specified in Section 237 (3), if this is necessary in the interest of the juvenile offender.

(2) The court may order that the part of the trial which could have a harmful effect on the proper development of the juvenile offender be held in the absence of the juvenile offender. The gist of the trial held this way shall be presented to the juvenile offender by the presiding judge not later than prior to the adjournment of the trial.

(3) The presence of the prosecutor is statutory at the trial.

Section 461 The trial may not be held in the absence of a juvenile offender accused under the provisions of Chapter XXIV.

Section 462 (1) At the trial of the case against a juvenile offender accused the accused and the witness shall be heard by the presiding judge (single judge). After hearing the accused and the witness, those entitled may ask questions from them.

(2) The study of the living conditions shall be presented at the trial.

(3) The prosecutor may not ledge a motion defining the extent of the measure on corrective education.

Waiving the right to trial

Section 463 The provisions of Chapter XXV may not be applied in the case of juvenile offenders.

Omission of the trial[96]

Section 464 In addition to those listed in Section 548 (1), the legal representative of the juvenile offender, without the consent thereof, may also request that a trial be held.

Ordering corrective education

Section 465 The court shall order corrective education in a condemning judgement.

Replacing the fine with imprisonment

Section 466 The court shall decide on replacing the fine or the fine imposed as ancillary penalty with imprisonment either ex officio or at the motion of the prosecutor, if the juvenile offender failed to pay the fine and it cannot be collected.

---

95 Sections 224 and 225 of this Act were regulated anew by Sections 134 and 135 of Act I of 2002. The obligation under the original Section 224 (2) c) of this Act was regulated anew by Section 225 (2) c) of this Act.

96 The subsection was established by Section 231 of Act I of 2002.

Termination of a furlough order

Section 467 (1) If the decision concerning the termination of a furlough order shall be adopted due to a punishment or measure imposed in lieu of punishment in the course of a new criminal proceeding instituted against the juvenile offender, such decision shall fall in the competence of the court proceeding in the new case.

(2) In the case specified in subsection (1) the court shall decide on the termination of the furlough order at the motion of the prosecutor or ex officio subsequently, if no such disposition was made in the judgement.

(3) The cost of criminal proceedings shall be borne by the state, if the court does not terminate the furlough order.

Ordering consolidated measures

Section 468 To the imposition of a consolidated measure in lieu of several corrective education institutions, the provisions stipulated in Sections 574 and 575[97] shall apply as appropriate.

Chapter XXI

MILITARY CRIMINAL PROCEEDINGS

Section 469 In the event of military criminal proceedings the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Scope of military criminal proceedings

Section 470 (1) Military criminal proceedings shall apply in the case of

a) a military crime (Chapter XX of the Penal Code) committed by a soldier [Section 122 (1) of the Penal Code] during the time of his actual service period,

b) any criminal offence committed by a member of the armed forces,

c) other criminal offence committed by a permanent staff member of the civil national security service or a penal institution at his post or in connection with his military duty,

d)[98] a criminal offence committed by a member of allied armed forces (Section 368 of the Penal Code) within the boundaries of Hungary, or on a Hungarian ship or Hungarian aircraft outside Hungary, falling in the judicial authority of the Republic of Hungary.

(2) All criminal offences committed by the defendant shall be subject to military criminal proceedings if military criminal proceedings apply to any of such offences and no severance is possible.

(3)[99] In the case of several defendants, military criminal proceedings shall be conducted if the criminal offence committed by any of the defendants if subject to military criminal proceedings and the close connection between the facts of the case permit no separate proceedings. This provision shall also apply to the receiver and the abettor.

---

97 Pursuant to Section 88-a (2) c) Act II of 2003, in Section 468 the words “Sections 571 and 572” were amended to “Sections 574 and 575”.

98 Section 470 (1) d) was enacted by Section 232 (1) of Act I of 2002.

99 The second sentence of Section 470 (3) was established by Section 232 (2) of Act I of 2002.

The court

Section 471[100] (1) In cases subject to criminal proceedings, the military panel of the county court designated in the Act on the organisation and administration of courts shall act in the first instance. [101]

(2)[102] In cases subject to criminal proceedings, the military panel of the Metropolitan Tribunal shall act in the second instance.

Composition of the court

Section 472[103] (1) In military criminal proceedings, both in the first and second instances the professional judge shall be a military judge, and the associate judge in the first instance shall be a military associate judge.

(2) In the cases of criminal offences specified in Section 14 (1) *a)* and Section 16 (1) *a)-g)*[104] the court of first instance shall act in a panel, while in other cases it shall act as a single judge, without the participation of associate judges.

(3) The court of first instance may also act in a panel consisting of one professional judge and two associate judges, if it establishes the court established that the classification may be graver than that indicated in the indictment.

(4) In the military criminal proceedings – with the exception of the case specified in subsection (5) – the associate judge may not be of lower rank than the accused. As a rule, the panel shall consist of the associate judges of the armed force at which the accused discharged his duty at the time of the offence. Derogation from the above rule is allowed if the required for the purpose of administration of justice.

(5) In proceedings against an accused bearing the rank of general, if the panel of the court consisting of the selected military associate judges cannot be set up as specified in subsection (4), the president of the competent county court designated to conduct the military criminal proceedings – through the chairperson of the National Judiciary Council – shall initiate a procedure to select associate judges as stipulated in the Act on the legal status and remuneration of judges. The staff meeting to select the associate judges shall be held within fifteen days following its initiation by the chairperson of the National Judiciary Council. In such a case, the panel shall consist military associate judges of the rank of general, selected at the staff meeting of generals.

---

100 The text of Section 471 was established by Section 233 of Act I of 2002.

101 Please refer to Part II of the appendix to Act LXVI of 1997.

102 Section 471 (2) was established by Section 2 (5) of Act XXII of 2002.

103 The text of Section 472 was established by Section 234 of Act I of 2002.

104 In Section 472 (1) the reference to Section 16 (1) g) shall be amended to reference to Section 16 (1) h) with the effect of January 1, 2005.

Jurisdiction of the court of first instance

Section 473 (1)[105] The geographical jurisdiction of the military panel of the county court designated to conduct the military criminal proceedings is stipulated in the Act on the organisation and administration of courts.

(2) Adjudication of a criminal offence committed outside the Republic of Hungary shall fall in the jurisdiction of the military panel of the county court in the territory of which the commanding officer of the offender is stationed.

(3) The ground for jurisdiction set forth in Section 17 (4) shall not be applied in military criminal proceedings.

The military prosecutor

Section 474 (1) In military criminal proceedings the responsibilities of a prosecutor shall be performed by a military prosecutor. In order to establish the existence of the conditions for filing an indictment, the military prosecutor shall either conduct or order an investigation.[106]

(2) The investigation shall be conducted exclusively by the military prosecutor if a soldier has committed

a) a military felony,

b) a military misdemeanour, if he has committed other related criminal offences or if there are several defendants and the cases shall not be severed,

c) non-military criminal offence.

(3) Further, the investigation shall be conducted by the military prosecutor if the service relationship of the soldier has ceased in the meantime.

(4)[107] The military prosecutor shall conduct the investigation in the case of a criminal offence committed by a member of allied armed forces (Section 368 of the Penal Code) within Hungary, or on a Hungarian ship or Hungarian aircraft outside Hungary, falling in the judicial authority of the Republic of Hungary.

(5) Military criminal proceedings may only be conducted based on public accusation; while a criminal offence subject to private accusation shall fall in the competence of the military prosecutor. In military criminal proceedings no counter-charge may be filed. In proceedings conducted owing to a military criminal offence, no substitute private accusation may be applied.

(6)[108] The military prosecutor may enforce a civil claim for the damage caused to armed forces by the criminal offence adjudicated in the military criminal proceedings.

Offices of the military prosecutors

Section 475 (1) The office of the military prosecutor shall operate beside the military panel of the county court; its head shall have the powers of the chief county prosecutor.

(2)[109] The responsibilities of the department of the public prosecutor shall be performed by the Office of the Military Prosecutor for Appeals beside the tribunal and the Office of the Military Prosecutor beside the Supreme Court. In terms of military criminal proceedings, any provision in this Act referring to the office of the chief prosecutor for appeals or the chief prosecutor for appeals operating beside the tribunal shall mean the Office of the Military Prosecutor for Appeals or the head of the Office of the Military Prosecutor for Appeals, respectively, whereas any reference in this Act to the Office of the Prosecutor General or the

---

105 The text of Section 473 (1) was established by Section 235 of Act I of 2002.

106 Please refer to a 15/2003. (ÜK. 7.) LÜ utasítást, and a 1/2002. (ÜK. 2.) LÜ utasítást.

107 Section 474 (4) was enacted by Section 236 (1) of Act I of 2002, which concurrently amended the original numbering of subsection (4) to subsection (5).

108 Section 474 (6) was enacted by Section 236 (2) of Act I of 2002.

109 The second sentence of Section 475 (2) was enacted by Section 237 of Act I of 2002.

Prosecutor General shall mean the Office of the Military Prosecutor or the chief military prosecutor, respectively.

(3) The jurisdiction of the office of the military prosecutor shall depend on the jurisdiction of he court where it operates.

(4) Pursuant to the disposition of the chief military prosecutor and the Office of the Military Prosecutor for Appeals, the military prosecutor may also proceed in cases which would not otherwise fall in its jurisdiction.

Designation of the proceeding prosecutor's office

Section 476 In the event of a conflict of competence between the military prosecutor's office and other prosecutor's offices, the proceeding prosecutor's office shall be designated by the Prosecutor General.

The military investigating authority

Section 477 (1) If it is not the military prosecutor who conducts the investigation, the commanding officer shall act as the investigating authority.

(2) If the criminal offence subject to military criminal proceedings is detected by a non-military investigating authority, a non-military investigating authority gains cognisance of such a criminal offence, it shall immediately notify the military prosecutor of the performance of the actions stipulated in Section 170 (4).

(3)[110] The commanders having powers to conduct the investigation and the detailed rules of the investigation by the such commander shall be determined by the minister controlling the armed force, together with the minister of justice in agreement with the Prosecutor General.

Protection of the witness

Section 478[111] (1) In especially justified cases, a conscripted witness discharging military duty may request to be commanded or transferred to another post for duty. Prior to filing the indictment the request shall be decided upon by the military prosecutor, and thereafter the court. The witness may appeal the rejection of the request.

(2) The command or the transfer shall be executed by the competent personnel department of the armed force within seventy-two hours following the service of the decision.

Custody

Section 479 If the order for taking a soldier in custody for a criminal offence subject to military criminal proceedings was given by a non-military investigating authority, the defendant shall be handed over to the competent military prosecutor within twenty-four hours.

Pre-trial detention

Section 480 (1)[112] An order for the pre-trial detention of a soldier may also be issued if proceedings are conducted against him for a military criminal offence or other criminal offence subject to imprisonment and committed at his post or in connection with his military duty, and the defendant needs to be deprived of his liberty due to reasons of service or discipline.

---

110 Section 477 (3) was enacted by Section 238 of Act I of 2002.

111 Section 478 was established by Section 239 of Act I of 2002, while the "conscript" part was amended pursuant to Section 88 (2) c) of Act II of 2003.

112 The text of Section 480 (1) was established by Section 240 of Act I of 2002.

(2) The pre-trial detention ordered pursuant to subsection (1) shall cease if the service relationship of the defendant ceases.

Execution of the pre-trial detention

[Section 481[113] *(1) In exceptional cases, the sworn officer of armed forces in pre-trial detention may also be held in a garrison 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 military prosecutor on two occasions – for a period of maximum fifteen days in each case.*

(2) The provision set forth in a Section 135 (2)may not be applied to the pre-trial detention of a sworn police officer. Further, the pre-trial detention may not be executed in a police cell if the service relationship of the defendant has ceased in the meantime.

(3) Sworn officers of penal institutions shall be held in pre-trial detention – regardless of the cessation of their service relationship – in a police cell or army guardhouse.]

Ensuring the right to defence [114]

Section 482 During his actual service relationship, the defendant shall be relieved of service if his participation in a procedural action is allowed or statutory pursuant to this Act.

Imposing close control

Section 483 (1)[115] Conscript soldiers may not be subject to home curfew. Upon a reason for arrest specified in Section 129 (2) *b)* to *d)* and Section 480, in lieu of the pre-trial detention of a conscript, the court may order the close control of the defendant at the unit thereof. Defendants under close control may not perform armed service and prior to the filing of the indictment may not leave his post without the permission of the military prosecutor or thereafter without the permission of the court.

(2) Extension of close control shall be governed by the provisions pertaining to the extension of pre-trial detention (Section 131), while the termination of close control shall be governed by Section 480 (2).

(3) Upon ordering close control, the participation of a counsel for the defence in the proceedings shall be statutory.

Prohibition of bail

Section 484 No bail may be accepted in the case of soldiers during the existence of their actual service relationship.

Rejection of the complaint

Section 485 The complaint may also be rejected by the military investigating authority due to grounds for the termination of punishability stipulated by law specified in Section 124 of the Penal Code.

---

113 The text of Section 481 was established by Section 241 of Act I of 2002. Pursuant to Section 308 (4) of Act I of 2002, Section 481 shall enter into force on January 1, 2005. Up to that time, to the location of az pre-trial detention Section 116 (1) and (3) of Law-Decree on the Penal service shall apply.

114 Section 482 were the subtitle thereof were established by Section 242 of Act I of 2002.

115 The text of Section 483 (1) was established by Section 243 of Act I of 2002. In the first and second sentences of the subsection, the text “sorállományú” was amended to “conscript” pursuant to Section 88 (2) c) of Act II of 2003.

Adjudication of a criminal offence by disciplinary procedure[116]

485/A. Section (1) The military prosecutor shall reject the complaint or terminate the investigation, and send the documents to the commander entitled to conduct a disciplinary procedure, if the objective of the punishment for a military misdemeanour may also be attained by way of disciplinary punishment.

(2) If the military investigating authority deems that the criminal offence can be adjudicated in the course of a disciplinary procedure, it shall forthwith submit the documents to the competent military prosecutor for the adoption of the decision specified in subsection (1); the military prosecutor shall adopt a decision within seventy-two hours.

(3) An investigation shall be ordered to be conducted or the procedure continued, if the suspect or his defence counsel filed a protest against the decision rejecting the complaint or terminating the investigation and there has been no other reason for rejecting the complaint or terminating the procedure. The suspect shall be warned thereof in the decision.

(4) If the military prosecutor referred the adjudication of the criminal offence to a disciplinary procedure, the competent commander may conduct a disciplinary procedure and impose the disciplinary punishments in compliance with the provisions of the separate acts regulating serve relations.[117]

(5) The decision imposing the disciplinary punishment shall also be served on the military prosecutor.

485/B. Section (1) Within three days following the final decision of the commander, the punished person and his defence counsel – after exercising their right of protest as defined in a separate act – may request the court review of the decision or order imposing a penalty for a criminal offence referred to disciplinary procedure. Until the request is adjudicated, the punishment may not be executed.

(2) The request shall be submitted to the commander having imposed the punishment, who shall forward it, together with the documents of the case, to the military panel of the county court having geographical jurisdiction in the case within twenty-four hours. The request may be withdrawn until the commencement of the trial.

(3) The court

a) shall act as a single judge,

b) shall adjudicate the request within three days, at a trial, after hearing the person punished and examining the documents; and if required, may take further evidence,

c) the commander having imposed the punishment and the military prosecutor shall be notified of the time of the trial.

(4) The commander and the prosecutor may make an address as the trial. Any written statements they may wish to make shall be sent to the court prior to the commencement of the trial.

(5) The court shall make a decision on the request in the form of a ruling.

(6) Requests not permitted by law, or lodged by a non-eligible party, and belated requests shall be rejected by the court. The request may also be rejected prior to setting the date of the trial.

(7) The court

a) shall uphold the decision or the order, if the request is not substantiated,

b) applies a lower security of imprisonment or commutes the punishment,

---

116 The subtitle and Sections 485/A and 485/B were enacted by Section 244 of Act I of 2002.

117 Please refer to Act XLIII of 1996, Act XLIV of 1996 and Act XCV of 2001.

c) annuls the decision or order imposing the punishment, if a disposition concerning acquittal or the termination of the procedure should be adopted if the case was adjudicated in criminal proceedings.

(8) The appeal against the ruling of the course delivered pursuant to subsections (6) to (7) shall be governed by the provisions of Section 346 (1) concerning the appeal against the ruling terminating the procedure.

Prohibition of postponed indictment [118]

485/C. Section[119] (1) The indictment may not be postponed if the soldier has committed a military criminal offence during his actual service period or committed another criminal offence at his post or in connection with his military duty – if the actual service relationship of the defendant exists at the time specified in Section 216 (1).

(2) The prohibition set forth in subsection (1) may not be applied if the indictment shall be postponed for the reasons stipulated in Section 222 (2).

The investigating judge

Section 486[120] In the course of military criminal proceedings, the tasks of the investigating judge shall be performed by the military judge of the county court. The appeal against the decision adopted by the military judge acting as an investigating judge shall be considered by the military panel of the tribunal.

Termination of the procedure

Section 487 On the grounds for the termination of punishability specified in Section 124 of the Penal Code, until the filing of the indictment the military prosecutor and thereafter the court may terminate the procedure.

Persons participating at the trial

Section 488[121] In the cases specified in Section 241 (1), the presence of the military prosecutor is statutory at the trial. In military criminal proceedings the secretary of the prosecutor's office may not represent the prosecution.

Section 489 The presence of the counsel for the defence is statutory at the trial,

a) if the criminal offence is punishable by five years' or more imprisonment by law,

b) in the cases regulated in Section 46,

c) if the accused is a conscript[122],

d) if there is a substitute private accuser.

Voting order of the military panel

Section 490[123] In the military panel, the judge of a lower rank shall vote before the judge of a higher rank. In the case of equal ranks, the officer having been promoted to the higher

---

118 The subtitle was enacted by Section 245 of Act I of 2002.

119 Section 485/C was enacted by Section 245 of Act I of 2002, and its text established by Section 78 of Act II of 2003.

120 The text of Section 486 was established by Section 246 of Act I of 2002.

121 . The text of Sections 488 and 489 were established by Section 247 of Act I of 2002.

122 In Section 489 c) the word "sorállományú" was amended to "conscript" pursuant to Section 88-a (2) c) of Act II of 2003.

123 The third sentence of Section 490 was enacted by Section 248 of Act I of 2002.

rank earlier shall cast his vote first. If the dates of promotion to the rank are identical, the younger officer shall vote first. The presiding judge shall be the last to vote.

Costs of criminal proceedings

Section 491 The costs of criminal proceedings conducted against a conscript[124] due to a military criminal offence – with the exception of the remuneration and out-of-pocket expenses of the mandated defence counsel and the representative of the victim, and the costs incurred due to imprisonment in a non-military penal institution – shall be borne by the state.

Prohibition of the application of provisions pertaining to juvenile offenders

Section 492 The provisions of Chapter XX may not be applied to a soldier.

Chapter XXII

PROCEDURE BASED ON PRIVATE ACCUSATION

Section 493 In criminal proceedings conducted based on private accusation, the provisions set forth in this Act shall be applied with the derogations stipulated in this Chapter.

The private accuser

Section 494 (1) The burden of proving the guilt of the defendant shall falls on the private accuser.

(2) Unless provided otherwise in this Act, in addition to the rights of the victim, the private accuser shall also have the rights that the representation of the prosecution entail.

(3) If there are several victims in a case, they shall agree on the person to act as the private accuser. In the absence of such an agreement, the private accuser shall be designated by the court. After the selection or designation of the private accuser, the others shall have the right of a victim.

(4) In the absence of a counter-charge, the private accuser may be heard as a witness.

Section 495 (1) The private accuser shall be entitled to exercise the rights inherent to the representation of the prosecution in respect of the charge he pressed. In the event of a counter-charge (charge pressed against the private accuser) the private accuser shall have the rights and obligations of an accused.

(2) In respect of the counter-charge, the representative of the private accuser shall have the same legal status as the defence counsel, provided that his mandate extends to the defence.

The prosecutor

Section 496[125] In the procedure based on a private accusation the prosecutor may examine the documents of the case and may also attend the trial. The prosecutor may take over the representation of the prosecution from the private accuser in any stage of the procedure; in such a case the private accuser shall have the rights of the victim. Should the prosecutor later withdraw from the representation of the prosecution, this role shall be taken over by the private accuser once again. The judgement shall be served on the prosecutor if he has taken over the representation of the prosecution.

---

124 In Section 491 the word “sorállományú” was amended to “conscript” pursuant to Section 88-a (2) c) of Act II of 2003.

125 The last sentence of Section 496 was enacted by Section 249 of Act I of 2002.

Grounds for instituting the procedure

Section 497 (1) The procedure shall be instituted based on a complaint. In the complaint the complainant shall identify the person against whom he requests the institution of the criminal proceedings, as well as designate the offence charged and the underlying evidence. The complaint shall be made at the court either in writing or verbally; verbal complaints shall be recorded in minutes.

(2) The investigating authority shall forward the complaint received to the competent court. The prosecutor shall send the complaint to the court if he does not take over the representation of the prosecution.

(3)[126] In the case of mutual assault, libel or slander, the procedure instituted against either party for the criminal offence, the other party shall be entitled to file the private motion prior to the panel session described in Section 321 (1) even if the relevant deadline has lapsed, provided that the criminal liability has not lapsed yet. Pressing a counter-charge is permitted even if the prosecutor has taken over the representation of the prosecution from the private accuser.

(4) The court shall also adjudicate the administrative offence of slander having been committed mutually by the criminal offences set forth in subsection (3).

Section 498 If the person or the criminal offence cannot be identified from the complaint, the court shall call the complainant to make the complaint more specific in writing and may hold a preliminary session or order an investigation.

Investigation in the procedure based on a private accusation

Section 499 (1) Investigation may be ordered by the court or the prosecutor.

(2) The court shall order an investigation, if the identity, personal data or place of stay of the person referred to in the complaint is unknown, or means of evidence needs to be sought. The court shall send the ruling ordering the investigation and the documents to the investigating authority. The investigation shall be conducted by the police.

(3) The prosecutor may order an investigation, if he takes over the representation of the prosecution prior to issuing the summons to a personal hearing [Section 502 (1)].

Section 500 (1) After the conclusion of the investigation ordered by the court, the documents shall be returned to the court.

(2) The court having ordered the investigation shall be notified if the identity of the unknown offender could not be established even from the data gathered during the investigation.

(3) Should the complainant withdraw the complaint during the investigation ordered by the court, the documents produced by that time and the statement concerning the withdrawal of the complaint shall be returned to the court.

(4) In the cases specified in subsections (2) and (3) the court shall terminate the procedure.

Decision without a personal hearing

Section 501 (1) The court shall send the documents to the prosecutor, if

a) the complaint and the documents seem to suggest a criminal offence requiring the prosecutor to represent the prosecution,

b) it deems necessary that the prosecutor should consider taking over the representation of the prosecution,

---

126 The second sentence of Section 497 (3) was enacted by Section 250 of Act I of 2002.

c) the prosecutor has taken over the representation of the prosecution before the summons to the personal hearing is issued.

(2) If this is feasible based on the contents of the complaint and the documents, the court shall decide on the transfer of the case, the suspension of the procedure and the termination of the procedure.

(3)[127] In the case specified in subsection (1) *a)* the prosecutor shall order the investigation. The investigation needs not be ordered, if the conditions stipulated in 174 (1) *c)* to *f)* prevail.

The personal hearing

Section 502 (1) If the measures listed in Sections 498 and 501 do not apply, the court shall summon both the reported person and the complainant to a personal hearing, and hold a session. The defence counsel and the representative of the complainant shall be notified thereof. If there are several victims in the case, all of the victims shall be summoned to the personal hearing.

(2) In the summons the complainant (victim) shall be warned that upon an insufficient excuse for his absence the court shall regard the charges dropped. The summons sent to the reported person shall refer to the name of the complainant and the substance of the criminal offence.

(3) If the reported person is a foreign citizen, an officer at the consulate of their native country may also attend the personal hearing.

(4) At the commencement of the personal hearing the court shall establish the identity of the complainant and the reported person, presents the substance of the complaint, and – if the conditions therefor prevail – advises the reported person of the option of a counter-charge. Thereafter, the court shall endeavour to reconcile the complainant and the reported person.

(5) Should the attempt for reconciliation fail, the court records the data of the reported person, then asks whether he pleas guilty of the charges contained in the complaint, and requests him to specify the means of evidence in support of his defence. If necessary, the court shall designates the victim to act as the private accuser, or designates the private accuser.

(6) If the reported person lodges a counter-charge, the court may also hear the complainant in his capacity as the reported person.

(7) The court requests the complainant – and in the case of a counter-charge the reported person – to specify the means of evidence and indicate the facts they prove. The court may set a fifteen-day deadline for this.

Section 503 (1) Minutes shall be taken of the personal hearing.

(2) The responsibilities of the court defined in Sections 501 and 502 may also be discharged by the associate judge or the court secretary, and they are also entitled to adopt the decision described in Section 504 (1).

Decision based on the personal hearing

Section 504 (1) The court shall terminate the procedure, if the complainant

a) did not attend the personal hearing and failed to forthwith provide a substantial excuse in advance, or could not be summoned because he had failed to report his change of address,

b) has withdrawn the complaint.

(2) The court may adopt a decision at the personal hearing in each issue it is entitled to decide upon prior to the personal hearing.

---

127 Section 501 (3) was enacted by Section 251 of Act I of 2002.

(3) In the case specified in subsection (1) the procedure instituted based on the counter-charge shall be terminated, provided that the deadline for filing a private motion has lapsed before the day of the personal hearing.

Appeal against the decisions and measures in the course of the preparation of a trial

Section 505 No appeal may be lodged
a) against the order for an investigation,
b) against the summons to a personal hearing, and the notification thereof,
c) due to the designation of the private accuser,
d) against the measure taken pursuant to Section 501 (1).

Setting the trial

Section 506 In the summons the private accuser shall be warned that upon an insufficient excuse for his absence the court shall regard the charges dropped, unless he arranges his representation.

Persons attending the trial

Section 507 If the private accuser fails to attend the trial and had failed to forthwith provide a substantial excuse in advance, or could not be summoned because he had failed to report his change of address, he shall be regarded as having dropped the charges.

Conducting the trial and maintaining the order of the trial

Section 508 Should the private accuser be ordered to leave or be removed from the trial due to disturbing the order, he shall be notified of the evidence taken in his absence not later than before the conclusion of the evidentiary procedure. If the representative of the private accuser disturbs the order, and the private accuser is not present, the trial shall be adjourned at the cost of the former.

The trial

Section 509 (1) If the private accuser has no representative or the accused has no defence counsel, at the trial the court presents the substance of the charge and, where appropriate, the counter-charge.

(2) At the trial, the court shall hear the accused and the witness, as well as the expert. The accused shall be heard in the absence of the private accuser.

Dropping the charge and withdrawal from the representation of the prosecution

Section 510 (1)[128] The private accuser shall not provide justification for dropping the charge. At the trial, the condition set forth in Section 504 (1) *a)* shall also be applicable. The private accuser may also drop the charge in a repeated procedure.

(2) If the prosecutor has taken over the representation of the prosecution from the private accuser, he may not drop the charge but may withdraw from the representation thereof. If the private accuser is present, the trial shall be continued, otherwise the court shall adjourn the trial and simultaneously set the date for a new trial and notify the private accuser that prosecution shall be represented by him once again.

---

128 The third sentence of Section 510 (1) was enacted by Section 252 of Act I of 2002.

Ruling terminating the procedure

Section 511 (1) The court shall terminate the procedure if the private accuser has dropped the charge at the trial, or the charge should be regarded as dropped due to his negligence (Section 507). Such cases shall also be governed by the provisions of Section 504 (3).

(2) The abridged minutes [Section 252 (5)] shall contain the statement of the accused – if appropriate – induced the private accuser to drop the charge as well as the declaration of dropping the charge.

Procedure of the court of appeal

Section 512 (1) The private accuser may not file an appeal against the decision of the court of first instance in favour of the accused.

(2) The court of first instance shall submit the documents directly to the court of appeal.

(3) The court shall summon the private accuser to the hearing, if it deems that his presence is necessary. Otherwise the private accuser shall be notified of the trial.

(4) The court of appeal shall repeal the judgement of the court of first instance at a panel session and terminate the procedure, if a motion to this effect is filed by the private accuser before the panel session to be held for adopting a decision. This case shall also be governed by the provisions of Section 504 (3).

Section 513[129]

Bearing the costs of criminal proceedings

Section 514 (1) In the case regulated in Section 339 (1) the costs of criminal proceedings shall be borne by the private accuser, however, if the criminal proceedings is terminated on the grounds terminating punishability as specified in Section 32 *a)* or *c*) of the Penal Code, the costs of criminal proceedings defined in Section 74 (1) *a)* shall be borne by the state. Section 339 (2) shall also apply, if the court terminated the proceedings pursuant to Section 504 (1) *b)*, the first sentence of Section 510 (1) or Section 512 (4).

(2) The court of appeal shall order the private accuser to bear the costs of criminal proceedings incurred in the course of the appeal procedure, if only the private accuser lodged an appeal against the decision of the court of first instance, and the court of appeal has upheld such decision.

(3) In the event of a counter-charge, the court may also order the private accuser and the party having filed the counter-charge to bear the costs of criminal proceedings it has advanced.

(4)[130]

Motion for re-trial

Section 515 (1) The private accuser may also file a motion for re-trial, if the defendant was acquitted from the charge or the proceedings were terminated.

(2) The motion for re-trial shall be submitted directly to the court. If the motion for re-trial requests the establishment of a criminal offence requiring the prosecutor to represent the prosecution, the statement of the prosecutor shall also be obtained.

---

[129] Pursuant to Section 308 (2) of Act I of 2002, Section 513 shall be repealed and shall not enter into force.

[130] Pursuant to Section 308 (2) of Act I of 2002, Section 514 (4) shall be repealed and shall not enter into force.

Chapter XXIII

ARRAIGNMENT

Section 516 Upon an arraignment, the provisions of this Act shall be applied with the derogations set forth in this Chapter.

Conditions for the arraignment

Section 517 (1) The prosecutor may arraign the defendant to court within fifteen days from the commission of the criminal offence, if

a)[131] the criminal offence falling in the competence of the local court or subject to military criminal proceedings is punishable by a maximum of eight years' imprisonment by law,

b) the case is simple,

c) the evidence is available,

d) the defendant was caught in the act or admitted the commission of the criminal offence.

(2) If the conditions for an arraignment set forth in subsection (1) *a)* to *c)* are met and the defendant was caught in the act, the prosecutor shall arraign the defendant within fifteen days of the commission of the criminal offence.

(3)[132] The private accuser, and the substitute private accuser may not file a motion for summoning the defendant to court.

Investigation and indictment

Section 518 (1) If the conditions for an arraignment are met and the prosecutor intends to summon the suspect to the court, the prosecutor shall communicate to the suspect both the criminal offence and the evidence of the arraignment.

(2) The prosecutor shall forthwith arrange that the suspect may retain a defence counsel; if the suspect has no defence counsel, the prosecutor shall appoint one. If the defendant is in custody, the prosecutor shall also provide for an opportunity for the defence counsel to communicate with the defendant prior tot he trial.

Section 519 (1)[133] The prosecutor shall forthwith notify the court, if he intends to have the defendant arraigned; and the court shall immediately set the date of the trial.

(2) The coercive measure entailing the restriction or deprival of personal freedom ordered prior to the arraignment shall last up to the conclusion of the trial. If the documents are returned to the prosecutor, it shall fall within the competence of the court to decide on the coercive measures entailing the restriction or deprival of personal freedom.

Section 520 The prosecutor shall have the accused arraigned with the participation of the investigating authority or otherwise, directly summon the defence counsel and ensure the availability of the means of evidence at the trial. The prosecutor shall also ensure that those who shall statutorily attend the trial be present there and those whose participation is not statutory may be present.

---

131 Section 517 (1) a) was established by Section 253 (1) of Act I of 2002.

132 Section 517 (3) was enacted by Section 253 (2) of Act I of 2002.

133 The text of Section 519 (1) was established by Section 254 of Act I of 2002.

Preparation of the trial

Section 521 In the event of an arraignment, the provisions of Chapter XII may not be applied.

Trial of the court of first instance

Section 522 (1) The prosecutor and the defence counsel shall statutorily attend the trial.

(2) Unless this has been done earlier, prior to the commencement of the trial, the prosecutor shall transmit the documents and the physical evidence to the court, and thereafter present the charges orally.

(3) After the presentation of the charges, the court shall return the documents to the prosecutor, if more than fifteen days have lapsed between the commission of the criminal offence and the arraignment, or the criminal offence is punishable by a maximum of eight years' imprisonment by law.

Section 523 (1) The accused and the witness shall be heard by the presiding judge.

(2) If in the light of evidence taken at the trial the prosecutor needs to be contacted in order to seek further evidence, the court shall return the documents to the prosecutor.

Section 524 The indictment may only be expanded, if the conditions for an arraignment are also met in respect of the criminal offence designated in the expanded indictment. Otherwise the court shall return the documents to the prosecutor.

Section 525 Returning the documents to the prosecutor shall not be subject to an appeal.

Chapter XXIV

PROCEDURE AGAINST AN ABSENT DEFENDANT

Section 526 In the case of a procedure against an absent defendant, the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Section 527 (1) The fact that the defendant is absconding shall not be an obstacle to the investigation; in addition to the measures taken to locate the place of stay of the defendant [Section 73 (1)] tracing and securing the means of evidence shall also be ensured.

(2) If the measures to locate defendant were unsuccessful, the prosecutor may motion in the indictment that the trial be held in the absence of the defendant, provided that based on the data of the investigation, there is no obstacle to filing the indictment.

(3) If the prosecutor files a motion for holding the trial in the absence of the accused, the court shall issue a warrant of arrest, unless it has already been issued.

(4) Prior to filing the indictment, the prosecutor shall appoint a defence counsel for the defendant – unless the defendant has retained a defence counsel – and ensures that the defence counsel may inspect the documents of the investigation (Sections 193 and 194).

(5)[134] Summons and notifications as well as the decision and other documents addressed to the defendant shall be served on the defence counsel.

---

134 The text of Section 527 (5) was established by Section 255 of Act I of 2002.

The procedure of the court against an absconding accused

Section 528[135] (1) The court shall proceed against the absconding the accused based on the motion of the prosecutor to this effect. If the prosecutor files a motion for holding the trial in the absence of the accused, the court may not suspend the procedure pursuant to Section 188 (1) *a)*. Neither the private accuser, not the substitute private accuser may motion for a court procedure against an absconding accused.

(2) If the prosecutor filed a motion for holding the trial in the absence of the accused, and the place of stay of the accused has become known prior to the commencement of the trial, the court shall notify the prosecutor thereof, and if necessary orders a coercive measure entailing the restriction or deprival of personal freedom of the accused.

Section 529 (1) If the place of stay of the accused has become unknown after the filing of the indictment, and the trial may be held in his absence [Section 527 (2)], the presiding judge may, without suspending the procedure, may ask the prosecutor whether he wishes to file a motion for holding the trial in the absence of the accused, and shall simultaneously issue a warrant of arrest.

(2) If the prosecutor deems it justified to hold the trial in the absence of the accused, he shall file a motion to this effect within fifteen days of such request.

(3) If no defence counsel had acted on behalf of the accused formerly, in the motion filed pursuant to subsection (2) the prosecutor shall also motion for the appointment of a defence counsel. The trial shall be continued with the presentation of the materials of the earlier trial.

(4) If the prosecutor does not file a motion for holding the trial in the absence of the accused, the presiding judge shall suspend the procedure.

(5)[136] The provisions set forth in subsections (1) to (4) shall also be applied, as appropriate, to procedure of the court of appeal.

Section 530 (1) At the trial held in the absence of the accused, the presence of the prosecutor and the defence counsel shall be statutory.

(2) The indictment, the decisions, the summons and the notification shall be served on the accused by way of an announcement. The summons and notification addressed to the accused shall also be served on the defence counsel thereof.

Section 531[137] (1) If the measures to locate the accused succeeded prior to the delivery of the conclusive decision of the court of first instance, the court shall continue the trial by the presentation of the material of the earlier trial, and if necessary, reopen the evidentiary procedure (Section 320).

(2) If the measures to locate the accused succeeded after the delivery of the conclusive decision of the court of first instance, within the deadline set for an appeal, the accused may, in lieu of an appeal, file a motion with the court of first instance for the repetition of the trial.

(3) Prior to the commencement of the trial, the court shall present its decision delivered based on the trial having been held in the absence of the accused and the motion of the accused to repeat the trial. At the repeated trial, instead of repeatedly taking the testimony of the witness and repeatedly hearing the expert, the minutes taken of the earlier testimony given before the court and the earlier expert opinion may be read out. In other respects, the trial shall be governed by the provisions stipulated in Chapter XIII.

---

135 Section 528 (1) was enacted by Section 256 of Act I of 2002, which concurrently amended the numer of the original Section 528 to Section 528 (2).

136 Section 529 (5) was enacted by Section 257 of Act I of 2002.

137 The text of Section 531 was established by Section 258 of Act I of 2002.

(4) Depending on the outcome of the repeated trial, the court may either uphold its decision having been delivered based on the trial held in the absence of the accused, or repeal the same and deliver a new decision.

(5) If the measures to locate the accused succeeded during the procedure of the court of appeal, the court of appeal shall set the date of the trial and hear the accused there, and – if required – takes further evidence as motioned for by the accused. Depending on the outcome of the procedure, the court of appeal may either uphold or change the judgement of the court of first instance, or repeal the same and order the court of first instance to conduct a new procedure.

(6) If the defendant is located after the delivery of the final decision, a motion for re-trial may be submitted in his favour.

Procedure against a defendant staying abroad

Section 532 (1) If the defendant is staying abroad and no extradition may be requested, or his extradition was rejected and the criminal proceedings have not been transferred either, the prosecutor may motion in the indictment to hold the trial in the absence of the accused.

(2) If it is established in a court procedure that the extradition of the accused staying abroad may not be requested, or his extradition was rejected and the court does not deem it justified to offer the transfer of the criminal proceedings, the court may ask the prosecutor whether he wishes to file a motion for holding the trial in the absence of the accused.

(3)[138] If it is established during the trial commenced in the absence of the accused that the extradition of the accused staying abroad may not be requested, or his extradition was rejected and the court does not deem it justified to offer the transfer of the criminal proceedings, the court shall continue the trial without such request to the prosecutor.

(4) If the procedure is conducted against a defendant staying abroad, or the defendant has returned to Hungary, the provisions of Section 527 to 531 shall be applied as appropriate.

Chapter XXV

WAIVER OF THE TRIAL

Section 533 In the case of the procedure conducted based on a waiver of the trial, the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Section 534 (1)[139] At the motion of the prosecutor, in a procedure instituted due to a criminal offence punishable by a maximum of eight years' imprisonment by law, the court may establish the guilt of the accused in a judgement delivered at a public session and may impose a sentence, if the accused waives his right to a trial and pleads guilty. Neither the private accuser, nor the substitute private accuser may motion for a procedure based on a waiver of the right to a trial.

(2)[140] In the procedure based on a waiver of the trial, the sentence of imprisonment to be imposed shall take into consideration the provisions of Sections 87/C and 85/A of the Penal Code.

(3) The court may not reject the civil claim.

---

138 The text of Section 532 (3) was established by Section 259 of Act I of 2002.

139 The second sentence of Section 534 (1) was enacted by Section 260 (1) of Act I of 2002.

140 Section 534 (2) was established by Section 260 (2) of Act I of 2002.

Waiver of the trial in the case of a co-operating defendant [141]

Section 534/A (1) The waiver of trial may also be applied in the case of an offender having committed a criminal offence in conspiracy (Section 137.8 of the Penal Code) and has closely co-operated with the prosecutor and the investigating authority in the course of the investigation to prove the criminal case, but the investigation has not been terminated for any reason, even if the criminal offence is punishable by more than eight years' imprisonment by law.

(2) In the case of a person stipulated in subsection (1) the procedure conducted based on the waiver of the trial, the sentence shall not be stricter than those set forth in the provisions of Section 98 of the Penal Code and the General Part of the Penal Code prescribed for a criminal offence committed in a criminal organisation. The sentence shall be established based on Sections 87/C and 85/A of the Penal Code. If the criminal offence shall be punished by more than eight years' imprisonment by law, the sentence may not exceed this limit.

The actions of the prosecutor

Section 535[142] (1) Taking into account the circumstances of the case, thus in particular the person of the defendant and the criminal offence committed, the prosecutor may initiate in the indictment the adjudication of the case at a public session, if the defendant

a) made a confession, admitting also his guilt in the course of the investigation, and

b) motions for the adjudication of the case at a public session.

(2) The defendant shall be informed of the option to waive his right to trial and the consequences thereof by the prosecutor prior to filing the indictment. The information and the statement of the defendant shall be recorded in minutes. The prosecutor may attach the minutes taken of the information as a document of the investigation to the court copy of the indictment, if the defendant has motioned for the adjudication of the case at a public session.

(3) Defendants who made no confession in the course of the investigation may request the prosecutor after the conclusion of the investigation, but not later than within fifteen days following the service of the indictment, to file a motion for the adjudication of the case at a public session.

(4) If the prosecutor agrees with the request, he informs the defendant of the acceptance thereof after hearing the defendant. In such a case, the prosecutor shall forthwith file the motion to the court for the adjudication of the case at a public session. Unless the defendant has a defence counsel, the prosecutor shall appoint a defence counsel to act on behalf of the defendant and shall ensure that the defence counsel may examine the documents of the investigation.

(5) If the prosecutor does not file a motion for the adjudication of the case at a public session, he will not advise the court of the request of the defendant and may not submit the documents produced in this regard to the court.

(6) The prosecutor may not withdraw the motion for the adjudication of the case at a public session. If – based on the outcome of the session – the prosecutor deems that the accused is guilty in a graver criminal offence, or is guilty in other criminal offences as well, the prosecutor shall file a motion for referring the case to a trial.

---

141 The subtitle and Section 534/A were enacted by Section 261 of Act I of 2002.

142 The text of Section 535 was established by Section 262 of Act I of 2002.

The procedure of the court

Section 536 (1) Upon a waiver of trial, the court shall act as a single judge and hold a public session. At the public session the attendance of the prosecutor and the defence counsel shall be statutory.

(2) The preparation of the public session shall be governed by the rules pertaining to the preparation of a trial.

Section 537 (1) At the public session the prosecutor shall present the charge and the motion for the adjudication of the case at a public session.

(2) After the presentation of the charge and the motion, the court shall inform the accused of the consequences of his waiver of trial and confession before the court, and in particular of the provisions stipulated in Sections 539 and 541.

(3) Thereafter, the court shall call the accused to make a statement whether he wishes to waive his right to trial.

(4) Prior to making the statement, the court shall allow the accused to consult with his defence counsel.

(5) The court shall order the public session if the accused waives his right of trial, and the court – based on this fact, the documents of the procedure and, if necessary, the answers to the questions addressed to the prosecutor, the accused and the defence counsel – deems that there is no obstacle to adjudicating the case at a public session. In other cases the court shall refer the case to a trial. This ruling shall not be subject to an appeal.

Section 538 (1)[143] After the waiver of trial, the court shall hear the accused of the actions included in the indictment. If the accused refuses to make a testimony, the court shall refer the case to a trial and this ruling shall not be subject to an appeal. The accused shall be warned of this fact prior to the commencement of the hearing.

(2) If, after hearing the accused, the court deems that there is reasonable doubt as to the legal responsibility of the accused, or the voluntary nature or credibility of the confession thereof, and if – with the exception of the cases set forth in Section 535 (3) – testimony of the accused significantly differ from his testimony given in the course of the investigation, the court shall refer the case to a trial, and this ruling shall not be subject to an appeal. If the court considers that the above measure would not be justified, it shall also hear the accused to establish the conditions underlying the sentence to be imposed.

(3) After concluding the hearing of the accused, the prosecutor and thereafter the defence counsel may also make their addresses.

Section 539 (1) The court shall establish the guilt of the accused based on the confession thereof and the documents of the investigation.

(2)[144] If the court established that the classification of the offence may be graver than that indicated in the indictment, it shall refer the case to a trial. This ruling shall not be subject to an appeal.

(3)[145] In the justification of the condemning judgement, in addition to the items listed in Section 258 (3) *a)* to *c),* and the conditions underlying the sentence and the applied legal regulations it is sufficient to refer to the fact of the waiver of trial.

Section 540 If the prosecutor motioned for the public session pursuant to Section 535 (2), and at the public session the court referred the case to a trial – unless there is an obstacle to

---

143 The text of Section 538 (1) and (2) was established by Section 263 of Act I of 2002.

144 The second sentence of Section 539 (2) was enacted by Section 264(1) of Act I of 2002.

145 Section 539 (3) was enacted by Section 264(2) of Act I of 2002.

holding the trial[146] – the court shall forthwith hold the trial. The trial shall be governed by the provisions set forth in Chapter XIII.

The procedure of the court of appeal[147]

Section 541 (1) The establishment of guilt, the facts of the case established in compliance with Section 539 identically with the indictment, and the classification established identically with that in the indictment shall not be subject to an appeal.

(2) The statement of new facts and reference to new evidence in the appeal shall be made with in consideration with the restrictions set forth in subsection (1).

Section 542[148] (1) The court of appeal shall review the dispositions in the appealed judgement concerning the substantiality of the facts of the case, the establishment of guilt and the classification of the criminal offence, however, upon the establishment of guilt, the facts of the case established in compliance with Section 539 identically with the indictment, and the classification established identically with that in the indictment it shall only change the judgement of the court of first instance, if the defendant may be acquitted or the procedure terminated, or – due to the reclassification of the offence compared to the judgement of the court of first instance – the sentence shall be significantly commuted or a measure shall be applied in lieu of the punishment.

(2) During the appeal procedure, evidence may be taken with consideration to the restrictions stipulated in Section 539 (1).

(3) Regardless of the appeal of the prosecutor for severity, the court of appeal may impose a sentence within the limits stipulated in 534 (2).

(4) If the court of first instance held the public session in the absence of the conditions stipulated by law, the court of appeal shall repeal the judgement of the court of first instance and order such court to conduct the procedure in compliance with the rules pertaining to repeated procedures.

Chapter XXVI

OMISSION OF THE TRIAL [149]

Section 543 Upon a suspended execution of imprisonment, imposition of a fine, or the application of an ancillary penalty as an individual punishment or order of probation with the omission of a trial, the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Section 544 (1) At the motion of the prosecutor – or in a case based on private accusation, ex officio – the court may adopt a ruling, with the omission of a trial, concerning the suspension of the execution of an imprisonment, a fine, or as an individual punishment suspension of the licence to practice, suspension of the driving licence, expulsion – against a

---

146 Pursuant to Section 308 (2) of Act I of 2002, in Section 540, the words “tanúk a korábban kibocsátott idézésre megjelentek és a” shall be repealed and shall not enter into force.

147 Section 541 and the subtitle thereof were established by Section 265 of Act I of 2002.

148 Section 542 (1) and (2) was enacted by Section 266 of Act I of 2002, which concurrently amended the original numbering of subsections (1) and (2) to subsections (3) and (4).

149 The text of the title of Chapter XVI was established by Section 267 (1) of Act I of 2002.

soldier demotion and the termination of service as well –, and, as a measure apply probation, reprimand against an accused at liberty, upon a criminal offence punishable by a maximum of three years' imprisonment by law, if

a) the law permits the suspension of the execution of the imprisonment, imposition of a fine, the probation, or the application of an ancillary penalty as an individual punishment, respectively,

b) the facts of the case are simple,

c) the accused has confessed the commission of the criminal offence,

d) the objective of the punishment can be attained without a trial as well.

(2) A sentence for imprisonment exceeding one year may not be impose without a trial.

(3)[150] Unless regulated otherwise by this Act, the ruling delivered with the omission of a trial shall be governed by the provisions concerning judgements.

Section 545 (1) The ruling specified in Section 544 (1) may be delivered within three days following the arrival of the case at the court.

(2) In cases based on private accusation the deadline stipulated in subsection (1) shall be reckoned from the day of the personal hearing.

Section 546 (1) If the prosecutor did not make a motion in the indictment for the omission of the trial by the court, the court may request him to do so.

(2) The prosecutor may file the motion specified in subsection (1) within three days of the service of such request.

Section 547 (1) The court

a) in the case of the suspension of the execution of an imprisonment, or the imposition of a fine, may order as an ancillary penalty the suspension of the licence to practice, suspension of the driving licence, or expulsion – against a soldier demotion, the termination of service reduction in rank or the extension of the waiting period as well – and in the case of the suspension of the execution of an imprisonment may apply fine as ancillary penalty,

b) in the case of the suspension of the execution of an imprisonment, or probation, may impose supervision by a probation officer,

c)[151] may also order in its ruling confiscation or forfeiture of property, or admit a civil claim, or refer the enforcement of the civil claim to other legal means,

d)[152] may terminate or repeal the probation.

(2) In respect of bearing the costs of criminal proceedings, the provisions set froth in Sections 338 to 340 shall be applied.

(3) The purview of the ruling delivered with the omission of a trial shall contain

a) the designation of the criminal offence,

b) the imposed sentence for imprisonment, fine, or the ancillary penalty, probation or reprimand applied as an individual punishment,

c) other dispositions based on legal regulations,

d) the warning of the conditions stipulated in Sections 548 and 550.

(4) To the justification of the ruling the provisions of Section 259 (1) shall be applied as appropriate.

(5)[153] The ruling may also delivered by the court secretary.

---

150 Section 544 (3) bekezdése was established by Section 267 (2) of Act I of 2002.

151 Section 547 (1) c) was established by Section 268 (1) of Act I of 2002.

152 Section 547 (1) d) was enacted by Section 268 (1) of Act I of 2002.

153 Section 547 (5) was enacted by Section 268 (2) of Act I of 2002.

Section 548 (1) The ruling delivered with the omission of a trial shall not be subject to an appeal; the prosecutor, the private accuser, the accused, the defence counsel, the private party and the other interested party – within eight days of the service – may request that a trial be held. Upon such a request, the court shall hold a trial.

(2) The prosecutor may not request that a trial be held on the grounds that the court had acted pursuant to Section 544 (1).

(3)[154] The private party and the other interested may only request that a trial be held in connection with the disposition regarding the civil claim, and the confiscation and forfeiture of property, respectively. If the trial was requested only by the private party, at the trial the court shall repeal the disposition regarding the civil claim and refers the enforcement of the claim to other legal means.

(4) The request for holding a trial – with the exception of the case stipulated in Section 549 (2) – shall have a delaying effect on the execution of the ruling.

(5)[155] If the ruling delivered with the omission of a trial cannot be served on the accused, in respect of the consequences of the failed service the provisions of Section 70 (7) shall apply, providing however, that service by announcement cannot be applied and the court shall arrange for setting a date for the trial.

Section 549 (1)[156] After the commencement of the trial, the court presents the ruling delivered with the omission of a trial and the request for holding a trial.

(2) If the request for holding a trial was filed under Section 548 (3), or, if the prosecutor, the accused or the defence counsel protested solely against the disposition concerning confiscation or forfeiture of property, the civil claim or the costs of criminal proceedings, the court shall only decide in this issue at the trial.

(3) The court – with the exception of the case stipulated in subsection (2) – shall repeal its ruling delivered with the omission of a trial and thereafter conducts the trial in compliance with the provisions of Chapter XIII.

(4) In the absence of a request to the detriment of the accused, the court may only impose a graver punishment, or apply a graver measure in lieu of a punishment, if new evidence arises at the trial and thereby the court establishes a new fact necessitating a graver classification or the imposition of a significantly graver punishment, or apply a graver measure in lieu of a punishment.

(5) The ruling delivered pursuant to subsection (3) shall not be subject to an appeal.

Section 550 (1) The petitioner may withdraw the request for holding a trial until the commencement thereof.

(2) The party having requested the trial shall be obliged to attend the trial. If he fails to attend the trial and forthwith provide a substantial excuse in advance his request shall be regarded withdrawn. This provision shall not apply to the prosecutor.

---

154 Section 548 (3) was established by Section 269 (1) of Act I of 2002.

155 Section 548 (5) was established by Section 269 (2) of Act I of 2002.

156 The text of Section 549 (1) and (2) was established by Section 270 of Act I of 2002.

Chapter XXVII

PROCEDURE AGAINST PERSONS ENJOYING IMMUNITY

Persons enjoying immunity due to holding a public office

Section 551 (1) Against members of Parliament, Constitutional Court justice, civil right ombudsman and the general deputy thereof, the ombudsman for minority rights, the data protection commissioner, the president and vice-presidents of the State Audit Office – until they hold such office – criminal proceedings may only be instituted after the suspension of their immunity.

(2) Against professional judges and prosecutors, as well as associate judges criminal proceedings for a criminal offence committed in their capacity as such, may only be instituted after the prior consent of an authorised person.

(3) The persons enjoying immunity, as listed in subsections (1) and (2) may only be heard as suspects after the suspension of their immunity, or after obtaining the prior consent of an authorised person, and before that – with the exception of being caught in the act – no coercive measure may be applied against such persons.

(4) The bodies and persons authorised to suspend the immunity or grant their consent are designated in a separate act.[157]

Section 552 (1) If the criminal proceedings reveal any data suggesting that the defendant is a person enjoying immunity, in addition to the suspension of the proceedings, a motion shall be filed for the decision by the person authorised to suspend the immunity or grant the consent therefor. Prior to the filing of the indictment, this motion shall be submitted by the Prosecutor General, and thereafter, or in cases based on private accusation, by the court. In the event of catching the offender in the act, the motion shall be submitted immediately.

(2) If the person authorised to suspend the immunity or grant the consent therefor has rejected the motion, the proceedings shall be terminated. Unless provided otherwise by law, the termination of the proceedings on such grounds shall not prevent the conducting of the criminal proceedings after the cessation of the personal immunity.

(3) After the suspension of the immunity or granting the approval, expedited proceedings shall be conducted in compliance with this Act. The proceedings may only be conducted in respect of the act covered by the consent.

Persons enjoying immunity under international law

Section 553 (1) In the cases of persons enjoying diplomatic immunity or other immunity under international law (hereinafter collectively: diplomatic immunity)[158]), the provisions

---

157 Please refer to Sections 4–7 of Act LV of 1990 on the Legal status of members of Parliament, Section 14 of Act XXXII of 1989 on the Constitutional Court, Sections 11–14 of Act LIX of 1993 on állampolgári jogok országgyűlési biztosáról, Section 20 (2) of Act LXXVII of 1993 on nemzeti és etnikai kisebbségek jogairól szóló, Section 23 (2) of LXIII of 1992 on a személyes adatok védelméről és a közérdekű adatok nyilvánosságáról, Section 9 of Act XXXVIII of 1989 on Állami Számvevőszékről, Section 5 of Act LXVI of 1997 on bíróságok szervezetéről és igazgatásáról and Section 23 of Act V of 1972 on Republic of Hungary prosecutorségéről.

stipulated in Sections 551 and 552 shall be applied with the derogations set forth in this Section.

(2) Against persons enjoying diplomatic immunity, no criminal procedural action may be taken before the suspension of their immunity.

(3) The motion for suspending diplomatic immunity shall be submitted by the court through the minister of justice, and the Prosecutor General directly to the minister of foreign affairs.

Section 554 (1) Until a decision made on the issue of diplomatic immunity, the court shall suspend the proceedings even if the person enjoying immunity acts as a private accuser. If the court establishes the existence of immunity based on the position of the minister of foreign affairs, it shall terminate the proceedings.

(2) Should it become necessary in the course of the proceedings to hear a person enjoying diplomatic immunity as a witness, or should such a person act as a private party, prior to the filing of the indictment the Prosecutor General, and thereafter, or in cases based on private accusation the court, through the minister of justice submits the case – without suspending the proceedings – to the minister of foreign affairs requesting his opinion.

(3) If the immunity can be established based on the opinion of the minister of foreign affairs, the person enjoying immunity may not be heard and his civil claim may not be adjudicated.

(4) The persons enjoying immunity, as specified in Section 553 (1) may not act as a defence counsel or expert in criminal proceedings, and may not be employed as an official witness.

---

[158] Please refer to Law-Decree No. 22 of 1965 on the Promulgation of the International Treaty on Diplomatic Relations signed in Vienna on April 18, 1961 and Sections 22, 24, 27, 29–32, 37–39 of the Treaty. Please also refer to Law-Decree No. 7 of 1973 on a diplomáciai or egyéb immunity esetében szükséges eljárásról.

PART SIX

Chapter XXVIII

SPECIAL PROCEDURES

Title I

GENERAL RULES

Section 555 (1) In special procedures, the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

(2) Unless provided otherwise, in the course of special procedures

a) the procedure shall be instituted ex officio or upon the motion of the prosecutor, the defendant or the defence counsel,

b) the court that delivered a conclusive decision in the first instance (in the basic case) prior to the special procedure shall be the acting court,

c) the court shall act without the participation of associate judges, as a single judge,

d) the court shall terminate the procedure, if the prosecutor withdraws his motion,

e) the court shall adopt its decision based on the documents, and, if necessary, if shall hear the prosecutor, the defendant and the defence counsel at a session; and shall hold a trial if evidence is taken,

f) minutes shall be drawn up when the prosecutor, the defendant and the defence counsel are heard,

g) the court decision may be appealed by the prosecutor, the defendant and the defence counsel,

h) the court of appeal shall consider the appeal against the judgement of the court of first instance at a panel session as well,

i)[159] the costs of criminal proceedings shall be borne by the defendant, if the defendant was obliged to pay the costs of criminal proceedings in the basic case.

(3) For the purposes of this Chapter, the costs of criminal proceedings shall mean the costs and out-of-pocket expenses incurred in the course of the special procedure and advanced by the state [Section 74 (1)].

(4) In the course of the special procedure, the measures regulated in Section 73 may be implemented against an absconding defendant in order to hold a trial or session; a warrant of arrest may be issued if deprival of freedom may apply as a result of the special procedure. When a warrant of arrest is issued, upon location, the defendant may be taken into custody. The custody may last until the conclusion of the trial or session but not longer than six days.

---

159 Pursuant to the first sentence of Section 308 (2) of Act I of 2002, the original item i) of Section 555 (2) shall be repealed and shall not enter into force; concurrently, the second sentence of Section 308 (2) of Act I of 2002 amended the numbering of the original Section 555 (1) j) to Section 555 (1) i).

Title II

THE SPECIFIC SPECIAL PROCEDURES

Subsequent establishment of the decree of security of imprisonment

Section 556 The court shall subsequently decide on the decree of security of imprisonment [Sections 41 (1) and 111 (2) of the Penal Code], if the final judgement did not make a disposition thereon or the disposition was contrary to the law. The disposition based on Section 45 (2) of the Penal Code may not be substituted or reviewed.

Subsequent modification of the disposition concerning release on parole

Section 557 (1) The court adopts a decision subsequently, if the final judgement contained a disposition in respect of release on parole contrary to the law.

(2) If the court decides subsequently on the earliest date of release on parole from a life imprisonment, it shall hold a trial.

Postponement of the earliest day of release on parole in the case of life imprisonment

Section 558[160] The court shall decide ex officio or upon the motion of the prosecutor on the postponement of the earliest day of release on parole in the case of life imprisonment (Section 47/B of the Penal Code) at a trial.

Termination of parole

Section 559 The court shall adopt a decision concerning the termination of parole subsequently, if the court adjudicating the criminal offence committed during the parole has made no disposition to this effect.

Subsequent modification of the disposition concerning termination of release on parole.

Section 560 The court adopts a decision subsequently, if the final judgement contained a disposition on the termination of parole contrary to the law.

Subsequent establishment of compulsory labour service

Section 561 The court adopts a decision subsequently, if its final judgement imposing compulsory labour service failed to specify the work to be done as compulsory labour service.

Subsequent decision on imprisonment to replace fine as ancillary penalty

Section 562 The court adopts a decision subsequently, if the final judgement did not contain a disposition on the replacement of fine as ancillary penalty by imprisonment – upon non-payment –, or the disposition was contrary to the law.

Replacement of a fine with imprisonment

Section 563 (1) The court shall adopt a decision ex officio or upon the motion of the prosecutor on the replacement of the fine, or the fine as ancillary penalty with imprisonment, if the convict has defaulted his obligation to pay the fine.

(2) The ruling announcing the replacement shall not be subject to an appeal.

---

160 The text of Section 558 was established by Section 271 of Act I of 2002.

Subsequent inclusion of the suspension of driver's licence

Section 564 The court adopts a decision subsequently, if the final judgement did not contain a disposition on the inclusion of the withdrawal of the driver's licence of the convict from the period of the suspension of the same, or the disposition was contrary to the law.

Exemption from the permanent withdrawal of a licence to practice or a driver's licence, and from permanent expulsion [161]

Section 565 (1) The convict may request exemption from the permanent withdrawal of a licence to practice or a driver's licence from the court of first instance having proceeded in the basic case.

(2) Prior to the consideration of the request, the court shall obtain the statement of the prosecutor. If the statutory conditions for the exemption are not met, the court shall reject the request, in other cases it shall adjudicate it on its merit.

(3)[162] The convict may request exemption from permanent expulsion from the court of first instance having proceeded in the basic case. The request may also be submitted to the foreign representation offices of the Republic of Hungary.

(4) Prior to the consideration of the request, the court shall obtain the statements of the prosecutor, the responsible immigration authority and – if possible – the authority entitled to provide legal assistance in criminal matters at the place of residence of the convict. If the statutory conditions for the exemption are not met, the court shall reject the request, in other cases it shall adjudicate it on its merit.

Review of the involuntary treatment in a mental institution

Section 566 (1)[163] The court shall decide on the review of the involuntary treatment in a mental institution – i.e. on the necessity of the maintenance or termination thereof – in a panel, at a trial, by way of a ruling. At the trial the prosecutor, the defence counsel and – provided that his health condition allows his attendance conditions and he is capable of exercising his rights – the person undergoing involuntary treatment in a mental institution shall be heard. The court to have competence for the review shall be the Pest Central District Court or the Metropolitan Court, if the case in the first instance was not proceeded by a Budapest-seated local court or a Budapest-seated county court, respectively.

(2)[164] The court shall review ex officio the necessity of a involuntary treatment in a mental institution prior to the lapse of one year calculated from the commencement thereof. If the court does not terminate the involuntary treatment in a mental institution, the review shall be performed annually. If the person obliged to undergo involuntary treatment in a mental institution had already been under the effect of the temporary involuntary treatment in a mental institution before the judgement has become final, the deadline shall be calculated from the commencement of the coercive measure.

(3) The involuntary treatment in a mental institution may be reviewed upon the motion of the prosecutor, the person undergoing the involuntary treatment in a mental institution, as well as the spouse, legal representative or defence counsel thereof, and the request of the head of the mental institution performing the involuntary treatment. The court may omit the review of the involuntary treatment in a mental institution upon a motion, if a review has taken place within six months therefrom.

---

161 The subtitle of Section 565 was established by Section 272 (1) of Act I of 2002.

162 Section 565 (3) and (4) was enacted by Section 272 (2) of Act I of 2002.

163 Section 566 (1) was established by Section 273 (1) of Act I of 2002.

164 The thid sentence of Section 566 (2) was enacted by Section 273 (2) of Act I of 2002.

(4)[165] Prior to the review, the expert opinion of a psychiatrist shall be obtained. During the procedure, the medical doctor of the mental institution performing the involuntary treatment may participate in formulating the psychiatrist's opinion as one of the experts.

(5) The ruling concerning the review of the involuntary treatment in a mental institution may be appealed both by the spouse and the legal representative of the person undergoing the involuntary treatment.

Subsequent order of supervision by probation officer

Section 567 (1) The court shall adopt a decision on ordering supervision by a probation officer subsequently, if the final judgement contained no disposition thereon; or the sentence for imprisonment was suspended indefinitely due to a pardon and the convict is a notorious criminal [Section 82 (1) of the Penal Code].

(2) Prior to ordering the supervision by a probation officer, the court shall obtain the motion of the prosecutor. The court shall hold a trial, if it deems that special rules of conduct should be prescribed [Section 82 (6) of the Penal Code], or the prosecutor makes a motion for the imposition of special rules of conduct.

Procedure in the case of probation

Section 568 (1)[166] The court having proceeded in the basic case shall ex officio or upon the motion of the prosecutor make a judgement at a trial on the extension of the probation period or the termination of the probation [Section 73 (1) and (2) of the Penal Code], if the convict on probation has gravely violated the rules of conduct related to supervision by a probation officer. The judgement shall pronounce the accused guilty of the criminal offence already charged to the accused and impose a punishment. In the event of a juvenile offender, the court may omit the pronunciation of the guilt and order his placement in a detention home.

(2) In respect of the appeal against the court decision the provisions pertaining to the legal remedy against conclusive decisions shall be applied.

(3) If a new procedure is instituted against the convict on probation due to a criminal offence committed before or during the probation period, and the court having competence and jurisdiction to adjudicate this latter case have not consolidated the cases [Section 265 (2) and (3)], the court shall make a decision thereon upon the motion of the prosecutor or ex officio and set a date for the trial. The trial shall be conducted in compliance with the provisions stipulated in Title III [167] of Chapter XV. The decision ordering consolidation shall not be subject to an appeal.

Procedure for confiscation and forfeiture of property ***[168]***

Section 569 (1)[169] Upon the motion of the prosecutor the court shall decide upon the confiscation or forfeiture of property, if no criminal proceedings have been instituted against anyone, or the criminal proceedings have been terminated, or suspended due to the unknown location or mental disease of the defendant.

(2) The procedure shall be conducted by the court having competence and jurisdiction to adjudicate the criminal offence; or, if such court cannot be designated, the court at which prosecutor has filed the motion to this effect.

---

165 The second sentence of Section 566 (4) was enacted by Section 273 (3) of Act I of 2002.

166 The text of Section 568 (1) was established by Section 274 of Act I of 2002.

167 The reference in the second sentence of Section 568 (3) was established by Section 88 (2) c) of Act II of 2003.

168 The subtitle was established by Section 275 (1) of Act I of 2002.

169 Section 569 (1) was established by Section 275 (2)of Act I of 2002.

(3) The court decision shall not be subject to an appeal, however, within eight days of the service of the ruling, the prosecutor and those affected by the dispositions in the decision may request that a trial be held.

(4) The prosecutor and those interested owing to the motion shall be notified of the trial. Should the person interested be unknown or absconding, or fail to command the Hungarian language, the court shall appoint a representative to act on his behalf.

(5) In respect of the trial, the provisions set forth in Chapter XXVI shall be applied as appropriate. As regards bearing the costs of criminal proceedings, the relevant general provisions (Sections 338 to 340) shall be applied as appropriate. The interested person may also appeal the ruling delivered at the trial; such appeal shall have a delaying effect.

(6) The tasks of the court specified in subsections (1) and (2) may also be performed by the court secretary, without, however, being entitled to hold a trial.

Subsequent confiscation

Section 570 (1)[170] If the court made no disposition on confiscation or forfeiture of property in its conclusive decision delivered based on the trial, it shall made the relevant decision subsequently, upon the motion of the prosecutor or ex officio. The court procedure shall be governed by the provisions set forth in Section 569 (3).

(2) If the court holds a trial, its shall notify thereof the prosecutor, the defendant, the defence counsel and the person interested due to the motion. In respect of the trial, the provisions set forth in Chapter XXVI shall be applied as appropriate.

(3) The interested person may also appeal the ruling delivered at the trial; such appeal shall have a delaying effect.

Subsequent order on items seized

Section 571 If the court made no disposition in its conclusive decision on the issue or destruction of an item seized, or the transfer of such item into the ownership of the state, or its disposition was contrary to the law, it shall made the relevant decision subsequently, upon the motion of the prosecutor or ex officio, applying the provisions of Section 570 as appropriate.

Subsequent order to execute an indefinitely suspended sentence and subsequent order of imprisonment suspended for probation [171]

Section 572 (1) The court shall order the execution of an indefinitely suspended sentence upon the motion of the prosecutor or ex officio, if

a)[172]

b) owing to a criminal offence committed during the probation period, the convict was sentenced as specified in Section 91 (1) *b)* or 91 (3) of the Penal Code, and the court proceeding in the latter criminal offence made no disposition on the execution thereof,

c) if the convict on probation has gravely violated the rules of conduct related to supervision by a probation officer.

(2)[173] In the case specified in subsection (1) *c)*, the court shall adopt a decision at a trial.

---

170 The text of Section 570 (1) was established by Section 276 of Act I of 2002.

171 The subtitle was established by Section 277 (1) of Act I of 2002.

172 Section 572 (1) a) was annulled by Resolution No. 5/1999. (III. 31.) AB of the Constitutional Court with the effect of the promulgation (March 23, 1998) of this Act.

173 In Section 572 (2), the provision referring to Section 572 (1) a) ("*a)* and") was annulled by Resolution No. 5/1999. (III. 31.) AB of the Constitutional Court. Pursuant to the Resolution of the Constitutional Court, Section 572 (2) shall enter into force with the text published here.

(3) In the absence of an order to execute the indefinitely suspended sentence, the costs of criminal proceedings shall be borne by the state.

(4) The provision stipulated in subsection (1) *a)* may not be applied, if the defendant was sentenced pursuant to the application of Section 543.

(5) The appeal against the ruling ordering the execution of an indefinitely suspended sentence shall have a delaying effect.

(6)[174] The court shall subsequently repeal the order to execute the indefinitely suspended sentence, if it ordered the execution of the imprisonment in violation of the law.

Subsequent disposition on general amnesty

Section 573 The court shall make a decision on the effect and the related legal consequences of the general amnesty subsequently, made no disposition thereon in its final decision, or the disposition was contrary to the law.

Concurrent sentencing

Section 574 (1) Concurrent sentencing shall fall in the competence of the court of first instance having proceeded in the latest case concluded, provided that the procedures were conducted by courts having identical competence; in other cases the court of first instance having the greater competence shall proceed.

(2)[175] If military criminal proceedings were instituted in any of the cases, the decision concerning concurrent sentencing shall be adopted by the court having conducted the military criminal proceedings, unless the effect of the military criminal proceedings in the latest case concluded was substantiated by the provisions of Section 470 (3).

(3) The court shall decide on concurrent sentencing in a judgement and reject the related motion in a ruling. In the judgement the court may make dispositions of the conditions specified in Sections 556 and 557.

(4) The power of attorney or appointment of the defence counsel in the case having been processed by the court with competence for concurrent sentencing shall extend to the concurrent sentencing procedure as well.

(5) Upon the absence of an order on concurrent sentencing, the costs of criminal proceedings shall be borne by the state.

Subsequent concurrent sentencing

Section 575 The court shall adopt a decision concerning concurrent sentencing, and the term of the concurrent sentence subsequently, if the final judgement announcing the concurrent sentence made a disposition thereon contrary to the law.

Subsequent inclusion of pre-trial detention and house arrest ***[176]***

Section 576 (1) The court shall adopt a decision on the inclusion of pre-trial detention or house arrest subsequently, if it made no disposition thereon in its final judgement, or the disposition was contrary to the law.

(2) In the procedure conducted pursuant to subsection (1) the disposition based on Section 99 (3) of the Penal Code may only be reviewed if the related disposition in the final judgement violates the law.

---

174 Section 572 (6) was enacted by Section 277 (2) of Act I of 2002.

175 The text of Section 574 (2) was established by Section 278 of Act I of 2002.

176 Section 576 and the subtitle thereof were established by Section79 of Act II of 2003.

Dispensation by court decision

Section 577 (1) The convict or the legal representative thereof may request subsequent dispensation from aggravating circumstances upon prior conviction from the court of first instance having proceeded in the basic case. In the case of several convictions, the court having the greater competence shall act, or, in the absence of such a court, the court having imposed the gravest punishment. If the sentences are of identical gravity, any of the courts may proceed in the case.

(2)[177] If military criminal proceedings were instituted in any of the cases, the court having conducted the military criminal proceedings shall act in the case, unless the effect of the military criminal proceedings in the latest case concluded was substantiated by the provisions of Section 470 (3).

(3) Prior to considering the request, the court shall obtain the statement of the prosecutor. If the statutory conditions for the dispensation are not met, the court shall reject the request, , in other cases it shall adjudicate it on its merit.

(4) The court shall repeal the decision announcing the dispensation subsequently, upon the motion of the prosecutor or ex officio, if the dispensation has lost its effect [Sections 102 (2) and 104 (2) of the Penal Code], or it is subsequently established that the dispensation was prohibited by law.

Subsequent decision concerning the costs of criminal proceedings

Section 578 The court shall make a decision on bearing the costs of criminal proceedings subsequently, if the final decision did not contain a disposition thereon, or the disposition was contrary to the law. The appeal against this ruling has a delaying effect.

Recognition of a foreign judgement

Section 579[178] Recognition of the judgement delivered by a foreign court shall (Section 6 of the Penal Code) fall within the competence and jurisdiction of the Metropolitan Court. In its procedure, the Metropolitan Court shall establish the detriments entailed by the conviction under the laws of Hungary, and, if required, the method of executing the judgement of the foreign court in compliance with the laws of Hungary. The rules of procedure for transposing a sentence for imprisonment imposed by a foreign court are regulated in a separate act.[179]

Title III

COMPENSATION AND REIMBURSEMENT

Compensation

Section 580 (1) Pre-trial detention and temporary involuntary treatment in a mental institution shall be subject to compensation, if

I. the investigation was terminated because

a) the action does not constitute a criminal offence,

b) it cannot be ascertained from the data of the investigation that the criminal offence has been committed,

---

177 The text of Section 577 (2) was established by Section 279 of Act I of 2002.

178 The text of Section 579 was established by Section 80 of Act II of 2003.

179 Please refer to Act XXXVIII of 1996.

c) it was not the suspect who committed the criminal offence, or it cannot be ascertained from the data of the investigation that the criminal offence has been committed by the suspect,

d) a ground for the preclusion of punishability exists,

e) the procedure cannot continue due to statutory limitation,

f) a final court verdict has already been delivered on the action;

II. the court

a) has acquitted the defendant,

b) has terminated the procedure due to statutory limitation of punishability, dropping the charges or because a final ruling has been delivered in the case.

(2) Notwithstanding subsection (1), no compensation shall be paid if the defendant

a) has escaped, or has attempted to escape, or absconded from the court, the prosecutor or the investigating authority,

b)[180]

c) was acquitted with an order to an involuntary treatment in a mental institution.

Section 581 (1)[181] The defendant shall be entitled to compensation for imprisonment, placement in a detention home or an involuntary treatment in a mental institution served under a final judgement, if the defendant was acquitted due to extraordinary legal remedy, received a less severe sentence, was placed on probation or was reprimanded, or the procedure against him was terminated, or it was established that the involuntary treatment in a mental institution was ordered without legal justification.

(2) No compensation may be paid, if the defendant

a) failed to disclose in the basic case the facts and evidence underlying the judgement delivered after the re-trial,

b)[182]

c) was acquitted with an order to an involuntary treatment in a mental institution.

(3)[183] Subsection (2) *b)* may not be applied, if the condition for the compensation can be established on the basis of a decision adopted in the course of an appeal on legal grounds or a harmonisation procedure.

Section 582 In respect of the method and extent of the compensation the provisions of the Civil Code pertaining to liability for torts actionable *per se*.

S

Section 583 (1)[184] The defendant may submit a claim for compensation within six months of being notified of the decision terminating the investigation, the final judgement of acquittal, the final ruling on termination, or the final decision delivered as a result of extraordinary legal remedy procedure.

(2) The claim shall specify the amount of compensation requested, the evidence underlying the claim and have the supporting documents attached.

(3)[185] If the investigation was terminated, the compensation claim shall be submitted to the court which had ordered the pre-trial detention or the temporary involuntary treatment in a mental institution.

---

180 Section 580 (2) b) was annulled by Resolution No. 41/2003. (VII. 2.) AB of the Constitutional Court.

181 Section 581 (1) was established by Section 281 (1) of Act I of 2002.

182 Section 581 (2) b) was annulled by Resolution No. 41/2003. (VII. 2.) AB of the Constitutional Court.

183 Section 581 (3) was enacted by Section 281 (2) of Act I of 2002.

184 Section 583 (1) was established by Section 282 (1) of Act I of 2002.

185 Section 583 (3) was established by Section 282 (2) of Act I of 2002.

(4) If the defendant dies prior to the conclusion of the compensation procedure, or dies prior to the lapse of the deadline without having submitted a claim, his heir may request that the procedure be conducted or submit a claim for compensation within the deadline, respectively.

Section 584[186] (1) The court shall send the claim, together with the documents of the criminal case for consideration to the court having competence and jurisdiction under the Code of Civil Procedures to conduct the procedure. The ruling ordering that the documents be forwarded shall not be subject to an appeal.

(2) In the course of considering the claim for compensation, the court specified in subsection (1) shall act in compliance with the rules set forth in the Code of Civil Procedures, while taking into account the derogations set forth in this Act. The litigating parties shall be the defendant (heir) as a plaintiff and the minister of justice representing the Hungarian State as the respondent.

(3) Prior to the consideration of a compensation claim substantiated by any of the provisions set forth in Section 580 (1) I. – if required – the court shall obtain the statement of the prosecutor having proceeded in the basic case. Upon the motion of the respondent, the statement of the prosecutor's office shall be obtained.

(4) The compensation shall be paid by the state.

Reimbursement

Section 585 (1)[187] The amount paid as a fine and the costs of criminal proceedings shall be reimbursed to the defendant, if the defendant was acquitted, or the procedure against him was terminated due to an extraordinary legal remedy procedure, or the decision delivered thereby contains no such payment obligation, or contains a payment obligation for a lower amount.

(2) In the case of forfeiture of property and confiscation the provisions stipulated in subsection (1) shall be applied, provided that the confiscated item shall be returned in kind, or, if this is not practicable, the amount reimbursed shall be the market value established at the time of the forfeiture of property or confiscation, increased by the prevailing legal interest rate for the period lapsed up to the date of the reimbursement.

(3)[188] Reimbursement shall be ordered by the court having adopted the decision on the acquittal or the termination of the procedure, or the court which have omitted the obligation or ordered the payment of a lower amount. The reimbursement shall be settled by the Office of the National Judiciary Council.

Title IV

SECURITY

Section 586 (1) Upon the request of a defendant living abroad, up to the filing of the indictment the prosecutor, thereafter the court may permit the deposit of a security. In such a case the procedure may be conducted in the absence of the defendant.

---

186 The text of Section 584 was established by Section 283 of Act I of 2002.

187 Section 585 (1) was established by Section 284 (1) of Act I of 2002.

188 Section 585 (3) was established by Section 284 (2) of Act I of 2002.

(2)[189] The amount of the security shall be determined by the prosecutor, or the court, in an extent required for the enforcement of the fine, forfeiture of property to be foreseeably imposed on the defendant as well as the costs of criminal proceedings to be incurred.

(3) In the request for permission of depositing a security, the defendant shall authorise the defence counsel to receive the official documents addressed to the defendant (mailing agent).

(4) After depositing the security, the documents addressed to the defendant shall be served on the mailing agent. The mailing agent shall immediately advise the defendant of the summons addressed to the defendant. If the defendant leaves the territory of the Republic of Hungary and fails to be present despite the summons served on the mailing agent,

a) no arrest on a bench warrant is issued,

b) the procedure shall not be terminated,

c) the summons shall not be announced by way of a publication,

and the trial shall be held regardless of the absence of the defendant.

(5) If the prosecutor or the court permitted the deposit of a security, and the defendant left the territory of the Republic of Hungary, the provisions stipulated in Chapter XXIV may not be applied in the procedure.

(6) The participation of a defence counsel is statutory in the procedure.

Section 587 (1) If the court pronounces the defendant guilty, the security shall be transferred to the state when the decision becomes final.

(2)[190] If the court imposes a fine, applies forfeiture of property, or obliges the defendant to pay the costs of criminal proceedings, the security transferred to the state shall be expended to execute such dispositions.

(3) Upon the imposition of a definite sentence of imprisonment, the security shall be repaid to the convict after the sentence has been served. no measures may be taken to execute other punishment.

(4)[191] The security shall be refunded to the defendant in full, or, in the case of several criminal offences in proportionate parts,

a) upon the partial termination of the investigation, and

b) if the court has partially acquitted the defendant or partially terminated the procedure against the defendant.

Chapter XXIX

EXECUTION OF THE DECISIONS

Title I

ENFORCEABILITY

Enforceability of the judgement

Section 588 (1) The judgement may be enforced after it has become final.

(2) The judgement of the court of first instance shall become final on the day when

---

189 The text of Section 586 (2) was established by Section 285 of Act I of 2002.

190 Section 587 (2) was established by Section 286 (1) of Act I of 2002.

191 Section 587 (4) was established by Section 286 (2) of Act I of 2002.

a) it is announced, provided that this Act excludes the possibility of an appeal,

b) those entitled to lodge an appeal declare that they do not wish to lodge an appeal or when they withdraw the appeal,

c) the deadline for an appeal has lapsed without the announcement of an appeal,

d)[192] the court of appeal rejected the appeal, or upheld the judgement of the court of first instance.

(3)[193] The judgement of the court of appeal becomes final when it is announced.

(4) After the conclusive decision has become final, the presiding judge shall certify the finality and the enforceability thereof by a clause on the original copy of the decision, indicating the date when the decision has become final as well as the date of enforceability.

(5)[194] If the decision becomes partially final, the clause shall indicate the date of partial finality as well as the part which has become final and the disposition that may be enforced.

(6) If necessary, both the accused and the defence counsel shall be notified of the establishment of the finality and enforceability.

Enforceability of a ruling

Section 589 (1) The enforceability of a ruling shall be governed by the provisions of Section 347 (2).

(2) In the event that a ruling delivered with the omission of a trial may be subject to a request for holding a trial, the ruling shall become enforceable on the day when the deadline for submitting the request has lapsed and none of those entitled have requested that a trial be held, or the request for holding a trial was withdrawn by the petitioner, or the petitioner failed to attend the trial. This provisions shall also apply to the dispositions of the ruling delivered with the omission of a trial pursuant to Section 549 (2), in respect of which no request was submitted for holding a trial.

Title II

THE TASKS OF THE COURT AND THE PROSECUTOR IN THE COURSE OF EXECUTING THE PUNISHMENT [195]

General provisions

Section 590 (1)[196] The execution of punishments and measures, as well as the collection of the disciplinary penalty, the execution of the detention replacing the disciplinary penalty and the collection of the costs of criminal proceedings due to the state shall be responsibility of the court having proceeded when the above become enforceable. The prosecutor shall be responsible for making arrangements for the collection of the disciplinary penalty imposed by the prosecutor, as well as the execution of supervision by a probation officer ordered during the postponement of filing the indictment and the reprimand applied by the prosecutor.

(2) The measures set forth in subsection (1) shall be implemented by the presiding judge.

---

192 Section 588 (2) d) was established by Section 287 (1) of Act I of 2002.

193 Section 588 (3) and (4) was established by Section 287 (2) of Act I of 2002.

194 Section 588 (5) and (6) was enacted by Section 287 (3) of Act I of 2002.

195 The text of Title II of Chapter XXIX was established by Section 81 (1) of Act II of 2003.

196 Section 590 (1) was established by Section 81 (2) of Act II of 2003.

(3) If the punishment or the remaining period of punishment should be enforced in respect of an absconding convict, the judge to enforce the punishment shall take measures for locating the convict and issues warrant of arrest in the case of a sentence for imprisonment.

Postponement of the execution of imprisonment

Section 591[197] (1) Upon the petition of the convict, the presiding judge may permit the postponement of the commencement of a sentence for imprisonment not exceeding two years, for a maximum of three months, for substantial reasons, thus, in particular with consideration to the personal or family conditions of the convict.

(2) If the disease of the convict directly jeopardises the life thereof, the presiding judge

a) may permit a postponement of a definite term in excess of that specified in subsection (1),

b) may extend the postponement permitted under subsection (1), or

c) may permit the postponement of a sentence for imprisonment even if it exceeding two years.

(3) Regardless of a petition, the execution of the sentence for imprisonment shall be postponed ex officio in the case of a woman, who

a) surpassed the fourth month of her pregnancy – maximum up to the end of the sixth month following the expected date of giving birth,

b) takes care of her less than six-month old baby.

(4) In the cases specified in subsections (2) and (3) *a)* the presiding judge shall establish the existence of the health conditions for postponement based on the opinion of a forensic medical expert, and shall make a decision on the petition considering the statement of the head of the Health Service of the National Headquarters of Law Enforcement regarding the feasibility of the medical treatment of the convict in the penal institution as required by the convict's state of health.

(5)[198] The execution of the sentence for a maximum of one-year imprisonment of a of a conscript due to a criminal offence committed prior to the commencement of his military service but having become final in the course thereof shall be postponed until the conscript is discharged.

(6) Upon the existence of the conditions set forth in subsections (1) to (5) no postponement is allowed, if it gravely threatened the public safety or public order, or if there is a risk that the convict may escape or hide.

(7) If the petition for the postponement of the imprisonment is submitted at a time that does not allow for arrangements prior to the commencement of the sentence before the date set therefor, the presiding judge shall not consider the petition and notify the petitioner thereof. If the imprisonment has commenced, the petition shall be sent to the penal institution for a measure for the interruption of the execution of the imprisonment, if appropriate.

Postponement and permission of instalment payments in the case of fines and fines as ancillary penalty [199]

Section 592 (1) If the convict provides probable proof that the prompt and lump-sum payment of the fine or the fine as ancillary penalty caused significant financial difficulties to himself and his dependant relatives which surpasses the objective of the punishment, and there is reasonable cause to believe that the convict will duly meet his payment obligation by

---

197 The text of Section 591 was established by Section 288 of Act I of 2002.

198 In Section 591 (5) the words "conscript katonai" were established by Section 88-a (2) c) of Act II of 2003.

199 Section 592 and the subtitle thereof were established by Section 289 of Act I of 2002.

the extended deadline, the court may permit a maximum of three months' postponement, or may permit the payment of the fine or the fine as ancillary penalty over six months, in instalments.

(2) For substantial reasons, the postponement for the payment of the fine or the fine as ancillary penalty may be extended on one occasion, for a maximum of three further months. Should the extraordinary conditions of the case justify it, permission may be given for the payment the fine over a year in instalments.

(3) The instalment shall be a monthly amount, which can be divided by the daily sum payable according to the judgement concerning the fine, or, in the case of a fine as ancillary penalty, by the amount established in the judgement for the replacement of the fine with imprisonment.

(4) After the replacement with imprisonment, no instalment payment may be permitted for the settlement of the fine or the fine as ancillary penalty.

Postponement and permission of instalment payments in the case of a disciplinary penalty and costs of criminal proceedings due to the state [200]

Section 593 (1) Postponement or permission of instalment payment for the settlement of a disciplinary penalty and costs of criminal proceedings due to the state exceeding ten thousand Forints may be permitted in compliance with the conditions and within the limits stipulated in Section 592, after seizure has been implemented by the court bailiff, if the bailiff has submitted the report on seizure to the court.

(2) In the event of an obligation to pay disciplinary penalty and costs of criminal proceedings in an amount smaller than that stipulated in subsection (1) the presiding judge may grant a permission for a maximum of three months' postponement or instalment payment over three months without waiting for the seizure, based on the available data.

Postponement of corrective education

Section 594 The execution of a final judgement ordering the corrective education of a juvenile offender may be postponed by the presiding judge under the conditions and within the limits stipulated in Section 591 (1).

Rules of procedure for permission of postponement and instalment payment [201]

Section 595 (1) The petition for postponement and instalment payment has no delaying effect.

(2) If the defendant submitted the petition immediately after the conclusive decision has become final, it shall be decided upon by the court which had delivered the conclusive decision; the court shall provide justification for its decision.

(3) If the petition was submitted later, its consideration shall be governed by the rules of special procedures (Chapter XXVIII).

(4) The decision concerning the postponement or the instalment payment of a fine, a fine as ancillary penalty, a disciplinary penalty and the costs of criminal proceedings due to the state shall not be subject to an appeal.

(5) The decision concerning the postponement of the execution of imprisonment and corrective education may be appealed by the prosecutor, the convict and the defence counsel. If the postponement was permitted by the court of appeal pursuant to subsection (2), in

---

200 Section 593 and the subtitle thereof were established by Section 290 of Act I of 2002.

201 Section 595 and the subtitle thereof were established by Section 291 of Act I of 2002.

respect of the consideration of the appeal the provisions stipulated in Title IV of Chapter XIV[202] shall be applied as appropriate.

Measure to ensure the execution of the sentence [203]

Section 596 (1) The court may order the immediate execution of a five-year or more imprisonment imposed in a final judgement against a defendant at liberty. The court shall order the immediate execution of the imprisonment imposed in a final judgement, if the sentence was delivered on the grounds of a criminal offence committed in a criminal organisation.

(2) In the case specified in subsection (1) the court shall directly request the commander of the penal institution operating at its seat to appoint a prison guard and shall hand over the to such guard. In the absence of a penal institution at the seat of the court, or there is an obstacle to the appointment of a prison guard, the court shall directly contact the police to have the convict escorted to the penal institution.

(3) If the defendant is not in pre-trial detention at the time when the decision of the court concerning the definite sentence of imprisonment becomes final and the court does not order the immediate execution of the imprisonment, but – considering the imprisonment to be executed or other reasons there is reasonable cause to believe that the convict would avoid, through escape or hiding, the execution of the sentence, until the convict is received at the penal institution, a safety measure may be ordered to ensure that the sentence for imprisonment will be executed.

(4) The above measure shall be ordered, if the court granted permission for the postponement of a sentence for imprisonment exceeding two years [Section 591 (2) *c)*].

(5) The decision on ordering the safety measure shall be adopted by the court. The convict subject to the measure shall not be allowed to leave the area or district specified in the court decision without permission and may not change his place of stay or residence. The decision may also prescribe that defendant should regularly report to the police.

(6) Compliance with the safety measure shall be supervised by the police, in accordance with the rules pertaining the supervision of compliance with home curfew. If the convict violates the dispositions of the safety measure, the police shall forthwith notify the court having ordered the measure and may take the convict into custody until the court decision is adopted, but not longer than for six days. Upon the violation of the dispositions in the decision on the safety measure, the court may order the immediate execution of the imprisonment and take the measures regulated in Section 590 (3).

(7) The measure to ensure the execution of the sentence for imprisonment shall be terminated if the sentence has become unenforceable.

(8) If the court ordered, in addition to an indefinite imprisonment, extradition of the defendant as ancillary penalty, and the conclusive decision becomes final upon its announcement, in order to execute extradition as an ancillary penalty, the court shall order that the defendant be escorted to the responsible immigration authority. For the effectuation of the escort, the presiding judge shall contact the police.

---

202 In the second sentence of Section 595 (5), the words “Chapter XIV” were established by Section 88-a (2) c) of Act II of 2003.

203 Section 596 and the subtitle thereof were established by Section 292 of Act I of 2002.

Title III

PROCEDURE FOR CLEMENCY

Plea for mercy

Section 597[204] (1) Motions for pardoning – ex officio or upon a petition – requesting the termination of criminal proceedings may be submitted by the Prosecutor General before the indictment is filed, or thereafter the minister of justice; while those requesting the waiver or mitigation of a yet unenforced sentence, or dispensation for aggravating circumstance upon prior conviction may be submitted by the minister of justice to the President of the Republic of Hungary.

(2) No plea for mercy may be submitted for the mitigation or waiver of a measure and the subsequent waiver of an already enforced punishment or measure.

(3) A plea for mercy may be submitted by the defendant, the defence counsel and the relative of the defendant.

(4) The plea for mercy requesting the termination of criminal proceedings shall be submitted to the prosecutor or court proceeding in the case. Plea for mercy requesting the waiver or mitigation of a yet unenforced sentence, or dispensation for aggravating circumstance upon prior conviction shall be submitted to the court of first instance having proceeded in the case.

(5) In the course of the procedure for clemency, the prosecutor and the court shall obtain and manage the personal data of the defendant required for the relevant decision.

Handling the plea for mercy

Section 598 (1) The documents containing the data required for the decision, and the plea for mercy shall be escalated

a) before the filing of the indictment, the prosecutor to the Prosecutor General,

b) after the filing of the indictment, the court to the minister of justice

without delay.

(2)[205] Upon a petition or a motion for the waiver or mitigation of the punishment the minister of justice may order the postponement or interruption of the execution of the sentence until the decision of the President of the Republic of Hungary. In the course of preparing the motion, the minister of justice may – with a delaying effect on the commencement of the sentence – order the medical examination of the convict by a specialist at the central hospital of penal institutions.[206]

(3) The Prosecutor General or the minister of justice shall escalate the plea for mercy to the President of the Republic of Hungary even if they make no motion for granting pardon.

(4)[207] The notification on the decision of granting pardon shall be served on the defendant and the party having submitted the plea for mercy by the court or prosecutor proceeding in the case. If the plea for mercy is submitted after the decision has become final, the notification of the granting pardon shall be served on the defendant and the party having submitted the plea for mercy by the court which had processed the case in the first instance. If the convict serves

---

204 The text of Section 597 was established by Section 293 of Act I of 2002.

205 The second sentence of Section 598 (2) was enacted by Section 294 (1) of Act I of 2002.

206 Please refer to az Decree No. 5/1998. (III. 6.) IM of the Ministry of Justice.

207 The third sentence of Section 598 (4) was enacted by Section 294 (2) of Act I of 2002.

a sentence of imprisonment, the notification of granting pardon shall be served by way of the penal institution.

(5) If the termination of the criminal proceedings due to a pardon was initiated by the court or the prosecutor ex officio, the defendant may request the resumption of the procedure within eight days of receiving the decision terminating the procedure.

Waiver of the costs of criminal proceedings or a disciplinary penalty

Section 599 (1) The obligation to pay the costs of criminal proceedings due to the state and a disciplinary penalty may be waived by the minister of justice for specifically sufficient reasons.

(2) In the course of the procedure described in subsection (1) the minister of justice shall obtain the personal data of the defendant required for the decision.

Chapter XXX

CLOSING PROVISIONS

Section 600[208] The court secretary may also respond to the requests received from other courts and may conduct the procedures specified in Title II and III of Chapter XXVIII, with the exception of those stipulated in Section 557 (2), Section 558, Section 565, Section 566, Section 568, 572-Section 577, Section 579, Section 586 and Section 587.

Interpreting provisions

Section 601 (1) Any provisions in this Act referring to the chief county prosecutor shall be construed to include the chief prosecutor for Budapest. Any provisions in this Act referring to county courts or local court shall be construed to include Metropolitan Court or the district and city courts.

(2) Any provisions in this Act referring to measures applied in lieu of punishment shall be construed to include reprimand (Section 71 of the Penal Code), probation (Section 72 of the Penal Code) and detention home (Section 118 of the Penal Code).

(3)[209] Regulations in this Act referring to a relative shall be governed by Section 137.6 of the Penal Code, and references to public organisations shall mean budgetary organisations.

(4) Regulations pertaining to business organisations in this Act shall refer to businesses listed under Section 685 *c)* of Act IV of 1959 on the Civil Code.

(5)[210] Whenever this Act makes legal consequences subject to a punishment stipulated by law, this shall be construed as the upper limit of the sentence that may be imposed pursuant to the Special Part of the Penal Code.

Interim provisions

Section 602 (1) If at the time of the entry into force of this Act, the investigating authority performs procedural actions in the case in order to supplement the complaint ordered pursuant to a former legal regulation, the investigating authority shall prepare a report within three days following the entry into force hereof and shall either reject the complaint or order an investigation, as stipulated in this Act.

---

208 The text of Section 600 was established by Section 295 of Act I of 2002.

209 Section 601 (3) was established by Section 296 (1) of Act I of 2002.

210 Section 601 (5) was enacted by Section 296 (2) of Act I of 2002.

(2) Protests filed in the course of an investigation pursuant to a former legal regulation shall be considered. If this Act allows the victim to act as a substitute private accuser after the rejection of the protest, the party having filed the protest shall be notified thereof.

(3) Supplementary investigations ordered in the case pursuant to a former legal regulation shall be conducted in compliance with the provisions of this Act.

(4) Investigations ordered by the court in the case of a private accusation or due to re-trial shall be conducted in compliance with the provisions of this Act.

Section 603 (1)[211] If the Supreme Court repeals the decision of the court adopted prior to the entry into force of this Act in an extraordinary legal remedy procedure, and orders the court to conduct a new procedure, the repeated procedure shall be conducted by the court having competence and jurisdiction under this Act.

(2) Pursuant to Section 417 (2), any motion filed against a decision delivered after the consideration of a motion for review or an appeal on legal grounds pursuant to a former legal regulation shall be regarded excluded by law. Motions for review under Section 406 (1) *a)* may also be submitted after the decision of the Court of Constitution published following the entry into force of this Act.

(3) If the court returns the documents to the prosecutor in the course of the prosecution, the subsequent procedure shall be conducted in compliance with the provisions of this Act.

(4)[212] If a trial was requested in connection with a court ruling delivered prior to the entry into force of this Act, the procedure shall be conducted in compliance with the provisions of this Act.

(5) If the court suspends the procedure, after the suspension the procedure shall be conducted in compliance with the provisions of this Act.

(6)[213] Procedures related to a motion for review or an appeal on legal grounds filed pursuant to a former legal regulation shall be conducted in compliance with the former legal regulation, if the motion has arrived at the Supreme Court prior to the entry into force of this Act.

Authorisations

Section 604[214] (1) The Government is hereby authorised to issue a decree for the regulation of the following:

a) the rules pertaining to the personal protection of the participants in the criminal proceedings, and the members of the court, prosecutor's office, investigating authority and penal institution proceeding in the case,[215]

b) the obligations relating to covert intelligence gathering of those performing communication service and forwarding mail and the detailed rules of their co-operation with the authorities,[216]

c) the tasks that may be performed by the court administrator in criminal cases.[217]

(2) The minister of justice is hereby authorised to issue a decree for the regulation of the following:

---

211 Section 603 (1) and (2) was established by Section 297 (1) of Act I of 2002.
212 Section 603 (4) was established by Section 297 (2) of Act I of 2002.
213 Section 603 (6) was enacted by Section 297 (3) of Act I of 2002.
214 The text of Section 604 was established by Section 298 of Act I of 2002.
215 Please refer to Government Decree No. 34/1999. (II. 26.) Korm.
216 Please refer to Government Decree No.75/1998. (IV. 24.) Korm.
217 Please refer to Government Decree No. 34/2003. (III. 27.) Korm.

a) together with the relevant ministers and in agreement with the Prosecutor General – the detailed rules of the search for the place of stay of an absconding defendant, or an unknown person reasonably suspected of having committed a criminal offence, the establishment of the residence and identity and ordering the arrest of such persons,[218]

b)[219] together with the minister of interior and the minister of finance, and in agreement with the Prosecutor General – the costs of the defence counsel appointed in the course of criminal proceedings and the participants of criminal proceedings, the remuneration and costs of the representatives of these persons, and the detailed rules of personal exemption granted to the defendant and the substitute private accuser from paying the costs,[220]

c) together with the minister of finance and the minister of interior, and in agreement with the Prosecutor General – the rules of advancing the costs of criminal proceedings, and the collection and settlement of the costs of criminal proceedings due to the state, as well as the rules of the reimbursement of the out-of-pocket expenses of the accused and the defence counsel and the remuneration of the defence counsel by the state,[221]

d) together with the relevant ministers and in agreement with the Prosecutor General – the detailed rules of the remuneration of the expert and the advisor, the costs to be reimbursed by the witness and the expert, and the compensation for professional examination,[222]

e) together with the relevant ministers, and in agreement with the Prosecutor General – the institutions and bodies that may be appointed as experts, the operation of forensic experts and other issues regarding experts and not regulated by law,[223]

f) together with the minister of health[224] – the health institutions designated for making a diagnosis of mental state, the costs related to the diagnosis of mental state in a psychiatric hospital and the settlement of such costs,

g) together with the relevant ministers, and in agreement with the Prosecutor General – provisions pertaining to interpreters and translators, as well as the detailed rules of the remuneration and reimbursed costs of interpreters and translators,[225]

h) together with the minister of interior and in agreement with the Prosecutor General – the rules of implementing house arrest,[226]

i)[227] the rules for depositing bail at the court,[228]

---

218 Please refer to Decree No. 1/2003. (III. 7.) IM of the Ministry of Justice.

219 Section 604 (2) b) was established by Section 82 (1) of Act II of 2003.

220 Please refer to Decree No. 7/2002. (III. 30.) IM of the Ministry of Justice, Joint Decree No. 26/2003. (VII. 1.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance, and Decree No. 9/2003. (V. 6.) IM of the Ministry of Justice.

221 Please refer to Joint Decree No. 26/2003. (VII. 1.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance, and Joint Decree No. 21/2003. (VI. 24.) IM-PM-BM of the Ministry of Justice, Ministry of Finance and the Ministry of Interior.

222 Please refer to Decrees No. 1/1969. (I. 8.) IM and No. 3/1986. (II. 21.) IM of the Ministry of Justice.

223 Please refer to Decree No. 2/1988. (V. 19.) IM of the Ministry of Justice.

224 Pursuant to Section 2 a) of Act XI of 2002, any reference to the minister of health in legal regulations shall be construed as the minister of health, social and family affairs.

225 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.

226 Please refer to Joint Decre No. 6/2003. (IV. 4.) IM-BM of the Ministry of Justice and the Ministry of Interior.

227 Section 604 (2) i) – pursuant to Section 308 (3) of Act I of 2002 and Section 88 (2) a) of Act II of 2003 – shall enter into effect on July 1, 2003.

228 Please refer to Decree No. 27/2003. (VII. 2.) IM of the Ministry of Justice.

j) together with the minister of interior and the minister of finance, and in agreement with the Prosecutor General – the rules of handling, registration, preliminary sale and destruction of items seized due to seizure and in the course of criminal proceedings,[229]

k) the rules of recording procedural action in a court procedure by means other than the minutes, and the detailed rules of holding a trial by way of a closed-circuit communication system,[230]

l) together with the relevant ministers, and in agreement with the Prosecutor General – the tasks to be performed by the court during the execution of decisions delivered in criminal cases,[231]

m) together with the minister of interior and the minister of finance, and in agreement with the Prosecutor General – the issue of copies of documents produced in the course of criminal proceedings,[232]

n) together with the minister of interior and the minister of finance, and in agreement with the Prosecutor General – the rules of notification by way of a press announcement applicable in criminal proceedings,[233]

o) in agreement with the National Judiciary Council – the rules of management of courts,[234]

p)[235] the rules of making a diagnosis of a mental state of a detained defendant and the implementation of the temporary involuntary treatment in a mental institution[236].

(3) The minister of interior and the minister of finance are hereby authorised to regulate – together with the minister of justice and in agreement with the Prosecutor General – in a Decree the detailed rules of the investigation conducted by the investigating authorities under their control, including recording procedural actions by means other than the minutes and the information to be disclosed to the press in the investigation stage of criminal proceedings.[237]

(4) Authorisation is granted

a) to the minister of defence to regulate – together with the relevant ministers[238], and in agreement with the Prosecutor General – the rules of implementing close control and surveillance of the home curfew ordered against a soldier,[239]

b) to the minister controlling the armed force,[240] to designate – together with the minister of justice, and in agreement with the Prosecutor General – the commanders entitled to conduct an investigation, as well as to establish the detailed rules of their competence and the

---

229 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.

230 Please refer to Decrees No. 14/2003. (VI. 19.) IM and No. 22/2003. (VI. 25.) IM Ministry of Justice.

231 Please refer to Decree No. 9/2002. (IV. 9.) IM of the Ministry of Justice.

232 Please refer to Joint Decree No. 10/2003. (V. 6.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

233 Please refer to Joint Decree No. 8/2003. (IV. 24.) IM-BM-PM of the Ministry of Justice, the Ministry of Interior and the Ministry of Finance.

234 Please refer to Decree No. 14/2002. (VIII. 1.) IM of the Ministry of Justice and Regulation No. 4 of 2002 of the OIT on the courtok egységes iratkezeléséről.

235 Section 604 (2) p) was enacted by Section 82 (2) of Act II of 2003.

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

237 Please refer to Joint Decree No. 23/2003. (VI. 24.) BM-IM of the Ministry of Interior and the Ministry of Justice, Joint Decree No. 26/2003. (VI. 26.) 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.

238 In respect of civil national security services, please refer to Section 2 l) of Act XI of 2002.

239 Please refer to Joint Decree No. 46/2002. (X. 10.) HM-BM-IM-MeHVM of the Ministry of Defence, the Ministry of Interior, the Ministry of Justice and … of the Prime Minister's Office.

240 In respect of civil national security services, please refer to Section 2 l) of Act XI of 2002.

investigation conducted by such commanders[241]

in a Decree.

(5) Authorisation is granted

a) to the national commander (head) of the investigating authority to order in an injunction – together with the Prosecutor General – in connection with investigations,

b) to the Prosecutor General to order in an injunction in the course of performing the prosecutor's responsibilities relating to criminal proceedings,[242]

c) to the National Judiciary Council to order in the regulation pertaining to court procedures,[243]

d) to the minister of justice, to order in a Decree regarding the penal duties of the court, that a standard form be used for summons, notifications, decision, minutes and other documents frequently used in the procedure.[244]

(6)[245] The minister of health, social and family affairs is hereby authorised – together with the minister of youth and sports, and in agreement with the minister of interior, minister of justice and the Prosecutor General – to issue a Decree to determine the rules of a a treatment for drug addiction, other therapeutic process treating drug users or preventive education.[246]

Entry into force

Section 605 (1)[247] This Act – with the exception of Section 607 – shall enter into effect on July 1, 2003; its provisions shall also be applied to criminal proceedings pending at the time of entry into force hereof. The entry into effect of Section 607 is regulated in a separate legal regulation.[248]

(2) In respect of criminal proceedings pending at the time of entry into force of this Act, prior procedural actions having been taken in compliance with a former legal regulation shall remain in effect even if it is regulated otherwise by this Act.

(3)[249] The procedure shall be conducted by the court having competence and jurisdiction pursuant to the former legal regulation, if the documents of the case have arrived at the court prior to the entry into effect of this Act. Cases still pending at the Supreme Court, which fall in the competence of the tribunal pursuant to this Act, shall be referred to the tribunal by July 1, 2003.

---

241 Please refer to Joint Decree No. 19/2003. (V. 8.) HM-IM of the Ministry of Defecne and the Ministry of Justice, Joint Decree No. 25/2003. (VI. 24.) BM-IM of the Ministry of Interior and the Ministry of Justice, Decree No. 16/2003. (VI. 20.) IM of the Ministry of Justice and Joint Decree No. 7/2003. (VI. 27.) MeHVM-IM of the … of the Prime Minister's Office and the Ministry of Justice.

242 Please refer to No. 6/2003. (ÜK. 6.) LÜ utasítást.

243 Please refer to Regulation No. 5 of 2003 of OIT pertaining to the application of certain documents used in the course of criminal proceedings as standard forms (Bírósági Közlöny No. 2003/6).

244 Please refer to the Appendix of Decree No. 9/2002. (IV. 9.) IM of the Ministry of Justice.

245 Section 604 (6) was enacted by Section 82 (3) of Act II of 2003.

246 Please refer to Joint Decree No. 26/2003. (V. 16.) ESzCsM-GyISM of the Ministry of Health, Social and Family Affairs and the Ministry of Youth and Sports.

247 Section 605 (1) was established by Section 2 (6) of Act XXII of 2002.

248 The entry into force of Section 607 of this Act was ordered by Section 163 (1) of Act CX of 1999.

249 The first sentence and second sentences of Section 605 (3) were established by Section 299 (1) of Act I of 2002 and Section 82 (4) of Act II of 2003, respectively.

(4)[250] If the court of appeal, or the tribunal or the Supreme Court repeals the decision of the court of first instance delivered prior to the entry into force of this Act, the repeated procedure – with the exception regulated in subsection (5) – shall be conducted by the court having competence and jurisdiction under this Act.

(5) Procedures repeated due to a repeal prior to the entry into force of this Act shall be conducted by the court having competence and jurisdiction under the former legal regulation, if the documents of the case to repeat the procedure have arrived at the court prior to the entry into force of this Act.

(6) Motions for retrial shall be considered by the court having competence and jurisdiction under the former legal regulation, if the motion have arrived at the court prior to the entry into force of this Act.

(7) Upon the entry into force of this Act, Act I of 1973 on Criminal proceedings shall be repealed. Legal regulations to be repealed or amended concurrently with the entry into force of this Act shall be specified in a separate act.[251]

(8)–(12)[252]

Section 606 (1) Should any legal regulation refer to Act I of 1973 repealed by this Act, it shall be construed as the relevant provision in this Act.

(2) The entry into force of the provisions in this Act pertaining or related to witness protection and covert investigators prior to the date of effect stipulated in Section 605 (1) shall be regulated in a separate Act[253] – by the appropriate amendment of Act I of 1973.

(3) The separate act specified in subsection (2) shall also regulate the entry into force of the provisions regarding the amendment of Act XXXIV of 1994 on the Police [Section 605 (8) to (12)] prior to the date of entry into force of this Act as stipulated in Section 605 (1).[254]

Section 607 (1)–(2)[255]

---

250 Section 605 (4) was established by Section 299 (2)of Act I of 2002.

251 Please refer to Section 308 (1) of Act I of 2002.

252 Section 605 (8)–(12) amended certain provisions of Act XXXIV of 1994 on the Police. These provisions – with modifications – entered into force by virtue of Section 61 (4) and Section 63 of Act LXXV of 1999 (Szbt.) on September 1, 1999.

253 Please refer to Act LXXXVIII of 1998 amending Act I of 1973. Act I of 1973 was repealed by Section 605 (7) of this Act, while Act LXXXVIII of 1998 was repealed by Section 308 (1)of Act I of 2002.

254 Please refer to Act LXXV of 1999.

255 Section 607 (1) and (2) inserted Sections 85/A and 87/C in Act IV of 1978 on the Penal Code. The entry into force of these sections were provided for by Section 163 (1) of Act CX of 1999.