Please note that the translation provided below is only provisional translation and therefore does NOT represent an official document of Republic of Croatia. It confers no rights and imposes no obligations separate from does conferred or imposed by the legislation formally adopted and published in Croatian language.

Please note that this translation is a purified text version including all amendments and decisions on the Act finishing with the Purified text version published in the Official Gazette no. 62/2003.

CRIMINAL PROCEDURE ACT

PART ONE

GENERAL PROVISIONS

CHAPTER ONE

PRELIMINARY PROVISIONS

Article 1

(1)This Act establishes the rules which guarantee that an innocent person shall not be convicted, and that a punishment or other criminal sanction shall be imposed on the person who commits a criminal offence, subject to the provisions of the criminal law and in lawful proceedings before the competent court.

(2) Before the judgement becomes final, the freedom and other rights of the defendant may be restricted only subject to the provisions of this Act.

Article 2

(1)Criminal proceedings shall be instituted and conducted only upon the request of the authorized prosecutor. For certain criminal offences, when prescribed by criminal law, the State Attorney shall institute criminal proceedings only upon the motion of the injured person.

(2) In cases involving offences subject to public prosecution, the authorized prosecutor shall be the State Attorney, and in cases involving offences subject to private charge, the authorized prosecutor shall be a private prosecutor.

(3) Except where otherwise prescribed by law, the State Attorney shall be bound to institute the prosecution when there is reasonable suspicion that a certain person committed an offence which is subject to public prosecution and when there are no legal obstacles to the prosecution of that person.

(4) If the State Attorney determines that there are no grounds for the institution or conducting of criminal proceedings, his role may be assumed by the injured per-son acting as subsidiary prosecutor, subject to the provisions of this Act.

Article 3

(1) A person is innocent and nobody may hold him culpable until his culpability is established by a final judgement.

(2) Doubt regarding the existence of the facts which constitute the elements of the definition of the criminal offence, or which are conditions for the implementation of a certain provision of the criminal law, shall be decided in favour of the defendant.

Article 4

(1) At his first interrogation the defendant shall be informed of the charge against him and of the grounds for the charge.

(2) The defendant shall be given an opportunity of being heard on all incriminating facts and evidence and to present all facts and evidence favourable to him.

(3) The defendant need not testify or answer any questions. It is forbidden and punishable to extort a confession or any other statement from the defendant or any other person participating in the proceedings.

Article 5

(1) The defendant shall have the right to defend himself in person or be assisted by a defence counsel of his own choice retained from the ranks of the Bar. Subject to the provisions of this Act, if the defendant does not retain a defence counsel, in order to provide for his defence, a defence counsel shall be appointed to the defendant.

(2) Subject to the provisions of this Act, if the defendant has insufficient means to pay for legal assistance and for this reason cannot retain a defence counsel, the latter shall be appointed to the defendant on his request and paid from budget funds.

(3) The court or other authorities participating in criminal proceedings shall already at the first interrogation inform the defendant of his right to legal assistance and to unimpeded communication with the defence counsel.

(4) The defendant must be accorded adequate time and opportunity to prepare his defence.

Article 6

(1) A person arrested under suspicion of having committed an offence shall be promptly informed of the reasons for his arrest, that he is under no obligation to testify, that he is entitled to the legal assistance of a defence counsel of his own choice, and that the competent authority shall upon his request inform his family or other person designated by the defendant that he is under arrest.

(2) Arrest is every measure or action that includes the compulsory detention of a person under suspicion of having committed an offence.

Article 7

(1) The Croatian language and the Latin script shall be used in criminal proceedings, unless the law prescribes another language or script for certain areas within the jurisdictional territory of the courts.

(2) The parties, witnesses and other procedural participants shall have the right to use their own language. If proceedings are not carried out in their language, the interpretation of statements and the translation of documents and other written evidence shall be provided. The interpretation and translation shall be carried out by an interpreter.

(3) The person referred to in paragraph 2 of this Article shall be informed of his right to an interpreter and translator before the first interrogation takes place, and he may waive his right if he speaks the language in which the proceedings are conducted. The court shall enter in the record that such information was given and shall record the person's response.

(4) Summonses and decisions of the court shall be served in the Croatian language and in Latin script. Accusatory pleadings, appeals and other briefs shall be submitted to the court in the Croatian language and in Latin script. If the law prescribes another language or script for official usage in certain areas within the jurisdictional territory of the courts, briefs may be submitted to the court in this language or script as well. After the initiation of the trial, the person who submitted the brief may not revoke his decision on the language he is going to use in the proceedings without the approval of the court.

(5) An arrested person, a defendant in detention and a person serving a sentence shall receive a translation of the summonses, decisions and briefs in the language used by this person during the proceedings.

(6) An alien in detention may submit briefs to the court in his language during the trial, and before and after the trial only subject to reciprocity.

Article 8

(1)The court and other authorities participating in the criminal proceedings shall with equal solicitude examine and determine facts tending to incriminate the defendant, as well as those favourable to him.

(2)The right of the court and other authorities participating in the criminal proceedings to assess the existence or non-existence of facts shall not be bound or restricted by rules of legal proof.

Article 9

(1) The court's decisions in criminal proceedings may not be founded on evidence obtained in an illegal way (illegal evidence).

(2) Illegal evidence is evidence obtained in a way representing a violation of fundamental human rights to defence, dignity, reputation, honour and inviolability of private and family life, guaranteed by the Constitution, domestic law and international law, as well as evidence obtained in violation of criminal procedure provisions expressly provided in this Act, and evidence obtained through such illegal evidence.

Article 10

(1) The defendant shall have the right to be brought before a court in the shortest period of time and to be acquitted or convicted in accordance with law. The time of detention shall be reduced to the shortest possible time.

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

(3) The party, defence counsel, the injured party, the legal representative or the legal guardian who apparently delay the criminal proceedings or otherwise abuse a right under this Act shall be denied the right to the action in question by a ruling of the court. An appeal shall not stay the execution of the ruling.

(4) In the case referred to in paragraph 3 of this Article, the president of the court shall also, at the motion of the investigating judge or the president of the panel, assign a defence counsel to the defendant by virtue of the office.

Article 11

(1) No one shall be tried again for an offence for which he has already been convicted by a final Court's decision.

(2) Criminal proceedings against a person who was acquitted by a final court's decision may not be reopened.

Article 12

A person who was unjustifiably convicted or arrested shall be entitled to full rehabilitation, compensation from budget funds, and other rights established by law.

Article 13

The court shall inform the defendant or other procedural participant, who is likely to omit to perform an action or fail to exercise his rights due to ignorance, of the rights to which he is entitled according to this Act as well as about the consequences of omission.

Article 14

When the institution of criminal proceedings entails restriction of certain rights, such restriction, unless otherwise proscribed by law, shall take effect when the indictment becomes final, and for offences punishable as a principal punishment by a fine or imprisonment for a term of less than three years, from the day the judgement of conviction is rendered, irrespective of whether it is final or not.

Article 15

(1) Where the application of criminal law depends on a prior decision concerning a question of law which falls within the jurisdiction of a court in some other type proceedings or within the jurisdiction of some other authorities, the criminal court may decide on this question by applying the provisions which regulate the process of proof in criminal proceedings. The

decision of this question of law rendered by a criminal court shall affect only the criminal case which is being tried before this court.

(2) If such prior question has already been decided by a court in some other type of proceedings or by another authority, such a decision shall not be binding on the criminal court in deciding on whether a criminal offence has been committed.

CHAPTER TWO

JURISDICTION OF COURTS

1. Subject Matter Jurisdiction and Court Composition

Article 16

(1) Criminal cases shall be considered in municipal courts, county courts and the Supreme Court of the Republic of Croatia.

(2) These courts shall, within the limits of their subject matter and territorial jurisdiction, consider all criminal offences and try all persons, unless otherwise provided by law.

Article 17

(1) Municipal courts shall have jurisdiction to:

1. adjudicate at first instance

a) offences punishable by a fine or imprisonment for a term of less than ten years as principle punishment;

b) offences for which the jurisdiction in municipal courts is prescribed by special law.

2. undertake urgent actions in pre-trial criminal proceedings'[2] regarding offences committed within the jurisdictional territory of a municipal court only if there is concern that the investigating judge[13] shall not be able to undertake this action in due time;

3. decide in proceedings referred to in subparagraph 1 of this paragraph on objections to the indictment and on requests of the president of the panel referred to in Article 282 of this Act;

4. administer other matters conferred by law.

(2) The law may prescribe that certain kinds of cases subject to the jurisdiction of two or more municipal courts within the jurisdictional territory of the same county court shall be considered by one of these municipal courts depending on the conditions of work and the work load of these courts.

Article 18

(1) Municipal courts sit in panels of one judge and two lay judges.

(2) Criminal offences punishable by a fine or imprisonment for a term of less than five years as principal punishment shall be considered by a municipal judge sitting alone, with the exception of the criminal offences referred to in Article 95, Article 100 paragraph 3, Article 101 paragraph 3, Article 164, Article 165, Article 166, Article 168, Article 170 paragraph 4, Article 172 paragraph 1, 2 and 3, Article 190, Article 191 and Article 272 paragraph 4 of the Criminal Code.

(3) The parties may agree before the commencement of the trial that the trial in the criminal proceedings for criminal offences punishable by imprisonment for a term of up to ten years shall be conducted by the president of the panel as a judge sitting alone, unless a special law prescribes the panel composition. He shall have the powers of the panel. The parties may not revoke this consent.

(4) Municipal courts shall sit in panels of three judges when rendering a decision outside the trial.

(5) The president of the municipal court and the president of the panel of the municipal court decide on matters in accordance with this Act.

Article 19

County courts shall have jurisdiction to:

1) adjudicate at first instance

a) offences punishable by imprisonment for a term of more than ten years or by long-term imprisonment

b) offences referred to in Articles 92, 125, Article 188 paragraph 1, Article 192 paragraphs 1 and 3 and Article 337 paragraph 4 of the Criminal Code and criminal offences referred to in Chapter Twelve of the Criminal Code and other criminal offences for which a special law prescribes jurisdiction of the county court.

2) decide on appeals against the decisions of municipal courts rendered at first instance;

3) conduct investigations and undertake other actions in pre-trial criminal proceedings, decide on disagreements between the State Attorney and investigating judge, decide on appeals against rulings of the investigating judge and decide on objections to the indictment or on requests of the president of the panel referred to in Article 299 of this Act;

4) render decisions in the procedure for the infliction of imprisonment in accordance with special legislation;

5) conduct procedures for the extradition of accused and convicted persons if the law does not prescribe the jurisdiction of the Supreme Court of the Republic of Croatia;

6) administer matters of international judicial assistance in criminal matters including the recognition and execution of the foreign criminal judgment;

7) decide on a dispute of the territorial jurisdiction of municipal courts in their jurisdictional territory;

8) administer other matters as provided by law.

Article 20

(1) First instance county courts sit in panels of one judge and two lay judges, in panels of two judges and three lay judges when considering offences punishable by imprisonment for a term of more than fifteen years or by long-term imprisonment.

(2) County courts sit in panels of three judges when they decide at second instance and outside the trial.

(3) County courts sit in panels of two judges and three lay judges when they decide at a trial at second instance.

(4) Investigatory actions shall be performed by the county court judge (investigating judge).

(5) Decisions in the procedure for the infliction of imprisonment (Article 19 subparagraph 4) are rendered by a county judge sitting alone (judge for the infliction of sanctions). County courts sit in panels of three judges when they decide on appeals against the first instance decisions of the judge for the infliction of sanctions (Article 19 subparagraph 4).

(6) The president of the county court and the president of the panel of the county court decide on cases as provided in this Act.

Article 21

The Supreme Court of the Republic of Croatia shall have jurisdiction to:

1) decide on appeals against decisions of the county courts rendered at first instance;

2) decide, at third instance, on appeals against the judgements rendered at second instance as provided in this Act;

3) decide on extraordinary judicial remedies as provided in this Act;

4) administer other matters as provided by law.

Article 22

(1) The Supreme Court of the Republic of Croatia sits in panels of three judges. It considers in panels of five judges offences punishable by imprisonment for a term of more than fifteen years or by long-term imprisonment.

(2) At a trial at second instance, the Supreme Court of the Republic of Croatia sits in panels of two judges and three lay judges.

(3) At third instance, the Supreme Court of the Republic of Croatia sits in a panel of five judges when it decides on appeals against judgments rendered by its own panels at second instance.

(4) When it decides on extraordinary judicial remedies, the Supreme Court of Republic of Croatia sits in a panel of three judges when considering offences punishable by up to fifteen

years, and in a panel of five judges when considering offences punishable by imprisonment for a term of more than fifteen years or by long-term imprisonment.

2. Territorial Jurisdiction

Article 23

(1) As a rule, the court within whose territory the offence is committed or attempted shall have jurisdiction

(2) A private charge may also be filed with the court within whose territory the defendant has domicile or residence.

(3) If the offence is committed or attempted within the territory of several courts or on their border, or if it is uncertain within which territory the offence has been committed or attempted, the court which on the request of authorized prosecutor has first instituted proceedings shall have jurisdiction, and if proceedings have not yet been instituted, the court to which the request for commencement of proceedings was first submitted shall have jurisdiction.

(4) Jurisdiction over the procedure for the execution of imprisonment (Article 19 subparagraph 4) shall reside with the court within whose jurisdictional territory the imprisonment is executed.

Article 24

If the offence is committed on a domestic ship or aircraft while it is in a home port or airport, the court within whose territory this port or airport is located shall have jurisdiction. In all other cases where an offence has been committed on a domestic ship or aircraft, the court within whose territory the home port or home airport of the ship or aircraft is located or within whose territory a home port or airport which the ship or aircraft first reaches is located shall have jurisdiction.

Article 25

(1) If the offence is committed through the press, the court within whose territory the paper is printed shall have jurisdiction. If this location is unknown or if the paper was printed abroad, the court within whose territory the printed paper is distributed shall have jurisdiction.

(2) If according to law the compiler of the paper is responsible, the court within whose territory the compiler has domicile or the court within whose territory the event to which the paper refers took place shall have jurisdiction.

(3) The provisions of paragraph 1 of this Article shall also be respectively applied to cases where the paper or statement was released by radio or television.

Article 26

(1) If the place of the commission of an offence is unknown or if this place is not in the territory of the Republic of Croatia, the court within whose territory the defendant's domicile or residence is located shall have jurisdiction.

(2) If proceedings are already pending in the court of the defendant's domicile or residence when the place of commission has been determined, this court shall retain its jurisdiction.

(3) If neither the place of the commission of the offence nor the domicile or residence of the defendant is known, or if both are outside the territory of the Republic of Croatia, the court within whose territory the accused person is apprehended or turns himself in shall have jurisdiction.

Article 27

If a person commits offences both in the Republic of Croatia and abroad, the court which has jurisdiction over the offence committed in the Republic of Croatia shall have jurisdiction.

Article 28

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

3. Jointer and Severance of Cases

Article 29

(1) Where one person is accused of committing several criminal offences of which some are subject to the jurisdiction of a lower, and some of a higher court, the higher court shall have jurisdiction, and if the courts having jurisdiction are at the same level, the court which on the request of an authorized prosecutor has first instituted proceedings shall have jurisdiction, and if the proceedings have not yet been instituted, the court to which the request for commencement of proceedings was first submitted.

(2) The provisions of paragraph 1 of this Article shall also be applied to determine which count has jurisdiction when the injured person at the time of the coin-mission of the offence has perpetrated a criminal offence against the defendant.

(3)As a rule, co-principals shall be subject to the jurisdiction of the court which, having jurisdiction for one of them, has first instituted proceedings.

(4) The court having jurisdiction over the perpetrator of the offence shall, as a rule, also have jurisdiction over the accomplices, accessories after the fact and persons who failed to report the preparation of the offence, the commission of the offence or the perpetrator.

(5) All cases referred to in the preceding paragraphs shall, as a rule, be considered in joint criminal proceedings and a single judgement shall be rendered.

(6) The court may decide to conduct joint proceedings and to render a single judgement when several persons are charged with several offences, provided that the offences are interconnected and that the evidence is common. If some of these offences are subject to the jurisdiction of a higher court and some to that of a lower court, the higher court shall have jurisdiction over the joint proceedings.

(7) The court may decide to conduct joint proceedings and to render a single judgement if separate proceedings are conducted against the same person for several offences or against several persons for the same offence.

(8) A jointer of proceedings shall be decided by the court having jurisdiction to conduct the joint proceedings. Rulings ordering the jointer of proceedings are not subject to appellate review.

Article 30

(1) Until any time up to the closing of the trial, the court having jurisdiction in accordance with Article 29 of this Act may for important reasons or for reasons of efficiency order the severance of joint proceedings conducted for several offences or against several defendants, and thereupon proceed separately, or refer separate cases to another court having jurisdiction.

(2) Rulings on severance of proceedings shall be rendered upon hearing a statement of the State Attorney and a present defendant.

(3) Rulings ordering the severance of proceedings or rejecting a motion for severance are not subject to appellate review.

4. Transfer of Jurisdiction

Article 31

If a court having jurisdiction is prevented from conducting proceedings due to legal or factual reasons, it shall inform the immediately superior court thereof which shall, after having heard opinion from the State Attorney, designate another court with subject matter jurisdiction which is located within its jurisdictional territory to conduct proceedings. Rulings on transfer are not subject to appellate review.

Article 32

(1) The immediately superior court may within its jurisdictional territory designate another court having subject matter jurisdiction to conduct the proceedings if it is evident that the proceedings will be facilitated or if there are other important reasons.

(2) The court shall render a ruling according to paragraph 1 of this Article upon the motion of the investigating judge, single judge or the president of the panel, or upon the motion of the State Attorney representing the prosecution before the court which decides on the transfer of subject matter jurisdiction when the proceedings are conducted upon the request of the State Attorney.

(3) At the motion of the State Attorney General of the Republic of Croatia, the Supreme Court of the Republic of Croatia may determine that in an individual case under the jurisdiction of a municipal court, a county court shall have subject matter jurisdiction, if particularly important reasons exist.

5. Consequences of Lack of Jurisdiction and Jurisdictional Dispute

Article 33

(1) The court is bound to examine its subject matter and territorial jurisdiction, and as soon as it determines a lack thereof, shall declare itself incompetent and, after the ruling becomes final, shall refer the case to the court having jurisdiction.

(2) If, pending trial, the court determines that a lower court has jurisdiction to conduct the proceedings, it shall not refer the case to the lower court, but shall carry out the proceedings and render judgement.

(3) After the indictment becomes final, the court may not declare itself territorially incompetent nor can the parties raise the objection of territorial incompetence.

(4) The court lacking jurisdiction shall undertake such procedural actions with respect to which there is a danger in delay.

Article 34

(1) If the court to which the case has been referred as the court having jurisdiction considers that the court that referred the case or some other court is competent, it shall initiate the proceedings for resolving the jurisdictional dispute.

(2) When an appellate court renders a decision upon an appeal against the ruling of a lower court by which it declared itself incompetent, this decision shall also be binding, with respect to jurisdiction, for the count to which the case has been referred, if the appellate court has jurisdiction for resolving the jurisdictional dispute between the courts involved.

Article 35

(1) A jurisdictional dispute between counts shall be decided by the court immediately superior to the courts involved.

(2) Before rendering a ruling on a jurisdictional dispute, the court shall ask the opinion of the State Attorney representing the prosecution before that court when the proceedings are conducted upon his request. The ruling on a jurisdictional dispute is not appealable.

(3) If the conditions referred to in Article 32 of this Act are met, the court may, at the same time as deciding on the jurisdictional dispute, render by virtue of the office a decision on the transfer of territorial jurisdiction.

(4) Until the jurisdictional dispute between the courts is resolved, each of the courts involved shall be bound to undertake procedural actions with respect to which there is a danger in delay.

CHAPTER THREE

DISQUALIFICATION

Article 36

(1) A judge or a lay judge shall be excluded from the exercise of the judicial office:

1) if he has been injured by the criminal offence;

2) if he is the spouse, a relative by blood, either lineal, descending or ascending, or collateral to the fourth degree, or related by affinity to the second degree, to the defendant, his defence counsel, the prosecutor, the injured person, their legal guardian or legal representative;

3) if he is a legal guardian, ward, adopted child or adoptive parent, foster-parent of foster-child to the defendant, his defence counsel, the prosecutor or the injured person;

4) if in the same criminal case he has carried out investigatory actions, or has taken part in deciding on an objection to the indictment or if he has taken part in the proceedings as a prosecutor, defence counsel, legal guardian or legal representative of the injured person or the prosecutor, or if he has testified as a witness or as an expert witness;

5) if in the same case he has taken part in rendering a decision of a lower court or in rendering a decision of the same court being challenged by an appeal or extraordinary judicial remedy.

(2) The judge and lay judge may be recused from the exercise of the judicial office in a particular case if, apart from the cases enumerated in the previous paragraph, it shall be stated and proven that there are circumstances which render his impartiality doubtful.

Article 37

(1) The judge or lay judge, as soon as he discovers a ground for exclusion referred to in Article 36 paragraph 1 of this Act, shall discontinue all the activity on the case and report this to the president of the court who shall appoint a substitute judge. If a judge who shall be excluded is the president of the court, he shall appoint a substitute judge from among the judges of his court, and if such an arrangement is impossible, he shall ask the president of the immediately superior court to appoint a substitute judge.

(2) If a judge or a Jay judge holds that other circumstances exist which would justify his recusation(Article 36 paragraph 2), he shall inform the president of the court about it.

Article 38

(1) The judge may also be challenged by the parties.

(2) The parties may submit a petition to challenge any time up to the opening of the trial, and if they learn of a reason for exclusion later (Article 36 paragraph 1), they shall submit the petition immediately after they have learnt of that reason.

(3) The party may address a petition to challenge an appellate judge in an appeal or in a response to an appeal, but not later than the commencement of the session of the court.

(4) The party may challenge only an individually designated judge, lay judge or higher court judge who exercises his judicial office in that particular case.

(5) The party is bound to state in his petition evidence and circumstances that in his opinion support his allegation that legal ground for challenge exists. It is not permitted to state the same reasons that were mentioned in a previous petition to challenge which was rejected.

Article 39

(1) The president of the court shall decide on the petition to challenge referred to in Article 38 of this Act. Where a petition is submitted to also challenge the president of the court, the deputy president of the court or the judge appointed by the president of the court to be his deputy among the judges of the court shall decide on the petition to challenge the president of the court, the judge or the lay judge.

(2) The president of the immediately superior court shall decide on the petition to challenge the president of the court, and if the petition challenges the president of the Supreme Court of the Republic of Croatia, the decision shall be rendered by a general session of that court. These decisions are not appealable.

(3) Before the ruling on disqualification is rendered, a statement of the judge, the lay judge or the president of the court shall be obtained, and, if necessary, other inquiries shall be carried out.

(4) The ruling which accepts the challenge is not appealable. The ruling which rejects the challenge may be subject to review by an interlocutory appeal, but if such ruling is rendered after the charge was brought, then only by an appeal against the judgment.

(5) If the petition to recusation referred to in Article 36 paragraph 2 of this Act is submitted after the beginning of the trial or if the petition does not comply with the provisions of Article 38 paragraphs 4 and 5 of this Act, the petition shall be dismissed entirely or partially. The ruling which dismisses the petition is not appealable. The ruling which dismisses the petition shall be rendered by the president of the court or by the panel pending trial. The judge who is challenged may participate in deciding on his qualification.

Article 40

When a judge or lay judge learns that a petition challenging him has been submitted, he shall discontinue all activity on the criminal case and in the case of recusation referred to in Article 36 paragraph 2 of this Act, he may, before the ruling on the petition has been rendered, undertake procedural actions with respect to which there is a danger in delay.

Article 41

(1) Provisions on the disqualification of judges and lay judges shall also be applied to State Attorneys and persons who are according to the Act on the State Attorney' 5 Service authorized to represent the State Attorney in proceedings, to court reporters, interpreters, experts, and expert witnesses, unless otherwise provided (Article 250).

(2) The State Attorney shall decide on the disqualification of persons who are in accordance with the Act on the State Attorney's Service authorized to represent him in criminal proceedings. The immediately superior State Attorney shall decide on the disqualification of a State Attorney. The assembly of the substitutes for the State Attorney shall decide on the disqualification of the State Attorney of the Republic of Croatia.

(3)The panel, the president of the panel or the judge shall decide on the disqualification of a court reporter, interpreter, expert, expert witness and defence counsel.

(4) When police officers undertake investigatory actions according to this Act, the investigating judge shall decide on their disqualification. The official person who undertakes action decides on the disqualification of a court reporter participating in this action.

CHAPTER FOUR

THE STATE ATTORNEY

Article 42

(1) The basic powers and main function of the State Attorney shall be the prosecution of perpetrators of criminal offences.

(2) The State Attorney shall, regarding the offences subject to public prosecution, be competent to:

1) undertake the necessary measures aimed at discovering the commission of criminal offences and the perpetrators;

2) undertake inquiries into criminal offences, and require and entrust the implementation of individual investigatory actions and measures aimed at collecting the data relevant for the institution of criminal proceedings;

3) request that an investigation and investigatory actions be carried out;

4) prefer and press an indictment or motion to indict before the court having jurisdiction thereof;

5) take appeals against courts' decisions before they become final and submit extraordinary judicial remedies against final court decisions;

6) represent the prosecution in proceedings upon a request for judicial protection against a decision or action of an administrative authority having jurisdiction for the infliction of a sentence or imprisonment imposed by a final judgment in the criminal proceedings.

(3) The State Attorney shall initiate special procedures and participate in special procedures as provided by law.

Article 43

(1) The subject matter jurisdiction of the State Attorney in criminal proceedings shall be prescribed by a special law.

(2) The territorial jurisdiction of the State Attorney shall be determined according to the provisions which prescribe the jurisdiction of the court within the jurisdictional territory to which the State Attorney is appointed.

(3) Jurisdictional disputes between State Attorneys shall be resolved by the immediately superior State Attorney.

Article 44

The State Attorney lacking jurisdiction shall undertake procedural actions with respect to which there is a danger in delay, and shall immediately inform the competent State Attorney thereof.

Article 45

The State Attorney shall carry out all procedural acts he is authorized to by law, either by himself, or by persons authorized by a special law to represent him in criminal proceedings.

Article 46

The State Attorney may desist from prosecution up until the conclusion of the trial, except where it is provided otherwise by special law.

CHAPTER FIVE

INJURED PERSON AND PRIVATE PROSECUTOR

Article 47

(1) As regards criminal offences prosecuted upon a motion or private charge, the motion or private charge must be submitted within a term of three months from the day when the authorized person learns of the offence and perpetrator.

(2) If a private charge is preferred in a case involving the criminal offence of insult, the defendant may, until the conclusion of the trial, prefer a counter charge against the prosecutor who has returned the insult on the same occasion, although the term referred to in paragraph 1 of this Article has expired. In such a case, the court shall render a single judgement.

Article 48

(1) The motion for prosecution shall be submitted to the State Attorney Service, and the private charge submitted to the court having jurisdiction over the case.

(2) If the injured person himself reports the offence or makes the motion for indemnification, he shall be deemed to have submitted the motion for prosecution.

(3) When the injured person reports an offence or makes the motion for prosecution and it transpires in the course of proceedings that an offence subject to private prosecution is

involved, the crime report or the motion shall be deemed to be a timely private charge if submitted within the term prescribed for submitting private charges. A private charge submitted in due time shall be deemed to be a timely motion of the injured person if it transpires in the course of proceedings that an offence prosecuted upon motion is involved.

Article 49

(1) In the case of minors and persons declared incapable of performing legal acts, the private charge shall be submitted by their legal guardian.

(2)A minor of sixteen years of age or more may submit a motion or a private charge by himself.

Article 50

If an injured person, subsidiary prosecutor or private prosecutor dies within the term for submitting a motion for prosecution or a private charge, or pending proceedings, his spouse, children, parents, siblings, adopted child or adoptive parent may within three months after his death submit a motion for prosecution or private charge or declare that they will continue the prosecution.

Article 51

If several persons are injured by the same criminal offence, prosecution shall be instituted or continued upon the motion or private charge from each injured person.

Article 52

The injured person, the subsidiary prosecutor and the private prosecutor may in their statement given to the authority in charge of the proceedings withdraw the motion for prosecution or the private charge until the conclusion of the trial. In such a case they forfeit their right to submit the motion or charge anew.

Article 53

(1) If a private prosecutor fails to appear at the trial although he was duly summoned, or if the summons could not be served on him because he did not report to the court changes of address or residence, he shall be deemed to have withdrawn the private charge, except where otherwise prescribed by this Act.

(2) The president of the panel shall grant reinstatement to the prior state of affairs[29] to the private prosecutor who, for a justifiable reason, fails to appear at the trial or inform the court in due time about changes of address or residence, provided he files a petition for reinstatement within eight days from the removal of the impediment to appearance.

(3) After a lapse of three months from the day of failure, reinstatement to the prior state of affairs may not be claimed.

(4) The ruling granting reinstatement to the prior state of affairs shall not be subject to appellate review.

Article 54

(1) The injured person, the subsidiary prosecutor and the private prosecutor shall be entitled to call attention to all facts and to present evidence important for the determination of the offence, for discovering the perpetrator and for adjudicating their claims for indemnification.

(2) At the trial they shall be entitled to present evidence, to examine the defendant, witnesses and expert witnesses and to comment and clarify their statements as well as give other statements and make other motions.

(3) The injured person, the subsidiary prosecutor and the private prosecutor shall be entitled to inspect files and objects which are evidence. The inspection of the files may be denied to the injured person until he has been examined as a witness.

(4) The investigating judge, the single judge and the president of the panel shall inform the injured person and the private prosecutor of the rights referred to in paragraphs 1 to 3 of this Article.

Article 55

(1) Except in cases referred to in Articles 184 and 185 of this Act, where the State Attorney determines that no grounds exist to institute prosecution for an offence subject to public prosecution or prosecuted upon a motion or where he determines that there are no grounds to institute prosecution against one of the accessories reported to the authorities, he shall be bound within eight days to notify the injured person thereof and instruct him that he can assume prosecution by himself. The same procedure shall apply to the court when it renders a ruling discontinuing the proceedings by reason the prosecutor's *nolle prosequi* in cases that are not referred to in Articles 184 and 185 of this Act.

(2) The injured person shall be entitled to institute or continue prosecution within eight days following receipt of the notice referred to in paragraph 1 of this Article.

(3) If the State Attorney withdraws the indictment, the injured person may, in assuming prosecution, adhere to the charge raised or bring a new charge.

(4) The injured person who is not notified that the State Attorney has failed to institute prosecution or has desisted from prosecution may, within three months from the day the ruling discontinuing the proceedings was rendered or six months from the date the State Attorney dismissed the crime report, declare to the court having jurisdiction that he shall continue proceedings.

(5) When the State Attorney or the court notifies the injured person that he may assume prosecution, the court shall inform him of the procedural actions he may undertake in order to realize that right.

(6) If the injured person dies pending proceedings, his spouse, children, parents, adopted child, adoptive parent, or his siblings may within three months after his death declare that they shall continue proceedings.

Article 56

(1) When the State Attorney enters *nolle prosequi* at the trial, the injured person shall be bound to declare immediately whether he intends to assume the prosecution. If having been duly summoned the injured person fails to appear at the trial or if the summons could not have

been served on the injured person because he had not reported to the court a change of address or residence, it shall be deemed that he does not intend to assume the prosecution.

(2) The president of the panel of the court at first instance shall allow reinstatement to the prior state of affairs in the case of the injured party who was not duly summoned or to whom the summons was duly served but for a justifiable reason could not appear at the trial at which the judgement rejecting the charge has been rendered on the ground that the State Attorney had withdrawn the indictment, provided that the injured person submit the petition for reinstatement within eight days of the receipt of the judgement and if in this petition it is stated that the petitioner intends to continue the prosecution. In such a case the trial shall be rescheduled and the previous judgement superseded by the new one rendered following such a repeated trial. If the duly summoned injured person fails to appear at the repeated trial, the previous judgement remains effective. The provisions of Article 53 paragraphs 3 and 4 of this Act shall also be applied in that case.

Article 57

(1) If the injured person does not initiate or assume the prosecution within the term prescribed by law or if the subsidiary prosecutor, having been duly summoned, fails to appear at the trial, he shall be deemed to have desisted from prosecution.

(2) If the subsidiary prosecutor, having been duly summoned, fails to appear at the trial, the provisions of Article 53 paragraphs 2 to 4 of this Act shall be applied.

Article 58

(1) The subsidiary prosecutor shall have the same rights as the State Attorney, except for those which are vested in the State Attorney as a state authority.

(2) In proceedings conducted upon the request of the subsidiary prosecutor, the State Attorney shall be entitled to assume and to represent the prosecution prior to the conclusion of the trial.

Article 59

(1) Where the injured person is a minor or a person declared incapable of performing legal acts, his legal guardian shall be authorized to give all statements and perform all actions to which, according to this Act, the injured person is entitled.

(2) An injured person of sixteen years of age or more may himself give statements and undertake procedural actions.

Article 60

(1) The private prosecutor, the injured person, and the subsidiary prosecutor as well as their legal guardians may exercise their procedural rights through legal representatives.

(2) When proceedings are carried out upon the request of the subsidiary prosecutor for an offence punishable by imprisonment for a term of more than three years, the court may upon the request of the injured person assign a legal representative to him if this is to the benefit of the proceedings and if the injured person due to his financial situation has insufficient means to pay for the legal representation. The investigating judge or the president of the panel shall decide on this request, and the president of the court shall appoint a legal representative from

the ranks of the Bar. If in the seat of the court there are not enough attorneys, a legal representative shall be appointed by the president of the immediately superior court from the ranks of the Bar located in the territory of the higher court.

Article 61

The private prosecutor, the subsidiary prosecutor and the injured person as well as their legal guardians and representatives shall be bound to report to the court any change of address or residence.

CHAPTER SIX

DEFENSE COUNSEL

Article 62

(1) The defendant may be represented by a defence counsel at any stage of the proceedings as well as before their commencement when prescribed by this Act. The defendant may be represented by a defence counsel in the procedure of the execution of the sentence, the execution of precautionary measures, security measures or educational measures in accordance with special regulations.

(2) If the State Attorney, in addition to the conditional withdrawal of a charge, wishes to impose fulfilment of obligations referred to in Article 184 paragraph 1 hereof upon the suspect, he may be represented by a defence counsel.

(3) Before the first interrogation the defendant must be informed of his right to have a defence counsel and of the right to have the defence counsel present during the interrogation.

(4) The defendant's legal guardian, spouse or common-law spouse, linear blood relative, adoptive parent or adopted child, siblings or foster parent may engage a defence counsel for the defendant, unless the defendant expressly refuses it.

(5) Only a member of the Bar may be retained as defence counsel, but in proceedings for offences punishable by imprisonment for a term of less than five years he may be replaced by an attorney apprentice who has passed the Bar examination. Before the Supreme Court of the Republic of Croatia, only a member of the Bar may be a defence counsel, and where the Supreme Court of the Republic of Croatia decides in a panel of seven judges, only a member of the Bar who, after passing the Bar examination, has practiced for at least five years in the judiciary or in an attorney's office may be a defence counsel.

(6) A defence counsel shall be bound to file his power of attorney with the authorities before whom proceedings are pending. The defendant may also give power of attorney to the defence counsel orally before the authority conducting the proceedings, in which case it must be entered into the record.

Article 63

(1) Several defendants may retain a common defence counsel, provided only that criminal proceedings against them are not carried out for the same offence or that it is not contrary to the interests of their defence.

(2) One defendant may not retain more than three defence counsels at the same time, and it shall be deemed that defence is ensured if one defence counsel participates in the proceedings.

Article 64

(1) A defence counsel cannot be the injured person, spouse or common-law spouse of the injured person, private prosecutor or subsidiary prosecutor, or their lineal relative in blood to any degree or a collateral relative in blood to the fourth degree or a relative by affinity to the second degree.

(2) A defence counsel cannot be a person called as a witness except if according to the present Act he is exempted from the duty to testify and declares that he shall not testify or if the defence counsel is testifies as a witness in the cast referred to in Article 233 subparagraph 2 of this Act.

(3) The defence counsel shall not be the person who was in the same case a judge or State Attorney.

Article 65

(1) If the defendant is mute, deaf or otherwise incapable of defending himself or if the proceedings are carried out for an offence punishable by long-term imprisonment, the defendant must have a defence counsel even at his first interrogation.

(2) If the defendant is in detention, he must have a defence counsel as soon as detention is imposed and throughout the time he is in detention.

(3) After the indictment has been preferred for a criminal offence punishable by imprisonment for a term of eight years, the defendant must have a defence counsel at the time the indictment is served.

(4) A defendant tried in his absence (Article 322 paragraphs 5 and 6) must have a defence counsel as soon as the ruling on the trial in absence is rendered.

(5) When in the case of mandatory defence referred to in paragraphs 1, 2, 3 and 4 of this Article the defendant fails to retain a defence counsel, the president of the court shall, by virtue of the office, appoint a defence counsel to represent him in further criminal proceedings up until the judgment becomes final, and if the punishment by long-term imprisonment is imposed, then in proceedings upon extraordinary judicial remedies as well. Where a defence counsel is assigned to the defendant by virtue of the office after the indictment has been preferred, the defendant shall be informed thereof at the time the indictment is served on him. If in the case of mandatory defence the defendant is left without a defence counsel in the course of proceedings and he does not retain another defence counsel, the president of the court before which the proceedings are carried out shall assign by virtue of the office a defence counsel to the defendant.

(6) If the court estimates that actions taken by the defendant or the defence counsel serve to delay the criminal proceedings, at the motion of the president of the panel the president of the

court shall appoint a defence counsel by virtue of the office for further proceedings up until the judgment becomes final.

(7) Only a member of the Bar may be appointed as defence counsel. If there are not enough members of the Bar in the territory of the court, the defence counsel shall by appointed by the president of the immediately superior court.

Article 66

(1) When no conditions for mandatory defence exist, the court may upon the defendant's request assign a defence counsel to the defendant if he, due to his financial situation, is unable to pay the defence costs.

(2) A request for the assignment of a defence counsel according to paragraph 1 of this Article may be made only after the indictment has been preferred. The president of the panel shall decide on tills request and the president of the court shall assign a defence counsel according to the provision of Article 65 paragraph 6 of this Act.

Article 67

(1) In lieu of the appointed defence counsel the defendant may retain another defence counsel. In such a case all procedural rights and obligations of the appointed defence counsel shall cease unless it is apparent at the trial that the defendant retained another defence counsel in order to delay the proceedings. The court shall render a special ruling on the release of the defence counsel.

(2) The appointed defence counsel may request to be released only for a justifiable cause.

(3) Before the trial the decision on release in the case referred to in paragraphs 1 and 2 of this Article shall be made by the investigating judge or the president of the panel, at the trial by the panel of judges, and in appellate proceedings by the president of the first instance panel or the panel having jurisdiction to decide on appeal. The ruling on the release is not appealable.

(4) The president of the court may release the appointed defence counsel who negligently carries out his duties. The president of the court shall assign another defence counsel in lieu of the released defence counsel. The Croatian Bar Association shall be notified of the release.

Article 68

After the authorized prosecutor submits the request for the institution of proceedings or after the investigating judge undertakes certain investigatory actions before the ruling on the opening of the investigation, the defence counsel has the right to inspect the files as well as objects which serve to determine facts.

Article 69

(1) A defence counsel may without supervision communicate orally or in writing with the defendant in detention.

(2) In proceedings for criminal offences against values protected by international law, anti-state terrorism, kidnapping, murder, robbery, abuse of narcotic drugs, counterfeiting of money, money laundering as well as endangering life and property by dangerous public acts

or means, if there are grounds for suspicion that theses offences are committed by a group of people or a criminal organization, the investigating judge may decide to monitor letters, messages and conversation between the defendant and the defence counsel.

(3) The investigating judge shall render a decision on supervision in the form of a ruling with a statement of reasons. An appeal against this ruling shall not stay its execution. Before the implementation of supervision, the ruling on supervision shall be served to the defendant and the defence counsel.

(4) The supervision referred to in paragraph 2 of this Article may last no longer than two months from the beginning of detention.

Article 70

(1) A defence counsel shall be authorized to perform all actions in favour of the defendant to which the defendant is entitled.

(2) The rights and obligations of a defence counsel shall cease when the defendant revokes the power of attorney and notifies the court thereof or if the appointed defence counsel is released.

CHAPTER SEVEN

BRIEFS AND RECORDS

Article 71

(1) Private charges, indictments and motions to indict of the subsidiary prosecutor, motions for prosecution, judicial remedies and other declarations and releases shall be submitted in writing unless otherwise prescribed by law.

(2) The briefs from paragraph 1 of this Article must be comprehensible and contain all matter that shall be necessary to undertake procedural action upon them.

(3) If the brief is not comprehensible or does not contain all matter that shall be necessary to proceed upon it, the court shall, unless otherwise prescribed by this Act, invite the person submitting the brief to correct or supplement it, and if he fails to comply with the summons within a specified term, the court shall dismiss the brief.

(4) In the summons to correct or supplement the brief the person submitting the brief shall be warned of the consequences of failure.

Article 72

The briefs which according to this Act are to be served on the other party shall be submitted to the court in a sufficient number of copies for the court and the other party. If such briefs are not submitted to the court in the sufficient number of copies, the court shall make the necessary copies at the expense of the person submitting the brief.

Article 73

(1) The court shall impose a fine to an amount not exceeding 20,000.00 Kuna on a defence counsel, legal representative, legal guardian, injured person, private prosecutor or subsidiary prosecutor, witness or expert witness who in a brief or orally offends the court or a person participating in the proceedings. The ruling on a fine shall be rendered by the investigating judge or the panel before which an offensive statement was given and, if it was made in the brief, the ruling shall be rendered by the court which is to decide on the brief. This ruling is appealable. If the State Attorney or the person representing him offends another person, the court shall inform the competent State Attorney thereof. The Croatian Bar association shall be informed of the fine imposed on an attorney or an attorney apprentice.

(2) The punishment imposed according to paragraph 1 of this Article shall have no effect on the prosecution or sentencing of the criminal offence committed by the offensive act.

Article 74

(1) Every procedural action performed in the course of criminal proceedings shall be entered in the record as it is being performed, and if this is not possible, then immediately afterwards.

(2) A record shall be made by a court reporter. Only records of searches of dwellings or personal searches and records of actions undertaken outside official premises may be made by the person undertaking the action if a court reporter cannot be provided.

(3) When the court reporter makes a record, the record shall be made in such a manner that the person performing the act dictates to the court reporter what shall be entered in the record, except where according to this Act the record may be drawn up by a court counsellor or a trainee judge.

(4) The interrogated person shall be permitted to state answers directly on the record. In the case of abuse, this right may be denied to him.

Article 75

(1) The record shall contain the name of the authority performing the procedural act, the place where it is undertaken, the day and hour when it is commenced and completed, the names and surnames of persons present as well as their role in the proceedings, and the number of the file of the criminal case in which the action is undertaken.

(2) The record must contain essential data on the course and the contents of the proceedings. Only the essentials of statements and declarations given shall be put in a narrative form. Questions shall be entered only if essential to the understanding of the answer. If necessary, the question and the answer to that question shall be entered in the record verbatim. If objects and documents are seized while undertaking a procedural action, this shall be entered into the record and the seized objects shall either be attached to the record or their location shall be stated.

(3) When undertaking procedural actions such as conducting views or searching of dwellings or persons, or the identification (Articles 258 and 259), data which are of importance regarding the significance of such a procedural action or for the determination of the identity of certain objects (description, measurement and size of objects or traces, labelling of objects, etc.) shall also be entered into the record, and if sketches, drawings, blueprints, photographs, film or other technical recordings are made, this shall also be entered in the record and attached to the record.

Article 76

(1) The record shall be drawn up neatly and shall contain no additions or changes. Crossed out parts must remain legible.

(2) All changes, corrections and additions shall be entered at the end of the record and certified by the signatures of the persons who sign the record.

Article 77

(1) The interrogated person, the persons whose presence is mandatory during the conduct of a procedural action, as well as parties, the defence counsel and the injured person if they are present shall have the right to read the record or to request that it be read to them. The person conducting the proceeding shall inform them of this right and the record shall note whether this information was given and whether the record was read. The record shall always be read if no court reporter is present and a note thereon shall be entered into the record.

(2) The record shall be signed by the interrogated person. If the record contains several pages, the interrogated person shall sign each page.

(3) The interpreter, if there is one, the witnesses whose presence during the conduct of an investigatory action is mandatory, and in the case of a search, the person who is searched or whose dwelling or other premises are searched shall put his signature at the end of the record. If the record is not written by a court reporter (Article 74 paragraph 2), it shall be signed by the persons present while the act is being carried out. If such persons are not present or if they cannot understand the contents of the record, the record shall be signed by two witnesses except if it is not possible to provide for their presence.

(4) In lieu of his signature an illiterate person shall leave the print of the right hand index finger, and a court reporter shall note in writing his name and surname below the fingerprint. If the print of the right hand index finger cannot be taken and another fingerprint is used, a note from which finger and hand the print was taken shall be made in the record.

(5) If the interrogated person has no arms, he shall read the record and if he is illiterate, the record shall be read to him and this shall be noted in the record. A refusal by the interrogated person to sign a record or leave a fingerprint on it shall be noted in the record as well as the reason for the refusal.

(6) If the procedural action cannot be carried out without interruption, (he date and hour of the interruption as well as the date and hour of the resumption of the procedural action shall be noted in the record.

(7) If objections are raised regarding the contents of the record, they shall be noted in the record as well.

(8) The person conducting the procedural action and the court reporter shall sign the record at the end of it.

Article 78

(1) Where this Act provides that the judicial decision cannot be based on certain evidence, the investigating judge shall at the motion of the parties or by virtue of the office decide on the

exclusion of this evidence from the file, and the investigating judge shall render this ruling before the conclusion of the investigation or before he gives consent for the indictment to be preferred without investigation (Article 204 paragraph 2). The ruling of the investigating judge on the motion of the parties or on the exclusion is subject to appellate review.

(2) After the ruling is final, the excluded evidence or records shall be sealed in a separate cover and the investigating judge shall keep them apart from other files and they may not be examined or used in proceedings.

(3) After the conclusion of the investigation and after consent is given to prefer the indictment without investigation (Article 204 paragraph 2), the investigating judge shall also proceed according to the provisions of paragraph 1 and 2 of this Article regarding all the information which according to Article 183 paragraph 4 and Article 186 paragraph 3 of this Act is given to the State Attorney or to police officers by citizens or by a suspect who has been interrogated contrary to the provisions of Article 186 paragraph 5 of this Act.

Article 79

(1) The investigating judge may order that an investigatory action be recorded by audio or video recording devices. Before the interrogation begins, the investigating judge shall inform the person being interrogated of this.

(2) The recording shall contain information referred to in Article 75 paragraph 1 of this Act, information necessary to determine the identity of the person whose statement is being recorded and information regarding the procedural role of that person. When statements from more than one person are recorded, it must be clearly recognizable from the recording who is giving which statement.

(3) Upon the request of the interrogated person the recording shall be reproduced immediately and the corrections and explanations made by this person shall be recorded.

(4) The record of the investigatory action shall contain the information that a technical recording was made, who did the recording, that the interrogated person was previously informed that the recording would take place, that the recording was reproduced and where the recording is kept if it is not attached to the file of the case.

(5) The investigating judge may order the technical recording to be fully or partially copied. The investigating judge shall examine the copy, certify it and attach it to the record on the performing of the investigatory action.

(6) The technical recording made according to the provisions of paragraphs 1, 2, 3, 4 and 5 of this Article shall be kept in court as long as the criminal file is kept.

(7) The investigating judge may allow persons participating in criminal proceedings, who have a justifiable interest, to record the performing of investigatory actions by devices for audio recording.

Article 80

The provisions of Articles 330 to 333 of this Act shall also be applied to the trial record.

Article 81

(1) A separate record shall be made concerning deliberation and voting.

(2) The record on deliberation and voting shall contain the course of the voting and the decision made.

(3) This record shall be signed by all members of the panel and the court reporter. Dissenting opinion shall be attached to the record on deliberation and voting if it is not entered in the record.

(4) The record on deliberation and voting shall be sealed in a separate cover. This record can be examined only by a higher court when deciding on a judicial remedy and in this case the court is bound to reseal the record in a separate cover and make a note on the cover thereon.

CHAPTER EIGHT

TERMS

Article 82

(1) Terms prescribed by this Act cannot be extended except when expressly provided for by law. If the purpose of a term described by this Act is the protection of the right to defence and other procedural rights of a defendant, this term may be shortened if the defendant or defence counsel so request in writing or orally on the record before the court.

(2) When a statement must be given within a prescribed term, it shall be deemed to be made in due time if delivered to the authorized recipient before the lapse of the term.

(3) If a statement is delivered to the Post Office by registered mail, telegraph or by other means of telecommunication, the date of delivery to the Post Office shall be considered to be the date of delivery to the recipient. It shall be deemed that the sender of the statement did not fail to give a statement within a prescribed term if the recipient did not receive the statement due to malfunctioning of a device for sending or receiving messages which was unknown to the sender.

(4) A defendant who is in detention shall deliver a statement limited by a term to the prison administration, and a person serving a sentence or an inmate of an institution for the enforcement of security or educational measures shall deliver such a statement to the administration of the institution where he is placed. The day and the hour of the delivery of such a statement shall be deemed to be the time of delivery to the authority authorized to accept such statement.

(5) If the brief which must be submitted within a term is, due to ignorance or an obvious mistake on the part of the sender, sent or delivered to a court lacking jurisdiction before the lapse of the prescribed term and therefore delivered to the court having jurisdiction after the lapse of the term, it shall be considered that it was submitted in due time.

Article 83

(1) Terms shall be counted in hours, days, months and years.

(2) The hour or day when the delivery or release is effected or when the event from which the duration of the term is measured occurred shall not be counted into the term but the next following hour or day shall mark the beginning of the term. One day shall be counted as 24 hours and a month shall be counted according to calendar time.

(3) The terms prescribed in months or years expire with the lapse of the day of the last month or year which by its number corresponds to the day when the term began (according to paragraph 2 of this Article). If such day does not exist in the last month, the term shall expire with the lapse of the last day of that month.

(4) If the last day of the term falls on a state holiday or on a Saturday or Sunday, or on some other day when the state authority does not work, the term shall expire with the lapse of the first following working day.

Article 84

(1) The court shall grant the reinstatement to the prior state of affairs in order to file an appeal to the defendant who for justifiable reasons fails within a prescribed term to file an appeal to a judgement or to a ruling on security or educational measures or on the confiscation of pecuniary benefit, provided that the defendant submits the petition for reinstatement to the prior state of affairs within eight days following the removal of the cause of a failure to act within the term, and that at the same time, with the petition, he takes the appeal,

(2) After a lapse of three months from the day of failure, no petition for reinstatement to the prior state of affairs may be submitted.

Article 85

(1) The president of the panel which renders the judgement or ruling challenged by an appeal shall decide on reinstatement to the prior state of affairs.

(2) The ruling granting reinstatement to the prior state of affairs is not subject to appellate review.

(3) If the defendant files an appeal to the ruling rejecting the reinstatement to the prior state of affairs, the court shall forward it together with the appeal to the judgement or to the ruling on security or educational measures or on confiscation of pecuniary benefit as well as the reply to the appeal and the entire file to the higher court for a decision.

Article 86

(1) The petition for reinstatement to the prior state of affairs does not, as a rule, stay the execution of a judgement or a ruling on security or educational measures, but the court having jurisdiction to decide on the petition may decide to stay execution until a decision on the petition is rendered.

CHAPTER NINE

MEASURES FOR PROVIDING THE PRESENCE OF A DEFENDANT

AND OTHER PRECAUTIONARY MEASURES

1. General Provisions

Article 87

(1) When deciding on the measures for providing the presence of a defendant and on other precautionary measures, the court shall be cautious not to apply a more severe measure if a milder measure may achieve the same purpose.

(2) The court shall by virtue of the office vacate the measures from paragraph I of this Article or replace them with milder measures when the legal conditions for their application have ceased to exist, or when the conditions are met for achieving the same purpose with a milder measure.

2. Summons

Article 88

(1) The presence of the defendant while actions in criminal proceedings are being carried out shall be provided by serving him with a summons. The summons shall be issued by a court.

(2) The defendant shall be summoned by means of serving a sealed written summons containing: the name of the summoning court, the first name and surname of the defendant, the offence he is charged with, the place, day and hour of appearance, information that the addressee is being summoned as a defendant, the caution that in case of his failure to appear he shall be brought in by force, the official seal and the signature of the judge.

(3) When summoned for the first time, the defendant shall be informed of his right to retain a defence counsel and of the right to have the defence counsel present during the interrogation.

(4) The defendant shall be instructed at his first interrogation or at the time the indictment without investigation is served (Article 204) or when the motion to indict or a private charge is served, that he is bound immediately to notify the court of changes in his address as well as of any intention to change his place of residence and shall be warned of the consequences of failure prescribed by this Act.

(5) If the defendant is unable to appear due to illness or other unavoidable impediment, he may be interrogated at the place where he is or transportation to the court or other location where the action is being carried out shall be provided or the interrogation of the defendant may be postponed.

(6) If necessary, the court may order a physical check-up or an expert examination to be carried out for the purpose of verifying the existence of the circumstances referred to in paragraph 5 of this Article.

3. Compulsory Appearance

Article 89

(1) A warrant for compulsory appearance may be issued by a court if a ruling on detention is issued or if a duly summoned defendant fails to appear and fails to justify his absence or if it is not possible to duly serve the summons and the circumstances clearly indicate that the defendant is evading the receipt of the summons.

(2) A warrant for compulsory appearance shall be executed by the police authorities.

(3) A warrant for compulsory appearance shall be issued in a written form and shall contain: the first name and surname of the defendant who is to be brought in, the offence he is charged with as well as the respective provisions of the Penal Code, the ground for the issuance of the warrant for compulsory appearance, the official seal and the signature of the judge who issued the warrant.

(4) The person to whom the execution of the warrant is conferred shall serve it to the defendant and shall invite the defendant to accompany him. If the defendant refuses to comply he shall be brought in by force.

(5) The warrant for compulsory appearance shall not be issued against military personnel, members of the police authorities and judiciary police, but their command or institution shall be required to take them to the court.

4. Precautionary Measures

Article 90

(1) When circumstances exist which constitute the ground for detention stated in Article 105 of this Act, the court shall, if the same purpose may be achieved by any of the precautionary measures provided in this Article, issue a ruling with a statement of reasons ordering the defendant to carry out one or more precautionary measures. Such a defendant shall be warned that in the case of failure to carry out the ordered precaution it may be replaced by another precaution, by a more severe measure or by detention.

(2) Precautionary measures are:

1) prohibition to leave a residence,

2) prohibition to visit a certain place or a territory,

3) obligation of the defendant to call periodically a certain person or authority,

4) prohibition to approach a certain person and prohibition to establish or maintain contacts with a certain person,

5) prohibition to engage in a certain business activity,

6) temporary seizure of a passport or other document which serves to cross the state border,

7) temporary seizure of a license to drive a motor vehicle.

(3) Precautionary measures may not entail the restriction of a defendant's right to his own apartment, to unimpeded connections with members of his household, spouse or common-low spouse, parents, children, adopted child or adoptive parent, except where the proceedings are conducted on account of a criminal offence committed to the detriment of any of these persons. The prohibition of the pursuit of a business activity may also include a lawful professional activity if the proceedings have been instituted for the criminal offence committed within the activity in question.

(4) Precautionary measures may not restrain the right of a defendant to unimpeded communication with his defence counsel.

(5) Precautionary measures may be ordered for the whole duration of the criminal proceeding. Prior to the commencement of the criminal proceeding and in the course of investigation, the precautionary measures shall be ordered and vacated by the investigating judge, and when the indictment or motion to indict is preferred until the judgment becomes final by the panel or by the single judge.

(6) Precautionary measures may last as long as they are necessary and at the longest until the judgment becomes final. The investigating judge, the single judge or the panel shall examine every two months by virtue of the office whether the need for the precautionary measures still exists and issue a ruling prolonging them or vacating them if they are not needed any more. The precautionary measures may be vacated even before the expiry of two months if the need for them ceases to exist or if there are no longer legal conditions for their application.

(7) Against the ruling ordering, prolonging or vacating a precautionary measure, parties may file an appeal that does not stay the execution of the ruling. The panel referred to in Article 18 paragraph 4 or Article 20 paragraph 2 of this Act shall decide on the appeal against the ruling of the investigating judge or the single judge.

(8) If the investigating judge disagrees with the application of the precaution proposed by the State Attorney in the course of the investigation, he shall render a ruling rejecting the motion of the State Attorney. The ruling of the investigating judge is subject to appellate review which does not stay the execution of the ruling and the panel referred to in Article 18 paragraph 4 or Article 20 paragraph 2 of this Act shall decide on the appeal.

(9) If it is likely that an offence against safety in traffic has been committed, the police authority that came to the place of commission may for up to three days seize the license to drive a motor vehicle from the person against whom there are grounds for suspicion that he is the perpetrator.

Article 91

(1) In the ruling ordering a precautionary measure of the prohibition to leave a residence, the court shall determine the place where the defendant must be as long as the precautionary measure is in effect as well as the borders beyond which he must not go.

(2) In the ruling ordering a precautionary measure of the prohibition to visit a certain place or a territory, the court shall determine the place or the territory and the distance the defendant is not allowed to cross to approach them.

(3) In the ruling ordering a precautionary measure of the obligation of the defendant to call periodically a certain person or an authority, the court shall appoint an officer the defendant must call, the terms for the calls and the method of keeping record of the calls the defendant made.

(4) In the ruling ordering the precautionary measure of prohibition of approaching a certain person and prohibition to establish or maintain contacts with a certain person, the court shall determine the distance the defendant must not cross to approach a certain person and prohibit the establishment or maintenance of a direct or indirect contact with a certain person.

(5) In the ruling ordering the precautionary measure of prohibition of engaging in a certain business activity, the court shall determine the type and the subject of the business activity in more detail.

(6) In the ruling ordering the precautionary measure of temporary seizure of a passport or another document that serves to cross the state border, the personal data shall be stated, the authority issuing the document, the number and the date of issue.

(7) In the ruling ordering the precautionary measure of temporary seizure of a license to drive a motor vehicle, the particulars of the license shall be stated (personal data, the authority issuing the license, the number, the date, the type of vehicle, etc.).

Article 92

(1) The court shall send the ruling ordering a precautionary measure to the authority executing the precautionary measure as well.

(2) The precautionary measure of prohibition to leave a residence, prohibition to visit a certain place or territory, prohibition to approach a certain person and prohibition to establish or maintain contacts with a certain person, temporary seizure of a passport or another document that serves to cross the state border and temporary seizure of a license to drive a motor vehicle is executed by the policy authority.

(3) The precautionary measure related to the obligation of the defendant to periodically call a certain person or authority is executed by the police authority or another state authority the defendant has to call.

(4) The precautionary measure of prohibition to engage in certain business activities is executed by the authority in charge of the business activity and the police authority.

Article 93

(1) The court may at any time order the precautionary measure to be examined and require a report from the police authority executing the precautionary measure. The authority executing the precautionary measure shall urgently implement the examinations ordered and inform the court immediately thereof.

(2) The authority executing the precautionary measure shall forthwith inform the court about any conduct of the defendant contrary to the prohibition or his failure to comply with the obligation imposed by means of the precautionary measure.

(3) The court may in a special ruling prohibit a person other than the defendant to engage in activities interfering with the precautionary measures related to the defendant. If that person fails to comply with the ruling, he shall be fined with the amount of 20,000.00 Kuna.

5. Bail

Article 94

(1) The defendant who shall be or has already been detained because of the danger of flight may remain at large or may be released provided that he personally, or another person, gives bail guaranteeing that he shall not abscond until the conclusion of criminal proceedings and with the further proviso that the defendant personally promises that he shall not hide or change his place of residence without permission.

(2) The ruling on bail and on vacating the bail shall be rendered according to Article 90 paragraphs 5 to 8 of this Act.

Article 95

(1) Bail shall always be set in a pecuniary amount determined with regard to the gravity of the criminal offence, the personal and family circumstances of the defendant as well as the financial situation of the person giving bail.

(2) Bail shall consist of depositions of cash, securities, valuables or other movables of more considerable value which can be easily kept and cashed or of mortgages of real estate for the amount of bail, or of the personal surety of one or more persons that they will pay the amount of bail in the case of the defendant's flight.

(3) If the defendant absconds, the court shall, according to the regulations, render the ruling on who will obtain the value of the bail.

Article 96

(1) Notwithstanding the bail granted, detention shall be ordered if a duly summoned defendant fails to appear without providing any reasons or if he makes preparations for flight, or if some other legal ground for detention occurs against him.

(2) In the case referred to in paragraph 1 of this Article, bail shall be vacated. Cash, valuables, securities or other movables shall be returned and the mortgage shall be released. The same procedure shall be followed after criminal proceedings have been terminated by a ruling discontinuing the proceedings or by a final judgment.

(3) If judgment imposes a sentence of imprisonment, bail shall be vacated when the convicted person begins to serve his sentence.

6. Arrest

Article 97

(1) Any person may prevent the flight of a person who is in the act of committing a criminal offence subject to public prosecution.

(2) A person is considered to be caught in the act of committing a criminal offence when he is noticed by somebody while committing a criminal offence or if he is immediately after the commission of the criminal offence caught under circumstances indicating that he is the one who has just committed a criminal offence.

Article 98

(1) Police authorities are entitled to arrest a person against whom they execute a ruling for compulsory appearance or a ruling on detention.

(2) Police authorities are entitled to arrest:

1) a person who is in the act of committing an offence subject to public prosecution;

2) a person against whom there are grounds for suspicion of having committed an offence subject to public prosecution, if any grounds exist for ordering detention referred to in Article 192 of this Act.

Article 99

(1) The arrested person must be immediately informed of the reasons for arrest unless due to the circumstances of the arrest this is not possible.

(2) The policy authorities shall be bound to inform the family of the arrested person within 24 hours of the arrest, except if he is opposed to it. The competent authority of social care shall be informed of the arrest if it is necessary to undertake measures of taking care of the children and other family members of the arrested person that he is bound to maintain.

Article 100

(1) The police authorities shall take the arrested person immediately, and at the latest within 24 hours from the moment of arrest, to the investigating judge or release him. A delay must be expressly explained.

(2) When a person's flight is prevented pursuant to Article 97 paragraph 1 of this Act, he shall immediately be brought before the investigating judge or to the police authorities who shall proceed in accordance with paragraph 1 of this Article, and if this is not possible, one of these authorities shall be informed thereof.

(3) When the arrested person is brought before the investigating judge, a written notice of the reasons and time of arrest shall be submitted as well. Such notice may be given orally on the record.

(4) The investigating judge shall immediately warn the arrested person brought before him pursuant to the provision of Article 6 of this Act, and if necessary assist him to retain a defence counsel. The caution and the stated of the arrested person shall be entered into the record. If the arrested person declares that he shall not retain a defence counsel or within 24 hours from the moment of caution he does not retain one, the investigating judge shall carry out an interrogation of the arrested person and decide on his release. If according to this Act defence is mandatory and the defendant fails to retain a defence counsel, the investigating judge shall, before the interrogation begins, appoint a defence counsel by virtue of the office

from the list of attorneys on duty which is compiled by the Croatian Bar Association for the territory of a county court and delivered to the county court.

7. Provisional Confinement

Article 101

(1) On the motion of the police authorities or the State Attorney, the investigating judge may order by a written ruling with a statement of reasons the provisional confinement for a duration of up to 24 hours of the arrested person brought before him if he establishes the existence of grounds for suspicion that the arrested person committed the offence he is suspected of and if there are grounds referred to in Article 102 paragraph 1 subparagraphs 1 and 2 of this Act, provided that provisional confinement is necessary in order to determine the identity, check the alibi, collect data on items of evidence, or remove serious danger to the life or health of people or to property of considerable value. Provisional confinement in accordance with the previous provisions may be ordered only one more time, provided that information that the arrested person committed another offence is collected. Exceptionally, on the motion of the police authorities or the State Attorney, the investigating judge may according to this paragraph order the provisional confinement of the arrested person at a police station if the offences referred to in Article 192 of this Act punishable by imprisonment for a term of more than 5 years are involved.

(2) The investigating judge may by virtue of the office or on the motion of the State Attorney order that the arrested person who is brought before him be confined for up to 48 hours when he is of the opinion that there is a reasonable suspicion that the arrested person has committed the offence he is suspected of, provided there are grounds for ordering the detention referred to in Article 102 paragraph 1 of this Act and that the State Attorney did not submit a request for investigation, indictment without investigation or motion to indict. If the State Attorney does not submit a request for investigation, indictment without investigation or motion to indict within 48 hours, the arrested person shall be released.

(3) If the arrested person was confined according to paragraph 1 of this Article, the investigating judge may order confinement for another 24 hours according to paragraph 2 of this Article.

(4) The investigating judge of the court that does not have jurisdiction may render a ruling on provisional confinement according to the provisions of paragraphs 1 and 2 of this Article. The investigating judge shall confine the person in respect of whom there are grounds for detention referred to in Article 105 paragraph 1 subparagraphs 1 and 2 of this Act while conducting urgent investigatory actions before the commencement of the investigation, or when the investigating judge of the competent court has conferred on him the performance of respective investigatory actions. If the investigating judge of the court that does not have jurisdiction has ordered provisional confinement, he is bound before the expiry of the confining term to direct the person in confinement to the competent investigating judge and to inform the State Attorney thereof.

Article 102

(1) The ruling on provisional confinement shall be immediately served on the arrested person and delivered to the competent State Attorney Service as well as to the police authorities if the ruling is rendered on their motion. If the investigating judge disagrees with the motion of the

State Attorney to confine the arrested person, he shall render a ruling rejecting the motion and releasing the arrested person. The State Attorney may file an appeal to this ruling within 24 hours and the panel referred to in Article 20 paragraph 2 shall decide on the appeal within the term of an additional 24 hours. The appeal shall not stay the execution of the ruling.

(2) The arrested person has the right to take an appeal from the ruling on provisional confinement for the whole duration of the confinement. Immediately upon the receipt of the appeal the panel referred to in Article 20 paragraph 2 of this Act shall decide on it. The appeal shall not stay the execution of the ruling.

(3) The arrested person who is confined pursuant to Article 101 paragraphs 1 and 2 of this Act shall be treated in conformity with the provisions of this Act governing the treatment of detainees. When the arrested person is confined pursuant to the provision of Article 101 paragraph 1 of this Act, the police authorities may seek information from him in accordance with the provision of Article 186 paragraph 4 of this Act.

(4) The arrested person who is confined shall be immediately released if upon his appeal the ruling on provisional confinement is vacated or if the terms from Article 101 paragraphs 1 and 2 of this Act have expired, unless the State Attorney demands detention in a request for investigation, an indictment without investigation or a motion to indict.

Article 103

(1) When the State Attorney submits a request for investigation, an indictment without investigation or a motion to indict and requested detention to be ordered, he shall immediately inform the investigating judge who ordered the confinement thereof. The investigating judge shall confine the arrested person until the competent court renders a decision on the request for investigation and detention, or on the detention after an indictment without investigation or a motion to indict is submitted. If the competent judicial authority does not order detention within 72 hours from the expiry of the term referred to in Article 101 paragraphs 1 and 2 of this Act for which the provisional confinement was ordered, the arrested person must be released immediately.

8. General Provisions on Detention

Article 104

(1) Detention may be ordered only if the same purpose cannot be achieved by Another measure.

(2) Detention shall be vacated as soon as the grounds for detention cease to exist and the detainee shall be released.

(3) When deciding on detention, especially regarding its duration, the court shall take into consideration the proportionality between the gravity of the offence, the sentence which, according to data at the disposal of the court, may be expected to be imposed, and the need to order and determine the duration of detention.

(4) The judicial authorities conducting the criminal proceeding shall proceed especially urgently if the defendant is in detention and take care, by virtue of the office, whether the ground and legal conditions for detention have ceased to exist, in which case detention shall be immediately vacated.

9. Grounds for Ordering Detention

Article 105

(1) If there exists reasonable suspicion that a person committed an offence, detention against this person may be ordered:

1) if there are circumstances indicating a danger of flight (the person is in hiding, his identity cannot be established, etc.);

2) if there exists reasonable suspicion that he shall destroy, hide, change or forge items of evidence and traces of importance for criminal proceedings or that he shall impede the investigation by influencing witnesses, co-principals or accessories after the fact;

3) if special circumstances support the concern that he shall repeat the offence, or complete the attempted one, or perpetrate the offence he threatens to commit;

4) if the offences involved are: murder, robbery, rape, terrorism, kidnapping, abuse of narcotic drugs, extortion, abuse of powers in economic business activities, abuse of office or authority, association to commit a criminal offence or any other criminal offence punishable by imprisonment for a term of twelve years or more and if this is necessary because of the particularly grave circumstances of the offence.

(2) Detention may be ordered pursuant to the provision of paragraph 2 subparagraph 3 of this Article provided that there is danger that an offence against property or other offence punishable by imprisonment for a term of three years or more may be committed.

(3) Detention may also be ordered against a duly summoned defendant who evades appearance at the trial.

(4) When pronouncing the judgment of imprisonment for a term of five years or more, detention against the defendant shall always be ordered.

Article 106

(1) If there are circumstances referred to in Article 105 paragraph 1 subparagraphs 1 and 3 of this Act, the court may order house arrest if the purpose of ordering detention may be achieved by prohibiting the person from leaving the apartment or other premises he occupies.

(2) In the ruling ordering house arrest the court may, with the person's consent, order the application of an external electronic or video surveillance for the duration of the house arrest on all openings of the apartment or other premises he occupies.

(3) If this Act does not contain any special provisions on house arrest, the provisions on detention shall adequately apply to ordering, vacating and prolonging house arrest. The Minister in charge of justice affairs shall, with consent of the Minister of the Interior, adopt special regulations governing the implementation of measures referred to in paragraphs 1 and 2 of this Article in more detail.

10. Ruling on Detention

Article 107

(1) Detention shall be ordered by a written ruling issued by the judicial authority having jurisdiction.

(2) A ruling on detention shall contain: the title of the court issuing the ruling, the first name and the surname of the detainee, the personal data of the person to be detained and the offence he is charged with, the legal ground for detention, the duration of detention, a provision on including any time the person was deprived of freedom before the ruling on detention was rendered with a note on the moment of arrest, a statement of reasons, instructions on the right to appeal and the signature of the judge. The statement of reasons shall state specifically and fully the facts and the evidence supporting the reasons referred to in Article 105 paragraph 1 or danger or concern referred to in Article 105 paragraph 2 of this Act.

(3) A ruling on detention shall be served on the detainee immediately after he has been put into detention. The files shall state the moment when the ruling was served. The detainee shall confirm the receipt of the ruling by his signature.

(4) In addition to the data referred to in paragraph 2 of this Article, the ruling on house arrest shall include: prohibition to the person to leave the apartment or other premises, prohibition of communication with other persons, except those who live with him or provide him with basic necessities, and, under the conditions the Act provides in Article 106 paragraph 2, the measure of video and electronic surveillance of the defendant. The ruling on house arrest shall be served to the police authority.

11. Judicial Authority Having Jurisdiction to Order and Vacate Detention

Article 108

(1) After the ruling on conducting investigation has been rendered, the detention shall be ordered and vacated by the investigating judge on a motion of the State Attorney or by virtue of the office. The investigating judge shall decide on a motion of the State Attorney to order detention immediately, but at least within 24 hours. If the investigating judge disagrees with the State Attorney's motion to order or vacate detention, he shall render a ruling rejecting the motion. In such a case the State Attorney may take an appeal within 48 hours. The appeal does not stay the execution of the ruling, and the panel referred to in Article 20 paragraph 2 of this Act shall decide on it within 48 hours.

(2) The investigating judge shall order and vacate detention on a motion of the State Attorney or by virtue of the office either in cases when conducting some investigatory actions in summary proceedings or when the State Attorney has requested consent to prefer an indictment without investigation, until it is submitted to the court.

(3) After an indictment or motion to indict has been submitted to the court, outside the trial until the judgment becomes final, detention shall be ordered, prolonged and vacated by the panel referred to in Article 18 paragraph 3 or Article 20 paragraph 2 of this Act. Pending trial and until the judgment is pronounced, detention shall be ordered, prolonged and vacated by the panel of judges or single judge conducting the trial.

(4) When it decides on an appeal against the judgment, the appellate panel (Article 20 paragraphs 2 and 3, Article 21 subparagraphs 1 and 2) shall order, prolong or vacate detention.

(5) When the judicial panel deciding on extraordinary judicial remedies vacates the contended judgment and returns the case to renewed proceedings, it may order detention if grounds referred to in Article 105 of this Act exist and the terms referred to in Article 114 of this Act have not expired yet.

Article 109

(1) The defence counsel and the State Attorney shall be summoned to the panel session (Article 18, paragraph 4 or Article 20 paragraph 2) where, after the indictment has been submitted, the issue is whether grounds for detention exist or where the question is whether detention shall be ordered, vacated or prolonged. If necessary, the defendant or the detainee shall be summoned as well.

(2) The panel session shall be held even if duly summoned persons from paragraph 1 of this Article fail to appear at the session or if the defendant or his defence counsel did not receive the summons due to a change of residence without their having informed the court thereof or because it was not possible to serve the summons due to their not being amenable.

(3) The panel shall afford an opportunity to parties to give their oral declarations relevant for a decision on detention as well as necessary explanations, to submit written briefs and to enclose relevant documentation.

(4) When deciding on detention, the panel shall take into consideration the parties' briefs and documentation delivered to the panel by mail or in some other way, provided that they arrive in court by the beginning of the session.

(5) In the course of the session a record shall be made and it shall be enclosed with the files along with the ruling on detention rendered by the panel.

12. Duration of Detention

Article 110

(1) Detention ordered by the ruling of the investigating judge or detention ordered for the first time in the course of investigation by the ruling of the panel may last no longer than one month from the date the detainee was deprived of his liberty. Every deprivation of liberty shall be included in the duration of detention.

(2) On the motion of the investigating judge or the State Attorney, the panel referred to in Article 20 paragraph 2 of this Act may, if there are justifiable reasons, prolong detention for a term not longer than two months.

(3) If the investigation is carried out, the panel referred to in Article 20 paragraph 2 of this Act may, after the expiry of the term referred to in paragraph 2 of this Article, prolong detention for a term not longer than three months.

(4) The whole duration of detention in the investigation including the time of the deprivation of freedom before the ruling on detention is rendered may not be longer than six months and on the expiry of this term the detainee must be released immediately.

(5) Before a motion to indict is submitted in summary proceedings, detention may last as long as it is necessary to carry out investigatory actions, but no longer than 60 days.

Article 111

(1) If the defendant is detained at the moment the indictment or motion to indict is submitted, the panel referred to in Article 18 paragraph 4 or Article 20 paragraph 2 of this Act shall immediately but not later than 48 hours after the indictment or motion to indict is submitted decide whether detention is still necessary and to this end shall render a ruling in order to prolong or vacate detention.

(2) After the indictment, motion to indict or motion to prefer an indictment without investigation is submitted, detention may last until the judgment becomes final, and after the judgment becomes final at the longest until the ruling on committing the defendant to serving a prison sentence becomes final. Every two months counting from the date the previous ruling on detention became final until the rendering of a judgment that is not final, the panel referred to in Article 18 paragraph 4 or Article 20 paragraph 2 of this Act shall review whether legal grounds for the application of the detention measure still exist and prolong or vacate it by a ruling. An appeal against this ruling does not stay its execution. If the defendant is in detention, at the time the judgment is pronounced the panel shall review whether there are legal grounds for a further application of the detention measure.

(3) If, upon an objection to the indictment, a request of the president of the panel to examine the indictment or a request for the reopening of the criminal proceedings, the case is returned to the stage of investigation, the previously ordered detention shall, until the new indictment is submitted, last at the longest six months. After the new indictment is submitted, the provisions referred to in paragraph 2 of this Article shall be applied.

(4) In summary proceedings, from the moment the motion to indict is submitted until the conclusion of the trial, the provisions of Article 105 of this Act shall apply, but the panel is bound to re-examine grounds for detention every month.

Article 112

After the indictment or the motion to indict is submitted the defendant and his defence counsel may, before the judgment becomes final, request from the court that the detention be vacated if the circumstances occur due to which detention is no longer necessary. The ruling rejecting the request to vacate detention is not appealable. In any case, detention shall be vacated and the detainee shall be released after the court pronounces the judgment acquitting the defendant of the charge or rejecting the charge or pronouncing a fine, a suspended sentence or an admonition.

Article 113

(1) Detention ordered on the ground from Article 105 paragraph 1 subparagraph 2 of this Act shall be vacated as soon as evidence is collected or taken, for the securing of which detention was ordered, but not later than by the conclusion of the trial.

(2) Detention ordered pursuant to Article 105 paragraph 3 of this Act may not last longer than one month.

Article 114

(1) Before a first-instance judgment is passed, the duration of detention may not be longer than:

1) six months if the offence is punishable by imprisonment for a term of less than three years;

2) one year if the offence is punishable by imprisonment for a term of less than five years;

3) one year and six months if the offence is punishable by imprisonment of less than eight years;

4) two years if the offence is punishable by imprisonment of more than eight years;

5) three years if the offence is punishable by long-term imprisonment.

(2) Where a judgment is rendered that is not final, the whole duration of detention before the judgment becomes final may be extended by one-sixth in the cases referred to in paragraph 1 subparagraphs 1 to 3 of this Article or by one-fourth in the cases referred to in paragraph 1 subparagraphs 4 and 5 of this Article.

(3) On the State Attorney's motion with a statement of reasons, after the first-instance judgment has been vacated, the Supreme Court of the Republic of Croatia may prolong the duration of detention in the proceedings related to criminal offences referred to in paragraph 1 subparagraphs 1 to 3 of this Article by an additional six months at the longest and in the proceedings related to criminal offences referred to in paragraph 1 subparagraphs 4 and 5 of this Article by an additional one year at the longest.

(4) From the date the second-instance judgment is rendered which is appealable, detention may last until the judgment becomes final, but no longer than three months.

(5) The defendant who is in detention and whose judgment pronouncing the sentence has become final shall remain in detention until he is committed to serving a person sentence, but no longer than the expiry of the duration of the sentence pronounced.

13. Appeal against a Ruling on Ordering, Vacation or Prolongation of Detention

Article 115

(1) The defendant, his defence counsel and the State Attorney may within two days file an appeal against a ruling on the ordering, prolongation or vacation of detention. The ruling on ordering, prolongation or vacation of detention by the panel of the Supreme Court of the Republic of Croatia is not subject to appellate review, except where the panel of the Supreme Court orders detention pursuant to Article 108 paragraph 4 and 5 of this Act for a defendant for whom no ruling on detention was ordered. An appeal against this ruling shall not stay its execution. The panel of the Supreme Court consisting of five judges shall rule on the appeal.

The panel deciding on the appeal may not include judges who rendered the ruling on the ordering of detention.

(2) An appeal against the ruling on the ordering, prolongation or vacation of detention shall not stay its execution.

(3) The panel from Article 18 paragraph 4 or Article 20 paragraph 2 of this Act shall decide on the appeal from paragraph 1 of this Article filed against the ruling of the single judge or the investigating judge.

(4) The panel of the higher court shall decide on an appeal against the panel's ruling on the ordering, prolongation or vacation of detention.

(5) The panel shall render a decision on the appeal referred to in paragraph 1 of this Article within 48 hours.

14. Execution of Detention and Treatment of Detainees

Article 116

(1) Detention shall be executed in accordance with the provisions of this act and other provisions founded thereon.

(2) Detention shall be executed in prisons designated for that purpose by the Minister in charge of justice affairs.

(3) The defendant for whom detention has been ordered on the ground from Article 447 paragraph 1 of this Act shall be committed to a hospital for persons deprived of liberty or an adequate psychiatric institution.

(4) Only those employees of the Ministry in charge of justice affairs who have the required professional capacity and knowledge as well as professional education may work on the execution of detention.

(5) The Minister in charge of justice affairs shall issue provisions from paragraph 1 of this Article and prescribe stipulations for employees working on the execution of detention.

Article 117

(1) The court may exceptionally approve a person ordered house arrest to leave the apartment or other premises for a certain period of time:

1) if it is necessary for the purpose of medical treatment of the person or

2) if it is required by special circumstances that might result in severe consequences endangering life, health or property.

(2) Detention shall be ordered against a person ordered house arrest if he leaves the apartment or other premises contrary to the prohibition imposed by the court or does not return to the apartment or other premises at a specified time or does not observe the prohibition of communication with certain persons or prohibition of the use of means of communication or

evades or disturbs the execution of the measures of video or electronic surveillance. The person shall be cautioned about it in the ruling on the ordering of house arrest.

(3) The court shall supervise the house arrest, and the supervision may be requested from the police authority any time. The police authority may supervise house arrest any time, without a court order as well. The police authority shall immediately inform the court about any behaviour contrary to the ruling on the ordering of house arrest.

(4) The court and the police authority shall keep record of the supervision of the house arrest.

(5) The Minister in charge of justice affairs, with consent of the Minister of the Interior, shall issue provisions on keeping record from paragraph 4 of this Article.

Article 118

(1) Detention shall be executed in conditions which do not offend the person and dignity of the detainee. Authorized employees with the judicial police and guards may, in cases where the execution of detention is not feasible due to the active or passive resistance of the detainee, use means of force only when and in the manner prescribed.

(2) The rights and freedom of detainee may be restricted only to the extent necessary to achieve the purpose of detention, to prevent his flight, to prevent the commission of an offence and to remove the danger to life and health of people.

(3) The prison administration shall collect, process and keep data on the detainees. The data collection contains:

1. data concerning the identity of the detainee and his psycho-social condition;
2. data on admission to detention, the duration, prolongation and vacation of detention;
3. data on the work the detainee is performing;
4. data on the conduct of the detainee and the discipline measures applied;
5. other data determined by the Minister in charge of justice affairs.

(4) The data referred to in paragraph 3 of this Article shall be kept and used while the detainee is in detention. Apart from the central register on detainees governed by the Ministry in charge of justice affairs, these data shall be given to the authorities of criminal proceedings and to the person the data refer to on their written request.

Article 119

(1) Detainees shall be accommodated in rooms of an appropriate size which meet all requirements of health. Persons of opposite sex shall be detained separately. As a rule, detainees shall not be accommodated in the same room as persons who are serving a prison sentence. A detainee shall not be accommodated with persons who may be of harmful influence to him, or whose company may be prejudicial to the course of the proceedings.

Article 120

(1) Detainees are entitled to eight hours of uninterrupted rest every 24-hour-period. In addition, at least two hours of movement in the open air daily shall be provided.

(2) A detainee is entitled to have on him his personal belongings and hygiene articles, to obtain at his own expense books, newspapers and other publications as well as the means for radio and television transmission and to have other things in the quantity and size which does not disturb the sojourn in the room or the good order of the institution. When personally searched on admission to detention, objects in relation to the offence shall be seized from the detainee while other objects which he is not allowed to retain shall be deposited and kept in accordance with his instructions or handed over to the person appointed by the detainee.

Article 121

(1) With the approval of the investigating judge or the president of the panel and under his supervision or the supervision of a person designated by him, the detainee may, in accordance with the good order of the institution, receive visits from his relatives and upon his request from a physician or other persons. Particular visits may be denied if they may be prejudicial to the course of the proceedings.

(2) In conformity with the good order of the institution, the investigating judge or the president of the panel shall approve a visit to a detainee who is a foreign national from the consular representative of the country to which he belongs.

(3) A detainee may correspond with persons outside the prison, subject to the knowledge and supervision of the investigating judge and after the indictment is preferred of the president of the panel. These authorities may forbid the detainee the sending and receiving of letters and other parcels, except the sending of a petition, complaint or appeal.

(4) A detainee is entitled to make telephone calls at his own expense in accordance with prison regulations and under the supervision of the prison administration. To secure the exercise of this right, the prison administration shall provide for an appropriate number of public telephone connections. For security reasons or other reason referred to in Article 105 paragraph 1 subparagraphs 1, 2 and 3 of this Act, the investigating judge, single judge or the president of the panel may by a ruling restrict or forbid a detainee's right to use the telephone.

(5) A detainee is entitled to unrestricted and unimpeded communication with his defence counsel.

Article 122

(1) In the event of a disciplinary offence the investigating judge, single judge or the president of the panel may, on the motion of the administrator of the prison, impose a disciplinary punishment consisting of restrictions on visits and correspondence. Such restrictions shall not refer to the communications between the detainee and his defence counsel or to the visits of a consular representative.

(2) A disciplinary offence is each grave breach of discipline that refers to:

1) physical attacks on other detainees, employees or officials and acts which offend them;

2) producing, receiving, bringing in, smuggling objects which serve for attack or flight;

3) bringing into the prison or preparing in the prison intoxicants or alcohol;

4) breaches of the provisions on security at the working place, fire protection and preventing the consequences of natural calamities;

5) the intentional causing of considerable material damage;

6) unacceptable conduct in the presence of other detainees or officials.

(3) An appeal may be taken from a ruling on the disciplinary measure to the panel referred to in Article 18 paragraph 3 or Article 20 paragraph 2 of this Act within 24 hours. The appeal shall not stay the execution of the ruling.

(4) The prison administration shall immediately inform the investigating judge of the use of the means of force against a detainee.

Article 123

(1) Supervision over the execution of detention shall be carried out by the president of the court having jurisdiction.

(2) The president of the court or the judge designated by him shall be bound to visit the detainees at least once a week and, if he considers it to be necessary without the presence of the guards, shall inform himself about the prisoners' food, how their other needs are satisfied and how they are treated. The president of the court or the judge designated by him shall be bound to undertake measures necessary to remove improprieties seen while touring the prison. The president of the court may not designate the investigating judge to supervise the execution of the detention on his behalf.

(3) The president of the court and the investigating judge or the president of the panel or the single judge conducting the proceedings regardless of the supervision referred to in paragraph 2 of this Article may at any time visit detainees, speak with them and receive their complaints.

(4) If the judge from paragraph 2 of this Article during the visit or upon the complaint of a detainee determines that the term of detention ordered by the ruling on detention has expired or that a lawful decision on the deprivation of liberty does not exist, he will immediately order the release of the detainee.

Article 124

The Minister in charge of justice affairs shall issue housekeeping rules for institutions where detainees are held which rules shall regulate the regime of detention in a more detailed way pursuant to the provisions of this Act.

CHAPTER TEN

COSTS OF CRIMINAL PROCEEDINGS

Article 125

(1) Costs of criminal proceedings are expenses incurred by reason of criminal proceedings from their institution to their termination, including costs for undertaking investigatory actions before an investigation.

(2) Costs of criminal proceedings shall consist of:

1) expenses for witnesses, expert witnesses, interpreters and experts, expenses for stenographic notes and technical recording and expenses of judicial view;

2) expenses of transportation of the defendant;

3) expenses of bringing before the court the defendant or arrested person;

4) expenses of transportation and travelling expenses of officials;

5) expenses of medical treatment of the defendant who is not entitled to health insurance while he is in detention or in a medical institution by virtue of a judicial decision, and expenses of child delivery;

6) a lump sum;

7) fees and necessary expenses of the defence counsel, necessary expenses of the private prosecutor and subsidiary prosecutor and their legal guardians, and fees and necessary of their legal representatives;

8) necessary expenses of the injured person and his legal guardian and fees and necessary expenses of his legal representative.

(3) The lump sum shall be determined within the limits of sums prescribed by special regulations depending on the complexity and duration of the criminal proceedings as well as on the financial situation of the person required to pay the sum.

(4) The expenses referred to in paragraph 2 subparagraphs 1 to 5 of this Article other than those incurred in the institutions financed from the state budget as well as the necessary expenses of the appointed defence counsel and appointed legal representative of the subsidiary prosecutor (Articles 66 and 130) in criminal proceedings for offences subject to public prosecution shall be advanced from the budget of the authorities carrying out the criminal proceedings and shall be later collected from the persons required to pay them according to the provisions of this Act.

(5) The expenses of translation into languages of minorities in the Republic of Croatia which occur by the application of the provisions of the Constitution and the statute on the rights of minorities in Croatia to use their language shall not be collected from persons who are according to provisions of this Act required to pay the costs of criminal proceedings.

Article 126

(1) Every judgement and every ruling discontinuing criminal proceedings shall contain a decision on who will bear the costs of the proceedings and what is their amount.

(2) If data on the amount of costs is lacking, the investigating judge, single judge or president of the panel shall render a separate ruling on the amount of costs when this data is obtained. A request for data on the amount of costs may be submitted not later than three months from the day the final judgement or ruling is served on the person with the right to submit such a request.

(3) When a decision on the costs of criminal proceedings is made in a separate ruling, the panel referred to in Article 18 paragraph 3 or Article 20 paragraph 2 of this Act shall decide on an appeal against that ruling.

Article 127

(1) The defendant, injured person, subsidiary prosecutor, private prosecutor, defence counsel, legal guardian, legal representative, witness, expert witness, interpreter and expert (Article 198), regardless of the outcome of the criminal proceedings, shall pay expenses for bringing them before the court, for postponing the investigatory action or trial and other expenses in the proceedings caused by their culpability as well as a proportional amount of the lump sum.

(2) A separate ruling shall be rendered on expenses referred to in paragraph I of this Article, except when expenses which are covered by a private prosecutor and defendant are decided upon in a decision on the subject matter of the case.

Article 128

(1) When the court finds the defendant guilty, it shall state in the judgment that he must pay the costs of the criminal proceedings.

(2) A person charged with several offences shall not bear the costs regarding the offences for which he was acquitted if these costs can be separated from the overall costs.

(3) In a judgment pronouncing several defendants guilty, the court shall order what proportion of the costs each of the defendants shall pay, and if this is not possible, the court shall order that the defendants shall be jointly liable for the costs. The payment of the lump sum shall be determined separately for each defendant.

(4) The court may, in a decision on costs, decide that the defendant shall not pay the entire or partial sum of the costs of the criminal proceedings referred to in Article 125 paragraph 2 subparagraphs 1 to 6 of this Act and the fee and necessary expenses of the appoint defence counsel if payment of these costs could imperil the maintenance of the defendant or persons he is bound to maintain. If these circumstances are determined after the decision on costs is rendered, the president of the panel may, in a separate ruling, dispense the defendant from the duty to bear the costs of the criminal proceedings.

Article 129

(1) When the criminal proceedings are discontinued or when a judgement of acquittal or a judgement rejecting the charge is rendered, the court shall state in its ruling or judgement that the costs of the criminal proceedings referred to in Article 119 paragraph 2 subparagraphs 1 to 5 of this Act as well as the necessary expenses of the defendant and the necessary expenses

and fees of the defence counsel shall be paid from budget funds, except in the cases referred to in paragraphs 2, 3, 4 and 5 of this Article.

(2) The person who deliberately makes a false report shall pay the costs of criminal proceedings.

(3) The private prosecutor shall pay the costs of the criminal proceedings referred to in Article 119 paragraph 2 subparagraphs 1 and 6 of this Act, the necessary expenses of the defendant and the necessary expenses and fees of his defence counsel if the proceedings are terminated by a judgement of acquittal or a judgement rejecting the charge or a ruling discontinuing the proceedings except if the proceedings are discontinued or if a judgement rejecting the charge is rendered because of the death of the defendant or his permanent mental illness or because the period of limitation for the institution of prosecution has expired due to the delay of proceedings which cannot be blamed on the private prosecutor. If the proceedings are discontinued because the prosecutor withdraws the charge, the defendant and the private prosecutor may reach a settlement on their mutual expenses. If there is more than one private prosecutor, they shall be jointly liable for costs.

(4) The injured person who has caused the discontinuance of the proceedings by withdrawing the motion for prosecution shall bear the costs of the criminal proceedings unless the defendant has declared that he will do so.

(5) When the court rejects a charge due to lack of jurisdiction, the decision on costs shall be brought by the court having jurisdiction.

Article 130

(1) Fees and necessary expenses of the defence counsel and the legal representative of the private prosecutor or the injured person shall be paid by the person who retains them regardless of who, according to the judicial decision, shall bear the costs of the criminal proceedings, except when according to the provisions of this Act the fees and necessary expenses of the defence counsel shall be paid from budget funds. If the court appoints the defence counsel, the fees and necessary expenses of the defence counsel shall be paid from the budget funds. This shall also apply when the court has appointed a legal representative to the subsidiary prosecutor.

(2) A legal representative who is not a member of the Bar shall not be entitled to fees but only to the recovery of necessary expenses.

Article 131

The higher court shall decide on who shall bear the costs of proceedings held before that court according to the provisions of Articles 125 to 130 of this Act.

Article 132

The Minister in charge of justice affairs shall issue more detailed regulations regarding the costs of the criminal proceedings.

CHAPTER ELEVEN

CLAIMS FOR INDEMNIFICATION

Article 133

(1) A claim for indemnification arising out of the commission of a criminal offence shall be considered in criminal proceedings upon the motion of authorized persons, provided that this does not considerably delay proceedings.

(2) The claim for indemnification may consist of a demand for the compensation of damages, recovery of an object or the annulment of a certain legal transaction.

Article 134

A motion to assert a claim for indemnification can be made by a person who is entitled to litigate an issue in a civil action.

Article 135

(1) A motion to assert the claim for indemnification in criminal proceedings shall be submitted to the authority charged with receiving crime reports or to the court conducting the proceedings.

(2) The motion may be submitted before the conclusion of the trial in the court at first instance.

(3) The person entitled to submit a motion must specify his claim and offer supporting evidence.

(4) If the authorized person fails to submit a motion for indemnification in criminal proceedings until the charge is preferred, he shall be informed of his right to make the motion until the conclusion of the trial.

Article 136

(1) Persons entitled to assert a claim for indemnification (Article 128) may withdraw their motion in criminal proceedings and submit it as a civil action. In the event that the motion has been withdrawn it cannot be submitted again except when otherwise prescribed by this Act.

(2) It after the motion has been submitted and prior to the conclusion of the trial, the claim is transferred to another person under the provisions of civil law, this person shall be invited to declare whether he is willing to continue pursuit of the claim. If a duly served person fails to appear it shall be deemed that he has withdrawn the motion.

Article 137

(1) The court conducting the proceedings shall examine the defendant with respect to the facts set out in the motion and explore the circumstances which are of importance for the decision on the claim for indemnification. But even before such a motion is submitted, the court shall collect evidence and carry out inquires into circumstances necessary for the adjudication of the claim.

(2) If an inquiry into a claim for indemnification would considerably delay proceedings, the court shall collect only that information whose discovery at a later date would be impossible or considerably impeded.

Article 138

(1) The court shall have jurisdiction to decide on claims for indemnification.

(2) The court may in a judgement of conviction satisfy the claim of the injured person fully, or it may satisfy it partially while directing the injured person to assert the rest of the claim in a civil action. If the data established in criminal proceedings furnish no reliable basis for either full or partial adjudication, the court shall direct the injured person to assert his claim in its entirety in a civil action.

(3) When rendering a judgement of acquittal, a judgement rejecting the charge, or a ruling discontinuing criminal proceedings, the court shall direct the injured person to assert his claim for indemnification in a civil action. When the court declares itself incompetent to conduct criminal proceedings, it shall instruct the injured person that he may assert his claim for indemnification in criminal proceedings which shall be instituted or continued by a court having jurisdiction.

Article 139

When the claim for indemnification is a claim to recover an object, the court shall order in its judgment that the object be delivered to the injured person if it establishes that the object belongs to the injured person and that it is in the possession of the defendant, his accomplices or a person or a body where it is located.

Article 140

If the claim for indemnification concerns the annulment of a particular legal transaction and the court finds it justified, it will adjudicate the full or partial annulment of that legal transaction with all the consequences deriving therefrom, without effecting the rights of third parties.

Article 141

(1) In criminal proceedings the court may alter a final judgement which decides on a claim for indemnification only upon extraordinary judicial remedies.

(2) Except for the case referred to in paragraph 1 of this Article, a final judgement which decides on a claim for indemnification may be revised only in civil proceedings on the request of the convicted person or his heirs, provided that grounds exist for reopening the proceedings under rules on civil procedure.

Article 142

(1) Provisional measures securing a claim for indemnification arising out of the perpetration of an offence may be ordered upon the motion of authorized persons (Article 128) and according to the rules on enforcement proceedings.

(2) In the course of the investigation, the ruling from paragraph 1 of this Article shall be rendered by the investigating judge. After the indictment is preferred, the ruling shall be rendered outside the trial by the president of the panel and at the trial by the panel of judges. An appeal against a ruling on provisional measures securing the claim shall not stay its execution.

Article 143

(1) If the objects involved undoubtedly belong to the injured person and they do not serve to determine fact in criminal proceedings, these objects shall be handed over to the injured person even prior to the termination of proceedings.

(2) If several injured persons claim ownership of an object, they shall be instructed to institute a civil action and the criminal court shall only order sequestration of the object as a provisional measure securing the claim.

(3) Objects of evidentiary value shall be seized temporarily from the owner and returned to him after the termination of proceedings. If such an object is indispensable to the owner it may be returned to him even before the termination of proceedings but he shall be obliged to bring it upon request.

Article 144

(1) If the injured person has a claim against a third party because he is in p05session of objects acquired by the commission of an offence or because a third party acquired pecuniary benefit in consequence of the commission of an offence, the court may in criminal proceedings on the motion of authorized person (Article 128) order a provisional measure securing the claim against that third party as well, according to the rules on enforcement proceedings. The provisions referred to in Article 136 paragraph 2 of this Act shall also apply in this case.

(2) In a judgement of conviction the court shall either vacate the measures referred to in paragraph 1 of this Article if these have not already been vacated or instruct the injured person to institute civil proceedings, with the proviso that these measures shall be vacated if the civil proceedings are not instituted within a term set by the court.

CHAPTER TWELVE

HANDLING SUSPICIOUS OBJECTS

Article 145

(1) If someone else's property is found at the defendant's, whose owner is not known, the authority conducting the proceedings shall describe the objects found and publish the description on the bulletin board of authorities of local self-government on the territory of which the defendant lives and where the criminal offence has been committed. In this advertisement the owner shall be invited to report within a period of one year, otherwise the property will be sold. The proceeds from the sale shall go to the budget funds.

(2) If the objects have higher value, the publication may also be made in the daily press.

(3) If an object is subject to deterioration or its storage is linked with considerable costs, it will be sold according to provisions governing the enforcement procedure and the proceeds shall be transferred to and deposited in a bank.

(4) Where the property belongs to a defendant who has fled or to an unknown perpetrator of a criminal offence, the provision of paragraph 3 of this Article shall also apply.

Article 146

(1) If, during a period of one year, no one requests the objects or the proceeds from the sale, the decision shall be rendered that the property shall become the ownership of the Republic of Croatia or that the proceeds shall flow into the budget funds.

(2) The owner of the property shall have the right to require the return of the property or the proceeds. The limitation period for this right shall be counted from the date of the publication of the advertisement.

Article 147

The objects that were seized temporarily during the criminal proceedings shall be returned to their owner. If the owner is not known, the objects shall be returned to the person who had them in his possession as soon as it is established that there are no reasons for their seizure.

CHAPTER THIRTEEN

RENDERING AND PRONOUNCING DECISIONS

Article 148

(1) Decisions in criminal proceedings shall be in the form of a judgement, ruling, or warrant and order.

(2) Only the court shall render a judgement, while rulings and warrants and orders may also be rendered by other authorities taking part in criminal proceedings.

Article 149

(1) The panel shall render a decision after oral deliberation and voting. A decision shall be rendered by a majority vote. The sentence on long-term imprisonment may be rendered only by a unanimous vote.

(2) The president of the panel shall chair the deliberation and voting and shall give his vote last. He shall see to it that all the issues are thoroughly and fully considered.

(3) If the votes are divided into more than two opinions so that none has the necessary majority, the issues shall be separated and the voting repeated until a majority is reached. If in such a manner a majority is not reached, the decision shall be rendered by adding the votes most favourable for the defendant to the votes less favourable for him until a required majority is reached.

(4) The members of the panel may not abstain from voting on issues presented by the president of the panel but a member of the panel who voted for the acquittal of the defendant or for vacation of the judgement and was outvoted shall not be required to vote on the issue of sanctions. If he fails to vote, it shall be deemed that he assents to the vote most favourable for the defendant. Upon his request these circumstances shall be specifically stated in the statement of reasons for judgement.

Article 150

(1) When deliberating, the court shall first vote on the issue of the court's jurisdiction, on the issue whether proceedings should be supplemented and on other threshold questions. After deciding on threshold questions the court shall decide on the subject matter of the case.

(2) When deciding on the subject matter of the case, the court shall first vote to determine whether the defendant committed the offence and whether he is guilty, and thereafter it shall vote on punishment or on other criminal sanctions, the costs of criminal proceedings, claims for indemnification and other issues on which a decision must be rendered.

(3) If the same person is charged with committing more than one offence, the court shall vote on culpability and punishment for each offence and thereafter on an aggregate punishment for all the offences.

Article 151

(1) Deliberation and voting shall take place in closed session.

(2) Only members of the panel and the court reporter may be present in the room where the deliberation and voting take place.

Article 152

(1) Except as otherwise provided by this Act, the decisions shall be conveyed to the interested persons by oral pronouncement if they are present and by the service of a certified copy if they are absent.

(2) When pronouncing a decision orally, this shall be noted in the record or in the files and certified by the signature of the addressee of the pronouncement. If the interested person states that he shall not take an appeal, the certified copy of the orally pronounced decision shall not be served on him, unless otherwise provided by this Act.

(3) Copies of the decision subject to appellate review shall be served along with an instruction on the right to appeal.

CHAPTER FOURTEEN

SERVICE OF DECISIONS, BRIEFS AND DOCUMENTS AND INSPECTION OF FILES

Article 153

(1) Decisions, briefs and other documents shall as a rule be served by mail. Service may also be effected by the official of the authority which renders the decision or directly at such authority.

(2) The court may serve a summons for trial or other summonses orally to the person present before the court along with instructions about the consequences of a failure to appear. The summons served in such a manner shall be noted in the record and signed by the summoned person except if this summons is noted in the record of the trial. It is deemed that by such acts the summons is duly served.

(3) The authorities referred to in paragraph 1 and 2 of this Article may entrust the service to a public or private organization having a special license for the activity of service in criminal proceedings issued by the Minister in charge of justice affairs.

(4) The Minister in charge of justice affairs shall prescribe the conditions to be fulfilled by the organization performing the service pursuant to paragraph 3 of this Article.

(5) The costs of the service according to paragraph 3 of this Article shall be an integral part of the costs of the criminal proceedings.

(6) If a party did not report a change of address to the court or he cannot be reached at the address that was previously given to the court or it is evident that he is evading receipt of the decision that is subject to appellate review, other than the judgment imposing a sentence of imprisonment, the court shall put the decision on the court's public board. After the lapse of the term of appeal the decision shall become final.

Article 154

When this Act prescribes that documents shall be served in person, they shall be served directly to the person to be served. If the person to be served cannot be reached at the place where the service has to be effected, the process server shall inform himself when and where the person can be found and leave with one of the persons stated in Article 146 of this Act a written notice directing the recipient of the document to be in his apartment or place of work on a specified date and hour for the purposes of receiving the document. If even after this, the process server cannot reach the person to be served, he shall act according to the provision of Article 146 1 of this Act. It is deemed by such acts that the document is served.

Article 155

(1) Documents which under this Act do not have to be served in person shall also be served in person, but if the recipient is not found in his apartment or place of work, these documents can be served on any of the adult members of the recipient's household who are bound to receive the documents. If the said household members are not found in the apartment, the document shall be served on the janitor or a neighbour if he is willing to receive it. If delivery is attempted at the recipient's place of work and he cannot be reached, delivery can be

effected to the person authorized to receive mail who is bound to receive the document or to the recipient's co-employee if he is willing to receive it.

(2) If it is determined that the recipient is absent and that persons from paragraph 1 of this Article are unable to deliver the document to him in due time, the document shall be returned with a notice regarding the absentee's whereabouts.

Article 156

(1) The summons for the first interrogation in pre-trial criminal proceedings and the summons for the trial shall be served on the defendant in person.

(2) An indictment, motion to indict or private charge as well as judgment and other decisions for which the term of appeal begins to run when service is made, shall be served in person to the defendant who does not have a defence counsel. Upon the defendant's request, the judgment and other decisions shall be served on a person he designates.

(3) If, with the exception of the judgment referred to in paragraph 4 of this Article, a decision or an appeal by the adverse party which is served for reply cannot be served on the defendant because he did not report a change of address or if it is evident that he is evading receipt of the decision, the court shall put the decision or the appeal on the court's public board and after the lapse of fifteen days it shall be deemed it was duly served.

(4) If the defendant who does not have a defence counsel should be served with a judgment imposing a sentence of imprisonment and this judgment cannot be served at his present address, the court shall assign a defence counsel to the defendant who shall perform this duty until the new address of the defendant is determined. The court shall grant the appointed counsel a necessary term, which shall be not less than eight days, to familiarize himself with the files, after which the judgment shall be served on the appointed counsel and the proceedings resumed. The same method shall be applied if the court pronounced punishment in the judgment that could not be served pursuant to the provisions of paragraph 2 of this Article.

(5) If the defendant has a defence counsel, an indictment, motion to indict, private charge and all other decisions for which the term for appeal begins to run when service is made as well as an appeal by the adverse party which is served for reply shall be served both to the defence counsel and to the defendant according to the provisions referred to in Article 155 of this Act. In such a case, the term for submitting a judicial remedy or a reply to appeal begins to run from the date the document is served on the defence counsel except in the case referred to in Article 379 paragraph 2 of this Act. If the decision or appeal cannot be served on the defendant because his address is unknown, the court shall act in accordance with the provisions of paragraph 3 of this Article. In such a case the term for submitting a judicial remedy or a reply to appeal shall be counted according to the provision of paragraph 3 of this Article.

(6) If a decision, brief or other document has to be served on a defence counsel, and the defendant has retained several defence counsels, the service shall be made on the defence counsel they have designated, and if they have not, the court shall serve the document on one of them.

(7) If a defendant is tried in his absence (Article 322 paragraph 5), decisions, briefs and all other documents shall be served on his defence counsel and it shall be deemed that the service was duly effected.

Article 157

(1) A summons for trial and other summonses shall be served on a private prosecutor and subsidiary prosecutor or to their legal guardian in person (Article 154), and to their legal representatives according to Article 155 of this Act. The decision for which the term of appeal begins to run when service is made and the appeal by the adverse party which is served for reply shall be served in the same manner.

(2) If the summons, decision or appeal cannot be served on the person referred to in paragraph 1 of this Article or to the injured person at their present address, the court shall put the summons, decision or appeal on the court's public board and after the lapse of eight days it shall be deemed that it was duly served.

(3) If the injured person, subsidiary prosecutor or private prosecutor is represented by a legal guardian or legal representative, service shall be made on the latter, and in the case where there are several, then only one of them shall be served.

Article 158

(1) Proof of service (service receipt) shall be signed both by the recipient and the process server. The recipient shall himself make a note on the service receipt indicating the day and hour of the service.

(2) If the recipient is illiterate or otherwise unable to sign the service receipt, the process server shall sign the recipient's name, indicate the day of receipt and note the reasons why he signed in place of the recipient.

(3) If the recipient refuses to sign the service receipt, the process server shall make a note thereof on the service receipt indicating the day and hour of delivery. This act shall signify that the service was duly made.

Article 159

When the recipient or an adult member of his household refuses to receive the served document, the process server shall note on the service receipt the day$_1$ hour and reason for the refusal and he shall leave the document in the recipient's apartment or at his place of work. These acts shall signify that service is duly made.

Article 160

(1) Service of summonses upon military personnel, members of the police authorities and judiciary police shall be effected to their command or to the immediate commanding officer and if necessary other documents may also be served on them in such a manner.

(2) Service upon prisoners shall be made to the court or through the administration of the institution where they are placed.

(3) Service on persons enjoying immunity under international law in the Republic of Croatia shall be made through the Ministry of Foreign Affairs, except as otherwise provided by international treaties.

(4) Summonses to nationals of the Republic of Croatia abroad, if the procedure prescribed by provisions on international judicial assistance in criminal matters is not applicable, shall be served through the diplomatic or consular mission of the Republic of Croatia in the foreign country, subject to the condition that the foreign country does not object to such a manner of service and with the consent of the recipient of the summons. If the subpoena is served in the mission, the authorized employee of the diplomatic or consular mission shall sign the service receipt as process server, and if the service is made by mail he shall confirm this on the service receipt.

Article 161

(1) Service of decisions and other documents upon the State Attorney shall be effected by delivery to the clerical office of the State Attorney or using the means of telecommunication.

(2) When delivering decisions for which the term begins to run when service is made, the day of the delivery of the document to the clerical office of the State Attorney or the day the document was sent using the means of telecommunication shall be deemed the day when the service is made.

Article 162

(1) Summonses and decisions which are issued up until the conclusion of the trial for persons participating in proceedings, except for the defendant, may be handed over to the procedural participant who consents to deliver them to the person to whom they are addressed if the authority conducting the proceedings holds that in this way their service is guaranteed.

(2) The persons referred to in paragraph 1 of this Article may be informed about the summons for a trial or another summons as well as a decision on the postponement of a trial or other scheduled actions by cable or using the means of telecommunication, if under the circumstances it can be assumed that the person to whom the information is addressed will in such manner receive it.

(3) An official note in the file shall be made about the summons and service of a decision effected in the manner prescribed in paragraph 1 and 2 of this Article.

(4) Detrimental consequences prescribed for omission may take effect against the person who was informed according to paragraphs 1 and 2 of this Article, or to whom the decision was addressed only if it is determined that he received in due time the summons or decision and that he was instructed of the consequences of the omission.

Article 163

In cases not prescribed by this Act the service shall be made in conformity with the provisions of civil procedure.

Article 164

(1) Anyone having a justified interest may be permitted to examine, transcribe and copy particular criminal files.

(2) When proceedings are pending, examination, transcribing and copying of the files shall be permitted by the authority conducting the proceedings and when proceedings are terminated, examination, transcribing and copying of the files shall be permitted by the president of the court or an official designated by him. If the files are kept by the State Attorney, permission to examine, transcribe and copy shall be granted by him.

(3) Upon his request with a statement of reasons, the court shall deliver the criminal case to the State Attorney for examination. If a term for filing an appeal is pending or if it is to the benefit of the proceedings, the court shall order a term in which the State Attorney should return the case.

(4) The private prosecutor and the subsidiary prosecutor have the right to examine, transcribe and copy the files. The right to examine transcribe and copy the files may be temporarily denied to the injured person in the case referred to in Article 54 paragraph 3 of this Act.

(5) The defendant has the right to examine, transcribe and copy the files and objects serving to determine facts in the proceedings.

(6) If concern, as stated in Article 248 paragraph 4 of this Act, exists, the investigating judge shall on the request of the State Attorney, a witness or by virtue of the office, in the appropriate manner (by the transcription of the record or official notes without the data on the identity of the person, by their exclusion in a separate cover and so on) protect the confidentiality of the data about persons whose statements and declarations are in the files.

CHAPTER FIFTEEN

ENFORCEMENT OF DECISIONS

Article 165

(1) The judgement shall become final after it can no longer be challenged by an appeal or when it is not subject to appellate review

(2) The final judgement shall be executed after it is duly served and when there are no legal obstacles to its execution. If an appeal is not filed or the parties waive their right to an appeal or they withdraw the appeal, the judgement shall be enforceable after the expiry of the term for the appeal or from the day when the parties waive their right to appeal or withdraw the appeal.

(3) If the court which rendered the judgement at first instance lacks jurisdiction over its execution, it shall serve a certified copy of the judgement with an attestation of its executability to the authority which has jurisdiction for execution.

(4) If a punishment is inflicted upon an active military officer, military official or military employee, the court shall serve a certified copy of the final judgement to the Ministry of Defence, and if a punishment is inflicted upon a reserve commissioned or non-commissioned

officer, the court shall serve a certified copy of the final judgement to the authority competent for matters of defence where the military registry of the convicted person is kept.

Article 166

When a fine imposed in accordance with the provisions of this Act is not paid entirely or partially in the prescribed term, the court may replace it with imprisonment which shall be determined by a reasonable application of the provisions of the Penal Code.

Article 167

(1) The jurisdiction for the execution of punishments, security and educational measures as well as the manner of their execution shall be regulated by special legislation.

(2) If doubts arise regarding the permissibility of enforcing a court's decision or fixing a punishment, or if a final judgement fails to include the time spent in detention or served under an earlier sentence, or if these computations are erroneous, the president of the panel at first instance or the single judge shall decide on these issues by a special ruling. The appeal shall not stay the execution of the ruling, provided the judge does not decide otherwise.

(3) If doubts arise regarding the interpretation of a court's decision, the court which rendered the final decision shall decide on it in the manner as stated in paragraph 2 of this Article.

Article 168

(1) The judgment regarding the costs of criminal proceedings, confiscation of pecuniary benefit and claims for indemnification shall be executed by the court having jurisdiction pursuant to the rules on the enforcement procedure.

(2) The court shall, by virtue of the office, carry out the exaction of the costs of criminal proceedings in favour of the budget funds. The costs of forceful collection shall be advanced from the budget funds of the court conducting the enforcement procedure.

(3) If the security measure of seizure of an object is ordered in the judgment, the court which rendered the judgment at first instance shall decide whether these objects shall be sold pursuant to the provisions on enforcement procedure, given to a museum of criminology or other institution or destroyed. Proceeds of the sale shall be assigned to public funds.

(4) The provision of paragraph 3 of this Article shall be reasonably applied when the decision on seizure of an object by virtue of Article 233 of this Act is rendered.

(5) Except for cases where an extraordinary judicial remedy is filed, a final decision on seizure of objects may be amended in civil proceedings if a conflict arises regarding the ownership of the seized objects.

Article 169

(1) Except as otherwise provided by this Act, rulings shall be executed when they become final. Warrants and orders shall be executed immediately if the authority issuing them does not decide otherwise.

(2) Rulings become final after they cannot be challenged by an appeal or when they are not subject to appellate review.

(3) Except as otherwise provided, rulings and warrants and orders shall be executed by the authorities which render them. If a court decides by a ruling on the costs of criminal proceedings, these costs shall be collected according to the provisions of Article 159 paragraph 2 of this Act.

Article 170

After the decision on a claim for indemnification becomes final, the injured person may request that the court at first instance issues him with a certified copy of the decision with a note that the decision is enforceable.

Article 171

(1) The Ministry in charge of justice affairs shall organize and govern the criminal register in such a manner as to enable the courts and the State Attorney Service to have direct access to the data in real time.

(2) The Minister of Labour and Social Welfare shall issue regulations on a register for educational measures.

CHAPTER SIXTEEN

MEANING OF LEGAL TERMS AND OTHER PROVISIONS

Article 172

(1) When prosecution is contingent on the motion for prosecution of the injured person, the State Attorney may not request the opening of the investigation or prefer an indictment without investigation or motion to indict as long as such a motion has not been made.

(2) Where the prosecution for certain offences requires the previous approval of a competent state authority, the authorized prosecutor may not request the opening of the investigation or immediately prefer an indictment, motion to indict or private charge, unless proof is submitted that such approval has been granted.

(3) Where the law provides that the State Attorney Service shall undertake criminal prosecution by virtue of the written request or consent of certain persons, the written request may be submitted or consent given within the term from Article 47 paragraph 1 of this Act.

(3) The duty and powers of the police authority to proceed in accordance with the provisions of Article 186 paragraph 1 of this Act shall not be restricted by the provision of paragraph 1 of this Article.

Article 173

(1) Criminal proceedings shall be commenced:

1) by rendering a ruling on the opening of the investigation;

2) by the consent of the investigating judge that the authorized prosecutor may prefer an indictment without investigation

3) by determining the date for the trial by virtue of the indictment preferred according to the provision of Article 191 paragraph 6 of this Act or the private charge submitted according to the provision of Article 267 paragraph 2 of this Act, if there is no objection to the indictment or to there-quest of the president of the panel according to the provision of Article 282 of this Act;

4) when the indictment preferred according to the provision of Article 191 paragraph 6 of this Act or the private charge submitted according to the provision of Article 167 paragraph 2 of this Act becomes final, provided that the objection to it was rejected or dismissed and that the panel of the court gave its consent to the indictment or private charge;

5) by determining the date for the trial by virtue of a motion to indict or a private charge in summary proceedings

6) by issuing the criminal order according to the provision of Article 446 paragraph 1 of this Act.

Article 174

(1) If criminal proceedings are initiated against an alien, the court shall also proceed in conformity with the provisions of the corresponding consular convention which is in force in the Republic of Croatia.

(2) The court shall inform the Ministry of Defence that an investigation is instituted against military persons, civil servants and public officials in the Armed Forces of the Republic of Croatia and deliver to this authority the ruling opening the investigation. In the same manner the court shall proceed regarding rulings on detention, final indictment, motion to indict and non-final judgment.

(3) If the offence affects cultural monuments, archive files or works of art which are of importance for the Croatian or world cultural heritage, the authorities of the interior shall inform the Ministry of Culture of the inquiries undertaken. The State Attorney shall act in the same manner when preferring an indictment or motion to indict, as shall the court when the judgment referring to such offences becomes final.

Article 175

If, in the course of proceedings, it is determined that the defendant has died, criminal proceedings shall be discontinued by a ruling.

Article 176

(1) In the course of proceedings, the court may inflict a fine not exceeding 20,000.00 Kuna upon the defence counsel, legal representative or legal guardian, subsidiary prosecutor or private prosecutor if his actions are clearly aimed at delaying the criminal proceedings. The ruling imposing the fine may be challenged by interlocutory appeal staying the execution.

(2) The Croatian Bar Association shall be notified of the punishment inflicted on an attorney or attorney apprentice.

(3) If the State Attorney does not submit motions in due time to the court or if he undertakes other actions in the proceedings with major delay and therewith causes the delay of the proceedings, the court shall notify the higher State Attorney thereof.

Article 177

(1) As regards exemptions from the criminal prosecution of persons enjoying immunity in the Republic of Croatia, the rules of international law shall apply.

(2) In the case of doubt as to whether a person enjoys immunity pursuant to the rules of international law, the court shall ask for clarification from the Ministry of Foreign Affairs.

Article 178

All state authorities are bound to render necessary assistance to the courts and other authorities participating in criminal proceedings.

Article 179

(1) Certain terms used in this Act have the following meaning:

1) The suspect is a person with regard to whom the authorities of criminal prosecution have grounds for suspicion that he has committed an offence or has participated in it.

2) The defendant is a person against whom the criminal proceedings are carried out. The defendant is also a person with a mental disorder for whom a special procedure is conducted in accordance with the provisions of this Act.

3) The accused is a person against whom the indictment has become final or against whom the private charge or motion to indict has been submitted or the trial scheduled.

4) The convicted person is a person who is found guilty for the commission of an offence by a final judgment.

5) The injured person is a person whose personal or financial right has been infringed or jeopardised by the criminal offence.

6) The prosecutor is the State Attorney, private prosecutor and subsidiary prosecutor.

7) The party is the prosecutor and the defendant.

8) The arrested person is a person against whom any measure or action causing his deprivation of freedom is applied.

(2) In this Act, defendant is also used as a generic term embracing the defendant, the accused and the convicted person.

(3) Police authorities within the meaning of this Act are authorized officials of the Ministry of the Interior (police officers) as well as authorized officials from the Ministry of Defence (military police) within their jurisdiction to act on military premises used for the purposes of

defence, and exceptionally officers of the police authorities of a foreign state or an international organization, which, in accordance with an international agreement and based on a written consent of the Ministry of the Interior, undertakes certain measure on the territory of the Republic of Croatia, its ship or aircraft.

PART TWO

THE COURSE OF PROCEEDINGS

A. Pre-trial Proceedings

CHAPTER SEVENTEEN

PRE-INVESTIGATORY PROCEEDINGS

1. Crime Report

Article 180

(1) All state authorities and all other legal entities shall be bound to report criminal offences subject to public prosecution about which they have learned themselves or have learned from other sources.

(2) When submitting criminal proceedings reports, state authorities and legal entities shall indicate evidence known to them and undertake measures to preserve traces of the offence, the objects upon which or by means of which the offence was committed as well as other evidence.

(3) The data on the identity of the person against whom a criminal report has been submitted and the data that might lead to conclusions about the identity of the person shall be kept confidential.

Article 181

(1) Citizens shall report criminal offences subject to public prosecution.

(2) Cases in which a failure to report a criminal offence is a criminal offence is prescribed by law.

Article 182

(1) The report shall be filed with the competent State Attorney in writing or orally.

(2) If the report is filed orally, the person who filed it shall be warned about the consequences of a false report. An oral report shall be entered in the record and if the report was conveyed by telephone or using other means of telecommunication, an official note shall be made.

(3) If the report was filed with the court, the police authority or a State Attorney lacking jurisdiction, they shall receive it and immediately forward it to the State Attorney having jurisdiction.

Article 183

(1) The State Attorney shall dismiss a crime report by a ruling with a statement of reasons if it follows from the report that the reported act is not a criminal offence subject to public prosecution, that the period of limitation for the institution of prosecution has expired, that the offence is amnestied or pardoned or that other circumstances exist excluding culpability or barring prosecution or if no reasonable suspicion exists that the suspect committed the reported offence. The State Attorney shall notify the injured person within eight days of the dismissal and of the grounds thereof (Article 55) except if he, with the consent of the investigating judge, decides not to institute prosecution in cases from Article 184 of this Act, and, if the report was made by the police authorities, the State Attorney shall notify them as well.

(2) If the State Attorney is unable to establish from the crime report whether or not allegations in the report are credible, or if facts stated in the report do not suffice for a decision on whether he should request the opening of an investigation, or if only rumours reach the State Attorney that a criminal offence has been committed, and particularly if the offender is unknown, the State Attorney shall, if he cannot do this himself or through other authorities, request the police authorities to obtain necessary information and undertake other measures for discovering the offence and the perpetrator (Article 186 and Article 179). The State Attorney may in his request to the police authorities determine measures or actions in more detail and require immediate information from the police authorities about the measure or action undertaken. If the State Attorney requires to be present during the measure or the action, the police authorities shall undertake the measure or action in such a manner as to enable his presence. The police authorities are bound to proceed in accordance with the request of the State Attorney, and unless the State Attorney has required otherwise, they shall notify the State Attorney within a term of thirty days from the submission of the request of the measures and actions undertaken.

(3) At his request, the police authorities, the Ministry of Finance, the State Audit Office and other state authorities, organizations, bank and other legal entities shall deliver to the State Attorney required information, except the information representing a lawfully protected secret. Failure to comply with the request of the State Attorney or undue delay in the delivery of the required information constitutes a severe violation of a public or official duty.

(4) The State Attorney may for the purpose of collecting necessary information summon the person who filed a criminal proceedings report, the suspect and other persons if he considers that their statements may contribute to the assessment of the credibility of the allegations made in the report. The summons shall state the reasons for the summons. The person who has answered the summons and who refuses to provide information may not be summoned again for the same reason. When collecting information from suspects, the State Attorney shall proceed in accordance with the provisions of Article 177 paragraph 5 and Article 225 of this Act, in which case the records of the State Attorney on the information collected from the suspects in the presence of a defence counsel may be used as evidence in the criminal proceedings.

(5) If, even after undertaking actions referred to in paragraph 2 and 3 of this Article, circumstances from paragraph 1 of this Article still exist or there is no reasonable suspicion that the reported person committed the offence subject to public prosecution, the State Attorney shall dismiss the report.

(6) When collecting or giving information, the State Attorney and other state authorities and organizations shall be bound to proceed with consideration, taking care not to harm the honour and reputation of the person the information refers to.

2. Deciding on Criminal Prosecution in Accordance with the Principle of Opportunity

Article 184

(1) Except when it is permitted by law, the State Attorney may decide to postpone the institution of criminal proceedings when a crime report is submitted for an offence punishable by a fine or a sentence of imprisonment for a term of less than three years, and it is an offence of a lower degree of guilt where the scope of the damaging consequences does not require the public benefit of criminal prosecution. The State Attorney may render the ruling on postponing the commencement of criminal proceedings only subject to a prior consent of the injured person and provided that the suspect gives his consent that he is willing to fulfil one or more of the following obligations:

1) to perform an action with the purpose of amending or compensating the damage caused by the offence;

2) to pay a certain amount for the benefit of a public institution for humanitarian or charitable purposes or into a fund for the compensation of damage for victims of criminal offences;

3) to fulfil an obligation to provide legal maintenance;

4) to perform community service work;

5) to be submitted for treatment against drug abuse or other addictions pursuant to special rules;

6) to be submitted to a psycho-social therapy with the objective to eliminate violent behaviour provided that the suspect gives his consent to leave his family for the duration of the therapy.

(2) The State Attorney shall inform the injured person before he gives his consent that in the case he gives his consent to postponing the commencement of criminal proceedings and in case the ruling is rendered to dismiss the crime report, he shall lose the rights referred to in Article 55 paragraph 2 of this Act.

(3) In the case where a suspect fulfils the obligation ordered in accordance with paragraph 1 of this Article, the State Attorney shall render a ruling dismissing the crime report.

(4) The State Attorney shall deliver the ruling referred to in paragraphs 1 and 2 of this Article to the injured person and the person who filed the crime report, and the injured person shall be instructed that he can assert a claim for indemnification in a civil action.

Article 185

The State Attorney General of the Republic of Croatia may under the conditions and in the manner prescribed in a special law dismiss a crime report by a ruling or desist from the prosecution in the course of criminal proceedings against a person who was a member of a

criminal organization if this is of importance for the discovery of offences and of the members of a criminal organization as well as if this is in proportion with the gravity of the offences committed and with the importance of that person's statement.

3. Inquiries into Criminal Offences

Article 186

(1) If there are grounds for suspicion that a criminal offence subject to public prosecution has been committed, the police shall be bound to take necessary measures aimed at discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or going into hiding, discovering and securing traces of the offence and objects of evidentiary value as well as gathering all information which could be useful for successfully conducting criminal proceedings. The police authorities shall inform the State Attorney about any measures taken within the period of 24 hours from the moment the first measure was taken. If necessary, the State Attorney shall proceed in accordance with the manner prescribed in Article 183 paragraph 2 of this Act.

(2) In order to fulfil the duties referred to in paragraph 1 of this Article, the police authorities may seek information from citizens, apply polygraph tests, voice analyses, carry out the necessary inspection of the means of transportation, passengers and luggage, restrict movement in a certain territory for an absolutely necessary time (surveillance, observation, blockade, raid, ambush, entrapment, surveillance of the transport of objects, etc.) undertake necessary measures regarding the establishment of the identities of persons and objects, issue an arrest warrant or warrant for seizure, carry out in the presence of the authorized person an inspection of certain objects and premises of state authorities, legal entities and other business premises and review their documentation and data, collect information concealing the purpose of the collection or concealing the capacity of a police officer, using an undercover agent, request an examination of the identity of telecommunication addresses establishing connections during a certain period of time from the legal entity providing telecommunication services as well as undertake other necessary measures and actions. An official note shall be made on facts and circumstances determined in the course of carrying out particular procedural actions that may be of interest for the criminal proceedings.

(3) The police authorities may summon citizens. A suspect who has failed to appear may be brought in by force only if he was informed about it in the summons or if the circumstances clearly indicate that the suspect evades the receipt of the summons. A person who appears upon being summoned or a suspect who is brought in by force and refuses to give information cannot be summoned again for the same reason.

(4) In the course of collecting information the police authorities may not examine citizens in the role of defendants, witnesses or expert witnesses. If it is necessary for discovering other offences committed by the same person, his accomplices or offences committed by other persons, information may also be collected from persons in detention provided that upon a written motion the investigating judge or the president of the panel grants his permission and only in the presence of the investigating judge or defence counsel chosen by person in detention. In such a case the detainee shall also be informed of the rights from paragraph 5 of this Article.

(5) In the course of collecting information the police authorities shall caution the suspect in accordance with the provisions of Article 237 paragraph 2 of this Act. Upon the request of the

suspect, the police authorities shall allow him to retain a defence counsel and for that purpose they shall cease collecting information from the suspect or undertaking a search of the dwelling until a defence counsel appears or at the latest three hours from the moment the suspect declared his wish to retain a defence counsel. The police authorities shall proceed in the same manner in the case of a defendant whose dwelling should be searched. If the circumstances indicate that the selected defence counsel will not be able to arrive within this term, the police authorities shall allow the suspect to retain a defence counsel from the list of attorneys on duty which is compiled by the Croatian Bar Association for the territory of a county and delivered to the competent police administrations along with the report made for the county court. The stopping time of the police authorities regarding the collecting of information or the search shall not be included in the legal term of bringing the suspect before the investigating judge. If the suspect does not retain a defence counsel or if a summoned defence counsel fails to appear within the term provided, the police authorities may resume the collecting of information from the suspect or the search of the dwelling. The State Attorney has the right to be present at the interrogation. The records of the police authorities of the suspect's statements given in the presence of a defence counsel may be used as evidence in the criminal proceedings.

(6) On the basis of the information collected, the police authorities shall draw up a crime report stating the evidence discovered. The contents of the statements given by certain citizens in the course of collecting information shall not be included in the crime report. The objects, sketches, photographs, reports, records on measures and actions undertaken, official notes, statements and other material which may be useful for successfully conducting proceedings shall be attached to the crime report. If the police authorities after filing the crime report discover new facts, evidence or traces of the offence, they shall be bound to collect necessary information and to deliver the report on this as a supplement to the crime report to the State Attorney.

(7) The Minister of the Interior and the Minister of Defence shall issue more detailed regulations on the implementation of measures and actions referred to in this Article in conformity with the provisions of this Act.

Article 187

Under the conditions and in the manner prescribed in a special law, the inquiries into criminal offences committed on a Croatian seagoing vessel or on a Croatian inland ship shall be carried out by the ship's captain.

Article 188

The police authorities are entitled to send persons found at the place of the commission of a criminal offence to the investigating judge or to hold them until his arrival if these persons may disclose important facts for the proceedings and if it appears likely that their examination at a later point might be impossible or might entail considerable delays or other difficulties. Such persons shall not be held for the purpose of bringing them before the investigating judge or held at the place of the commission of a criminal offence for more than six hours from the arrival of the police authority to the place of the commission.

Article 189

(1) In order to establish the identity of the suspect the police authorities may take his photograph, take his fingerprints, and upon the approval of the investigating judge publish the suspect's photograph.

(2) In order to analyze basic genetic material needed for the purposes referred to in paragraph 1 of this Article, samples of saliva or hair may be taken from a detainee even without his consent.

(3) The Minister of Interior and the Minister of Defence shall issue regulations on the structure and manner of keeping a database with automatic data processing for the purposes from paragraph 1 of this Article.

4. Special Inquiries into Criminal Offences Applying Temporary Restriction of Constitutional Rights and Freedoms

Article 190

(1) If inquiries into offences cannot be carried out in another way or would be accompanied by great difficulties, the investigating judge may, upon the request of the State Attorney, order against the person against whom there are grounds for suspicion that he committed or has taken part in committing an offence referred to in Article 192 of this Act measures which temporarily restrict certain constitutional rights of citizens as follows:

1) surveillance and interception of telephone conversations or means of remote technical communication;

2) entry on the premises for the purpose of conducting surveillance and technical recording of the premises;

3) covert following and technical recording of individuals and objects;

4) use of undercover investigators and informants;

5) simulated purchase of certain objects, simulated bribe-giving and simulated bribe-taking;

6) controlled transport and delivery of objects from offences.

(2) Measures referred to in paragraph 1 subparagraph 2 of this Article may also be ordered against persons against whom there are grounds for suspicion that he delivers to the perpetrator or receives from the perpetrator of the offences referred to in Article 192 of this Act information and messages in relation to offences or that the perpetrator uses their telephone or other telecommunications devices.

(3) Under the conditions referred to in paragraph 1 of this Article the measures referred to in paragraph 1 subparagraphs 1, 2, 3, 5 and 6 of this Article may with his written consent be applied to the means, premises and objects owned or used by the injured person.

(4) In case there is no knowledge about the identity of the accomplices in the criminal offence the measure referred to in paragraph 1 subparagraph 6 of this Article may be determined in accordance with the object of the criminal offence.

(5) The application of measures referred to in paragraph 1 subparagraphs 4 and 5 of this Article should not constitute an instigation to commit an offence.

Article 191

Technical records, documents and objects obtained under the conditions and in the manner referred to in Article 190 paragraph 1 subparagraphs 1, 2, 3, 5 and 6 and Article 193 of this Act may be used as evidence in criminal proceedings. An undercover agent and an informant referred to in Article 190 paragraph 1 subparagraph 4 of this Act and the persons who carried out the measures referred to in Article 190 paragraph 1 subparagraph 5 of this Act may be interrogated as witnesses about the course of the implementation of the measures.

Article 192

Measures referred to in Article 190 of this Act may be ordered if the following offences are involved:

1) offences against the Republic of Croatia (Chapter Twelve), offences against values protected by international law (Chapter Thirteen), against sexual freedom and sexual morality (Chapter Fourteen) committed to the detriment of children and minors and against the Armed Forces of the Republic of Croatia (Chapter Twenty-Six) punishable by imprisonment for a term of five years or more;

2) murder (Article 90 of the Criminal Code), kidnapping (Article 125 of the Criminal Code), pandering (Article 195 of the Criminal Code), robbery with severe consequences (Article 218 of the Criminal Code), extortion (Article 234 of the Criminal Code), blackmail (Article 235 of the Criminal Code), serious criminal offences against public safety (Article 271 of the Criminal Code), counterfeiting of money (Article 274 of the Criminal Code), money laundering (Article 279 of the Criminal Code), avoiding customs control (Article 298 of the Criminal Code), obstruction of evidence (Article 304 of the Criminal Code), duress against an official engaged in the administration of justice (Article 309 of the Criminal Code), association for the purpose of committing a criminal offence (Article 333 of the Criminal Code), as well as criminal offences committed by the group or criminal organization in concurrence, illicit possession of weapons and explosive substances (Article 335 of the Criminal Code), abuse in performing governmental duties (Article 338 of the Criminal Code), bribe-taking (Article 347 of the Criminal Code), bribe-giving (Article 348 of the Criminal Code);

3) offences punishable by long-term imprisonment.

Article 193

(1) Measures referred to in Article 190 of this Act shall be ordered by the investigating judge in a written order containing a statement of reasons. The order shall be executed by police authorities. The order shall state the available data on the person against whom the measures are to be applied, the facts justifying the necessity for applying the measures and the term for their duration that should be proportionate to the accomplishment of the goal as well as the

manner, the scope and the place of execution of the measure. The technical operation centre for the supervision of telecommunications in the authorized services which carries out technical coordination with the telecommunication operators in the Republic of Croatia is bound to provide the necessary technical assistance to police authorities, the investigating judge and the State Attorney in executing the measure. Officials and responsible persons taking part in the decision-making process and execution of the measures referred to in Article 190 of this Act are bound to keep the confidentiality of the information that came to their knowledge in the process.

(2) The measures undertaken may last up to four months. Upon the motion of the State Attorney the investigating judge shall, on account of important reasons, prolong the duration of such measures for a term of another three months. The panel of the county court shall decide on a disagreement between the State Attorney and the investigating judge (Article 20 paragraph 2). As soon as the conditions for surveillance cease to exist the investigating judge is bound to order the vacation of the measures undertaken. If the State Attorney desists from prosecution or if the data and information obtained by the application of the measures are not relevant for proceedings, the shall be destroyed under the supervision of the investigating judge, who will draw up a separate record thereon and enclose it with the file.

(3) The order referred to in paragraph 1 of this Article shall be kept in a separate cover. After the termination of the surveillance and even before that, the order on surveillance may be delivered to the person the surveillance was ordered against if he so requests, provided that this is to the benefit of the proceedings.

(4) If in the course of the surveillance and covert recording, data and information relating to another offence are recorded, that part of the recording shall be copied and delivered to the State Attorney if the offences stated in Article 192 of this Act are involved.

(5) Regarding the conversations of the defendant with his defence counsel, the provisions from Article 69 of this Act shall be applied in the appropriate manner.

(6) If the measures referred to in Article 190 of this Act are undertaken without the order of the investigating judge or if they are conducted contrary to the provisions referred to in Articles 190 and 193 paragraph 2 of this Act, the evidence deriving from the data and information obtained in this manner may not be used in the criminal proceedings.

(7) The State Attorney Service and the investigating judge shall prevent in the appropriate manner (a transcript of the record or official notes without personal data therein, excluding the official note from the file etc.) unauthorized persons as well as the suspect and his defence counsel from establishing the identity of the persons who carried out measures referred to in Article 190 paragraph 1 subparagraphs 4 and 5 of this Act. If these persons are interrogated as witnesses, the court may proceed in accordance with the provisions from Articles 249 to 252 of this Act.

Article 194

(1) Measures referred to in Article 190 of this Act shall be carried out by the police authorities. The police authorities shall draw up daily reports on the process of execution and the documentation of the technical records, which, upon a special request, they send to the investigating judge and the State Attorney Service.

(2) Upon the termination of the measure, the police authorities draw up a special report for the State Attorney Service and the investigating judge stating as follows:

1) time of the commencement and time of the termination of the measure;

2) number and job description of officials who carried out the measure;

3) type and number of technical devices used;

4) number and identity of persons covered by the measure;

5) type of criminal offences from Article 192 of this Act the commission of which was possibly prevented by carrying out the measure;

6) summarized appraisal of the question to what extent the measure contributed to achieving the goal described in the order or the goal was not achieved;

(3) Along with a special report the police authorities provide the State Attorney Service with the collected documentation of photographs, video, audio or electronic records.

(4) The execution of the measure of using undercover agents includes the right of the undercover agent to enter a person's home if the conditions are met as prescribed by legal regulations on police officers' entering a person's home without a court order.

(5) If beside the conditions from Article 190 of this Act evidence exists providing grounds for suspicion that as a result of preparing criminal offences stated in Article 192 of this Act particularly serious criminal offences are to be committed or that some of them have already been committed, the investigating judge may determined that the undercover agent, apart from entering a person's home, may use technical equipment to record conversations that are not public.

(6) The State Attorney Service shall designate in his file, and the investigating judge in the court file, the determination of each measure of this Article that has not been vacated because its goal has not been achieved.

(7) The application of measures referred to in Article 190 of this Act shall cease by virtue of the office as soon as the reasons lapse on the basis of which they were ordered.

Article 195

Police authorities may compare personal data of citizens kept in a database and other registers with police data records, registers and automatic data processing bases, provided that there are grounds for suspicion that a criminal offence referred to in Article 192 of this Act has been committed. Information thus collected shall, along with a report on this to the State Attorney, be erased from the above mentioned records as soon as it ceases to be necessary for successfully conducting proceedings, but not later than six months from the data they are stored. Upon the motion of the State Attorney the investigating judge may exceptionally prolong this term for three months if it is likely that in such a manner a search for a certain person or object may be successfully completed.

5. Urgent Investigatory Actions

Article 196

(1) If there is danger in delay, the police authorities may even before the commencement of the investigation carry out a search (Article 224), temporarily seize objects (Article 233), carry out the identification (Article 258), a judicial view (Article 260) and take fingerprints and prints of other parts of the body (Article 263). The investigating judge who arrives to the place of the judicial view may in the course of its implementation carry out this action or leave the implementation of the judicial view in process or a part thereof to the police authority.

(2) If there is danger in delay, the police authorities may order necessary expert witness examination, except for autopsy and exhumation.

(3) The police authorities shall notify the State Attorney forthwith of all actions which they have undertaken according to paragraphs 1 and 2 of this Article.

Article 197

(1) When the perpetrator of a criminal offence is unknown, the State Attorney may request that the police authorities undertake certain investigatory actions if, regarding the circumstances of the case, it would be expedient to undertake such actions even before the commencement of the investigation. If the State Attorney holds that certain investigatory actions are to be undertaken by the investigating judge himself, or if an autopsy or exhumation of a human corpse should be performed, he will propose that the investigating judge undertake these actions. If the investigating judge disagrees with this motion he shall refer it to the panel for disposition (Article 20 paragraph 2).

(2) The investigating judge shall deliver the records on the investigatory actions undertaken to the State Attorney.

Article 198

(1) The investigating judge of the court having jurisdiction and the investigating judge of the lower court within the jurisdictional territory where the offence was committed may, upon the motion of the authorized prosecutor or on his own initiative, before rendering a ruling on the opening of an investigation, undertake certain investigatory actions for which there is a danger in delay but he is bound immediately to inform the competent State Attorney of every action undertaken.

(2) When the investigating judge of the lower court undertakes investigatory actions, the State Attorney who is representing the prosecution before that court may be present.

(3) Regarding the summoning and interrogation of the suspect, provisions on the summoning and interrogation of defendants shall apply.

CHAPTER EIGHTEEN

INVESTIGATION

Article 199

(1) An investigation shall be instituted against a designated person when reasonable suspicion exists that he has committed a criminal offence.

(2) In the course of the investigation, evidence and information shall be collected that are necessary for a decision on whether to prefer an indictment or to discontinue proceedings as well as evidence which may not be possible to repeat at the trial or if its examination may involve some difficulties.

Article 200

(1) The investigation shall be conducted upon the request of the authorized prosecutor.

(2) A request for investigation shall be submitted to the investigating judge of the court having

jurisdiction thereof.

(3)The request shall contain: the name of the person against whom the investigation is requested, the description of those factual aspects of the act which constitute the elements of the definition of the offence, the statutory name of the offence, the circumstances on which the reasonable suspicion is founded, and the existing evidence.

(4)The request for investigation may contain a proposal to investigate certain circumstances, to undertake particular actions and to examine certain persons on certain issues, as well as a proposal to detain the person against whom the investigation is requested.

(5) The State Attorney shall deliver to the investigating judge the crime report and all documents and records concerning the actions undertaken. At the same time the State Attorney shall deliver to the investigating judge objects of evidentiary value, or shall indicate their location.

(6) If the State Attorney withdraws the request for investigation before a ruling on investigation is rendered, the investigating judge shall dismiss the request and inform the injured person that he may assume the prosecution by himself (Article 55).

Article 201

(1) Upon receiving the request for investigation, the investigating judge shall without delay examine the file and interrogate the person against whom the investigation is requested if there is danger in delay, and if he agrees with the request, he shall render the ruling on the opening of the investigation which must contain the information stated in Article 200 paragraph 3 of this Act. The ruling shall be served to the State Attorney and to the defendant who may appeal against the ruling.

(2) Before deciding on the request for investigation or on the motion of the State Attorney referred to in Article 204 of this Act, the investigating judge may summon the state attorney

and the suspect to a preliminary hearing if clarification is needed of circumstances relevant for the decision on the request for investigation or the motion of the State Attorney referred to in Article 204 of this Act. In addition to the State Attorney, the defendant and the defence counsel, the court shall summon to the preliminary hearing the injured person and his legal representative if he has retained one. Regarding the summons and interrogation of the suspect, the provisions on the summoning and interrogation of the defendant in the investigation shall be applied. The failure of the defence counsel or the injured person or his legal representative to appear shall not prevent the holding of the preliminary hearing.

(3) At the preliminary hearing referred to in paragraph 2 of this Article, the summoned persons may take their motions orally, and the State Attorney may alter or supplement his request or motion. If necessary, the investigating judge may investigate certain facts or circumstances and obtain information on the defendant's personality (Article 215), and, upon the motion of the State Attorney, may decide to undertake certain investigatory actions before an indictment without investigation is preferred.

Article 202

(1) The investigating judge shall be bound immediately to refer the appeal of the defendant to the panel of the county court (Article 20 paragraph 2). The appeal does not stay the execution of the ruling.

(2) If the investigating judge does not agree with the State Attorney's request for investigation, he shall request the panel of the county court (Article 20 paragraph 2) to make a disposition thereon. The parties and the injured person may take an appeal from the ruling of the panel, which does not stay its execution. If the appeal is taken only by the injured person and the appeal is satisfied, it shall be deemed that the injured person assumes prosecution by taking the appeal.

(3) In the cases referred to in paragraphs 1 and 2 of this Article the panel is bound to make a disposition within 48 hours.

(4) When deciding on a request for investigation, the investigating judge and the panel are not bound by the State Attorney's legal qualification of the offence.

Article 203

Rendering a Judgment at the Request of the Parties to the Investigation

(1) Before the termination of the investigation (Article 216 paragraph 1) in the criminal proceedings for criminal offences for which a sentence of imprisonment for a term of up to ten years may be pronounced the parties may submit a request to the investigating judge to render a judgment for the defendant of no more than one third of the upper limit of the prescribed sentence.

(2) The party shall in a request exactly state the type and the extent of the sentence that he requests the judge to pronounce. If the party simultaneously requests a probation sentence or a probation sentence with supervision, the investigating judge may pronounce this precautionary measure or proceed pursuant to paragraph 10 of this Article.

(3) Before a request for investigation is decided upon a written request from paragraph 1 of this Article may be submitted by the defendant. The State Attorney and the defendant may

jointly submit a written request that is signed by the defendant in the presence of his defence counsel. If the defendant has not retained a defence counsel, the president of the court shall appoint one for the further course of the proceedings up to the moment the investigating judge renders his decision.

(4) The submission of the request is not deemed to be the defendant's admission of guilt, but in the proceedings that continue after the decision of the investigating judge the defence counsel may not present evidence on the exclusion of unlawfulness or guilt relating to a charge with regard to which he agreed to the prosecutor's request, unless he learnt about the evidence after the request.

(5) Before rendering a decision on the request the investigating judge shall inform the defendant about the consequences from paragraph 4 of this Article and make sure thereafter that the parties who submitted a joint request for the pronouncement of a sentence are in agreement with the entire contents of the request and state it in the record.

(6) A party may withdraw the request from paragraph 1 of this Article before the decision is rendered by the investigating judge.

(7) If the investigating judge accepts the request, he shall pronounce the judgment at the hearing with the parties which may not involve another type or a more severe extent of punishment than the one stated in paragraph 1 of this Article, along with a sentence and a precautionary measure, a security measure referred to in Article 75, 76, 78, 79 and 80 of the Criminal Code may be pronounced. The tenor of the judgment must comply with Article 372 of this Act. If the parties submitted a joint request, the investigating judge shall in the decision on the costs of the proceedings (Article 372 paragraph 1 subparagraph 7) order that the defendant be fully exempt from paying the costs of the criminal proceedings referred to in Article 125 paragraph 2 subparagraphs 1 to 6 of this Act.

(8) The judgment that is rendered shall be pronounced immediately. It shall be drawn up in writing within a period of 8 days from the day it is pronounced and it shall include the data referred to in Article 376 paragraphs 2 to 5 of this Act. In the statement of reasons for the judgment the court shall only state the circumstances it considered during its deliberation of the sentence.

(9) The judgment may not be challenged by an appeal for erroneous or incomplete determination of the factual situation (Article 383 paragraph 3), except in the case the defendant learnt about the evidence on the exclusion of unlawfulness or guilt after the judgment was rendered. When rendering a new judgment the second instance court shall be bound by the provision stated in paragraph 1 of this Article.

(10) If the investigating judge states that the evidence collected on the facts of importance for the selection and determination of the sentence do not justify the application of paragraph 1 of this Article or that there are no legal conditions for the rendering of a judgment referred to in paragraph 7 of this Article, he shall request that the panel of the county court decide on the request. The parties may lodge an appeal against the ruling, and the appeal shall not stay the execution of the ruling. If the appeal is not accepted, the request referred to in paragraph 1 of this Article may not be reiterated during the trial.

Article 204

(1) The investigating judge may agree with a motion of the State Attorney not to conduct an investigation if information obtained referring to the offence punishable by imprisonment for a term of less than fifteen years and to the perpetrator provide sufficient support to prefer an indictment.

(2) The investigating judge may give consent referred to in paragraph 1 of this Article only after he has interrogated the person against whom the indictment is to be preferred. Regarding summoning and the interrogation of that person, the provisions on the summoning and interrogation of the defendant shall apply. The investigating judge shall send notice of consent to the State Attorney and to the person against whom the indictment is to be preferred.

(3) The term for preferring the indictment is eight days, but the panel of the county court (Article 20 paragraph 2) may prolong that term.

(4) The motion referred to in paragraph 1 of this Article may be submitted by the State Attorney even after the request for investigation has been submitted but only until the ruling deciding on the motion is rendered.

(5) If the investigating judge finds that the requirements for preferring an indictment without investigation are not met, he shall proceed as if the request for investigation was submitted.

(6) If the offence involved is punishable by imprisonment for a term of less than eight years, the State Attorney may prefer an indictment without the conditions prescribed in paragraphs 1 to 5 of this Article and without conducting an investigation if information collected regarding the offence and the perpetrator provide enough basis for accusation. Before preferring an indictment, the State Attorney may submit a motion to the investigating judge to undertake certain investigatory actions.

(7) In addition to the motion referred to in paragraph 1 of this Article and to the indictment preferred according to paragraph 6 of this Article, the State Attorney shall deliver the crime report and all documents and records on actions undertaken as well as objects which may serve to determine facts or he shall state their location.

Article 205

(1) The investigation shall be conducted by the investigating judge of the court having jurisdiction.

(2) The Minister in charge of justice affairs may designate one court where the investigation is to be conducted within the jurisdictional territory of more than one court (investigating centre).

(3) As a rule, the investigating judge shall conduct investigatory actions only within the jurisdictional territory of his court. If the purpose of the investigation so requires, he may conduct certain investigatory actions outside the territory of his court, but in such a case he shall inform thereof the court in whose territory he is conducting the investigatory actions.

(4) Upon the motion of the investigating judge the president of the court may order that the court counsellors and professional co-workers (graduate students in the techniques of police science with a Bachelor's Degree) help the investigating judge as expert assistants in comply investigative cases. They can make preparations for certain investigatory actions, receive declarations and motions of the parties, and independently undertake an investigatory action

entrusted to them by the investigating judge. The investigating judge shall verify the record of such an action within forty-eight hours after it was undertaken. Assistance to the investigating judge through the interrogation of the defendant and witnesses may be performed by court counsellors only.

Article 206

(1) In the course of the investigation, the investigating judge may entrust the performance of particular investigatory actions to the investigating judge of the court in whose jurisdictional territory these actions need to be undertaken, and in the case where one court is designated to give legal aid within the jurisdictional territory of several courts, then to that court.

(2) The State Attorney representing the prosecution before the court to which the performance of particular investigatory actions is entrusted may be present when these actions are undertaken if the competent State Attorney does not declare that he will be present.

(3) In the manner prescribed by this Act, the investigating judge may entrust to the police authorities the execution of an order for a search of a dwelling or a person, or an order for the temporary seizure of objects.

(4) Upon the motion of the State Attorney, the investigating judge may confer to the police authorities the performance of a certain investigatory action if the investigation is conducted for offences of illegal trafficking of narcotic drugs or dangerous materials, weapons, ammunition or other defence objects, the counterfeiting of money or securities, as well as for other offences whose perpetrators are connected to persons abroad or for offences which are committed by a group of people or a criminal organization, provided that such conferring is necessary for the successful completion of the investigation, due to the seriousness of the offence and the complexity of the evidence. If the investigating judge does not agree with the motion of the State Attorney, he shall request a decision of the panel which shall be rendered within twenty-four hours.

(5) When undertaking investigatory actions, the police authorities shall proceed according to the respective provisions of this Act on investigatory actions.

Article 207

(1) The investigating judge entrusted with the performance of certain investigatory actions shall, if necessary, undertake other investigatory actions which are related to or derive from those conferred on him.

(2) If the investigating judge entrusted with the performance of certain investigatory actions has no jurisdiction over the matter, he shall refer it to the court having jurisdiction and inform thereof the investigating judge who entrusted the matter to him.

Article 208

(1) The investigation shall only be conducted in respect to the criminal offence and the defendant specified in the ruling on the opening of the investigation.

(2) If in the course of the investigation the proceedings should be expanded to another criminal offence or against another person, the investigating judge shall inform the State

Attorney thereof. In such a case, urgent investigatory actions may be undertaken, but the State Attorney shall be notified of all the actions undertaken.

(3) The provisions of Article 188 and 189 of this Act shall be applied on the expansion of the investigation.

Article 209

After a ruling on the opening of the investigation is rendered, the investigating judge shall on his own motion undertake actions which he considers necessary for the successful conduct of proceedings.

Article 210

(1) In the course of the investigation, the parties and the injured person may submit motions to the investigating judge to undertake certain investigatory actions. If the investigating judge disagrees with the motion from the State Attorney to undertake certain investigatory action, he shall request that the panel referred to in Article 20 paragraph 2 of this Act decide on it.

(2) The parties and the injured person may submit motions from paragraph 1 of this Article to the investigating judge and to the police authorities entrusted with the performance of certain investigatory actions. If the investigating judge or the police authorities do not agree with the motion, they shall notify the person who made the motion thereof and this person may repeat his motion to the investigating judge of the court having jurisdiction.

Article 211

(1) The prosecutor and defence counsel may be present at the interrogation of the defendant.

(2) The prosecutor, the injured person, the defendant and the defence counsel may attend the taking of a view and the interrogation of an expert witness.

(3) The prosecutor and the defence counsel may be present at the search of a dwelling.

(4) The prosecutor, the defendant and the defence counsel may be present at the interrogation of a witness when it is likely that the witness shall not appear at the trial, when such presence appears expedient to the investigating judge or when one of the parties requests to be present at the interrogation. The injured person may be present at the interrogation of a witness only when it is likely that the witness shall not appear at the trial.

(5) The investigating judge shall in an appropriate manner notify the prosecutor, the defence counsel, the injured person and the defendant of the time and place fixed for the performance of investigatory actions they are entitled to attend, unless a danger in delay exists. If the defendant has a defence counsel, the investigating judge shall, as a rule, notify only the defence counsel.

(6) The investigatory action may be performed in the absence of the summoned person, except in the absence of a defence counsel in cases of mandatory defence and if the defendant is interrogated.

(7) Persons attending the performance of investigatory actions may suggest that the investigating judge asks the defendant, witness or expert witness certain questions for the

purpose of clarification, and may with the permission of the investigating judge ask questions directly themselves. They are entitled to request that their objections to the performance of certain actions are entered in the record and may propose that certain evidence be examined.

(8) In order to clarify certain technical or other expert issues which arise in relation to obtained evidence or at the interrogation of the defendant or in the course of undertaking other investigatory actions, the investigating judge may ask from a specialized institution or from an expert to give him necessary explanations in regard to these issues. If the parties are present when the explanation is given, they may request that the expert gives a more detailed explanation and that it be entered into the record.

(9) The provisions referred to in paragraphs 1 to 8 of this Article shall also be applied if the investigatory action is undertaken before the ruling on the opening of the investigation is rendered.

Article 212

(1) The investigating judge shall recess the investigation by a ruling if the defendant is not able to take part in the proceedings due to health problems.

(2) If the investigating judge states that the defendant is unfit to stand trial due to mental disorders, and the State Attorney has submitted a motion referred to in Article 475 paragraph 3 of this Act, the investigation shall not be recessed.

(3) In the cases referred to in paragraphs 1 and 2 of this Article the defendant must have a defence counsel.

(4) The investigation may be recessed if the residence of the defendant is unknown, but if the defendant has fled or is otherwise not amenable to state authorities, the investigation shall be recessed upon obtaining the State Attorney's opinion if proceedings are conducted upon his request.

(5) Before recessing an investigation, all evidence which can be obtained in relation to the offence and the culpability of the defendant shall be collected.

(6) The investigating judge shall continue an investigation when obstacles leading to recess cease to exist.

(7) If, in the course of proceedings, the period of limitation for the institution of prosecution expires, the court shall proceed in accordance with Article 214 of this Act.

Article 213

The investigating judge shall discontinue an investigation by a ruling when the State Attorney in the course of the investigation or after its conclusion declares that he is desisting from the prosecution. The investigating judge shall within the term of eight days notify the injured person of the discontinuance of the investigation (Article 55).

Article 214

(1) When deciding on any issue in the course of an investigation, the panel of the county court (Article 20 paragraph 2) shall discontinue an investigation by a ruling:

1) if the offence the defendant is charged with is not an offence subject to public prosecution;

2) if circumstances excluding the defendant's culpability exist and there is no ground for the application of security measures;

3) if the period of limitation for the institution of prosecution has expired or the offence is amnestied or pardoned or if other circumstances exist barring prosecution;

4) if there is no evidence that the defendant committed the offence.

(2) If the investigating judge finds that reasons for the discontinuance of the investigation referred to in paragraph 1 of this Article exist, he shall notify the State Attorney thereof. If the State Attorney does not notify the investigating judge that he has desisted from prosecution within the term of eight days, the investigating judge shall request that the panel decide on the discontinuance of the investigation.

(3) The ruling to discontinue the investigation shall be served on the State Attorney, the injured person and the defendant who shall be immediately released if he is in detention. The State Attorney and the injured person have the right to take an appeal from this ruling. If only the injured person takes an appeal from the ruling discontinuing the investigation, and this appeal is satisfied, it shall be deemed that the injured person assumes prosecution by taking the appeal.

Article 215

(1) Before the conclusion of the investigation, the investigating judge shall obtain information on the defendant stated in Article 237 of this Act if it is missing or if it requires a review, as well as the information on the defendant's previous convictions and, if the defendant is still serving a sentence or another sanction which is connected to the deprivation of freedom, information on his behaviour while serving a prison sentence or other sanction.

(2) The investigating judge shall request the respective files if it is possible to impose an aggregate sentence comprising the sentences from previous judgments as well.

Article 216

(1) The investigating judge shall conclude the investigation when he finds that the case has been sufficiently clarified so that the indictment may be preferred or the proceedings discontinued.

(2) After the conclusion of the investigation, the investigating judge shall deliver the case files to the State Attorney who is bound within a term of fifteen days to file a motion to supplement the investigation or to prefer an indictment or to declare that he is desisting from prosecution. Upon a motion from the State Attorney, the panel of the county court referred to in Article 20 paragraph 2 of this Act may prolong this term for another fifteen days at the longest.

(3) The State Attorney shall, without delay, notify the person who submitted a crime report of the preferring of an indictment, motion to indict or of the desisting from prosecution.

(4) If the investigating judge refuses the State Attorney's motion to supplement the investigation, he shall request that the panel of the county court (Article 20 paragraph 2) decide on it. If the panel rejects the State Attorney's motion, the term referred to in paragraph 2 of this Article begins to run from the day the State Attorney was notified of the panel's decision.

(5) If the State Attorney does not proceed within the term stated in paragraphs 2 and 3 of this Article, he is bound to notify the higher State Attorney of the reasons.

Article 217

(1) If the investigation is not concluded within a term of six months, the investigating judge is bound to notify the president of the court of the reasons which hinder its conclusion.

(2) If necessary, the president of the court shall undertake measures in order to conclude the investigation.

Article 218

(1) The subsidiary prosecutor and the private prosecutor may submit to the investigating judge a request for investigation or a motion to supplement an investigation. In the course of the investigation they are entitled to submit other motions to the investigating judge.

(2) With respect to the institution, conduct, recess and discontinuance of an investigation, provisions of this Act dealing with the institution and conduct of an investigation upon the request of the State Attorney shall apply respectively.

(3) When the investigating judge finds that the investigation is concluded, he shall inform the subsidiary prosecutor or private prosecutor thereof and instruct them that they should prefer an indictment or private charge and that if they fail to do so, it shall be considered that they have desisted from the prosecution and the proceedings shall be discontinued by a ruling. The investigating judge shall also be bound to give such an instruction when the panel (Article 20 paragraph 2) rejects the motion of the subsidiary prosecutor or private prosecutor to supplement the investigation, on the ground that in the panel's view the case has been sufficiently clarified.

Article 219

If, in conducting the investigation, the investigating judge needs assistance from the police authorities (pertaining to the techniques of police science, etc.) or from other state authorities, they are bound to provide this assistance upon his request.

Article 220

If it is required for the benefit of the proceedings, for keeping information confidential, for reasons of public order or for moral considerations, the investigating judge or the official of the police authorities entrusted to undertake certain investigatory actions shall order the persons who are being interrogated or who are present while investigatory actions are being carried out or who inspect the files of the investigation to keep certain facts or information they have learned in the proceedings confidential and shall instruct them that the disclosing of the secret is an offence. Such an order shall be entered into the record on investigatory action or shall be noted in the files inspected, along with the signature of the person instructed.

Article 221

When deciding in the course of the investigation, the panel may request necessary explanations from the investigating judge and the parties and may summon both parties to a panel session in order to give their declaration orally.

Article 222

(1) The investigating judge may impose a fine to an amount not exceeding 20,000.00 Kuna on any person who in the course of the investigatory action, after being warned, continues to disturb order. If the participation of such a person is not indispensable, he may be removed from the place where the investigatory action is carried out.

(2) The defendant may not be fined.

(3) If the State Attorney is disturbing order, the investigating judge shall proceed pursuant to the provision of Article 317 paragraph 5 of this Act.

Article 223

(1) The parties and the injured person may always submit complaints to the president of the court before which the proceedings are carried out regarding the delay of the proceedings and other irregularities in the course of the investigation.

(2) The president of the court shall check the allegations in the complaint and if the person who submitted the complaint requests, shall inform him of any action taken.

CHAPTER NINETEEN

INVESTIGATORY ACTIONS

1. Search

Article 224

(1) A search of a dwelling, other premises, movables and a person shall be undertaken with the purpose of finding persons who have committed an offence or finding objects relevant for the criminal procedure if the possibility exists that they are situated on certain premises or with a certain person.

(2) The search represents the investigation of the searched object by means of senses and aids under conditions and in the manner stipulated in this Act and in other regulations.

(3) The search of a person must be carried out in a manner as to preserve the dignity of the searched person. The search of a person shall be carried out by a person of the same sex.

(4) The search must be carried out in the manner that enables the least possible violation of house regulations and disturbance of the citizens.

(5) Should it not be possible to achieve the purpose of the search of a dwelling, other premises and movable property in any other manner, the authority carrying out the search shall

dismantle the searched object with the help from an expert person. Unnecessary damage shall be avoided when dismantling an object of the search.

Article 225

(1) The search of a dwelling shall include the search of one or more rooms used by a person as his/her home as well as rooms connected with these premises by the same purpose of usage.

(2) Provisions referring to the search of other rooms shall not apply to natural, public and abandoned premises.

Article 226

(1) In the course of conducting a search of a transporting device, dangerous, poisonous, easily inflammable and a similar matter or a device and upon the order given by the authority carrying out the search, the person who is operating or using the respective matter is obliged to undertake all precaution measures needed for safe and undisturbed conduct of the search. Even though the reasons referred to in Article 246 of this Act may not exist, the person failing to undertake such precaution measures may be punished by the authority carrying out the search according to the provision of Article 233 paragraph 2 of this Act.

(2) The search of movables in pursuance of paragraph 1 of this Article includes a search of a computer and similar devices for automatic data processing connected with the computer. Upon the request of the court, the person using the computer shall provide access to the computer or to the media on which data has been stored that is relevant for the searched matter (floppy disks, tapes, etc.) and gives necessary information for the use of the computer. A person who refuses to comply with the preceding provision, although the reasons referred to in Article 246 of this Act may not exist, may be punished by the authority carrying out the search according to the provision of Article 233 paragraph 2 of this Act.

Article 227

(1) When conducting a search of a person, the clothes, shoes, body surface, movables carried by the person or owned by the person and the space where the person is situated during the search shall be searched.

(2) When searching a person, the body of the searched person shall not be penetrated nor shall artificial organs and artificial body parts be taken off (artificial limbs, etc.).

Article 228

(1) A search shall be ordered by a written warrant with a statement of reasons issued by a court.

(2) Before the commencement of the search, the search warrant shall be given to the person to be searched or whose premises are to be searched. Before the search of a dwelling, the occupant shall be instructed that he is entitled to notify a defence counsel.

(3) Before the commencement of the search, the person against whom a warrant has been issued shall be invited to voluntarily hand over the wanted objects or persons.

(4) A search may be commenced without previously giving a warrant and without an instruction on the right to a defence counsel or without an invitation to hand over the person or objects if armed resistance is expected or when it is required to carry out a search by surprise in cases where it is likely that serious offences are involved committed by a group or criminal organization or whose perpetrators are connected with persons from abroad, or if the search shall be carried out on public premises.

(5) The search shall be carried out during the day, from 7 a.m. until 9 p.m. The search may be carried out at night if it was commenced during the day and not completed or if there are grounds to carry out a search without a search warrant (Article 231) or if the very person whose premises are to be searched requests so.

(6) If a search is to be carried out in a military building, the search warrant shall be delivered to the military authorities who shall designate at least one military person to be present at the search.

(7) If a search is to be carried out on a seagoing or an inland navigation vessel or on an aircraft, the search warrant shall be delivered to the captain of the vessel or of the aircraft, who will be present at the search.

Article 229

(1) Two citizens of full age shall be present as witnesses simultaneously during the entire search of a dwelling or other premises. Before the beginning of the search, the witnesses shall be instructed to observe how the search is carried out and they are entitled, before the record of the search is signed, to place their objection if they are of the opinion that the search has not been carried out in accordance with the provision of Article 224 of this Act or that the contents of the record are incorrect.

(2) When conducting a search of premises of state authorities and institutions, a representative of such authorities or institutions shall be called to be present at the search.

(3) A record shall be made of every search of a dwelling or a person and shall be signed by the person whose premises have been searched or who has been searched and by the persons whose attendance at the search is obligatory.

(4) Only objects and documents related to the purpose of the respective search shall be temporarily seized in the course of the search, with the exception of the objects stipulated in Article 233 paragraphs 3 and 4 of this Act.

(5) It shall specifically be stated in the record which objects and documents are seized, and this shall be written in a receipt which shall be immediately issued to the person from whom the objects or documents have been seized.

Article 230

(1) If in the course of a search of a dwelling or a person objects are found unrelated to the offence for which the search warrant was issued, but indicating the commission of another offence subject to public prosecution, they shall be noted in the record and temporarily seized, and a receipt on seizure shall be issued immediately. The State Attorney shall be notified thereof. These objects shall be returned immediately if the State Attorney determines that

there are no grounds to institute criminal proceedings and if no other legal ground for the seizure of these objects exists, whereof a record shall be made.

(2) The objects used to search a computer and similar devices for automatic data processing shall be returned to their users after the search provided that they are not necessary in further criminal proceedings. Personal data obtained by a search may only be used for purposes of criminal proceedings and shall be erased immediately when this purpose ceases to exist.

Article 231

(1) Police authorities may carry out a search of a dwelling or other premises without a search warrant:

if a special law authorizes them to enter a person's dwelling or other premises provided there exist conditions from Article 224 paragraph 1 of this Act,

if it is absolutely necessary to execute an arrest warrant or to apprehend a perpetrator of an offence punishable for not less than three years,

if it is absolutely necessary to remove serious danger to the life or health of people or to prevent damage to property of considerable value.

(2) In the case referred to in paragraph 1.2 of this Article, the search can be carried out to find or secure evidence if it is carried out in the dwelling or other premises of the perpetrator. This search may only be carried out in the presence of witnesses.

(3) The police authorities may without a search warrant and without witnesses carry out a search of a person when executing a warrant for compulsory appearance or to make an arrest if it is likely that person is in possession of offensive weapons or tools or if it is likely that he will throw away, hide or destroy the objects which need to be seized as evidence in the proceedings.

(4) After conducting a search without a warrant, the police authorities are bound to submit a record of the search along with a report to the investigating judge and if the proceedings are not yet pending – to the competent State Attorney.

Article 232

If a search has been carried out without a written warrant (Article 228 paragraph 1) or without the persons whose presence is obligatory at the search (Article 229 paragraphs 1 and 2) or if the police authorities have carried out the search in violation of the provisions of Article 231 paragraphs 1 and 2 of this Act, the records of the search and other evidence obtained in the search cannot be used as evidence in criminal procedure.

2. Temporary Seizure of Objects

Article 233

(1) Objects which, according to the Criminal Code, have to be seized or which may be used to determine facts in proceedings shall be temporarily seized and deposited for safekeeping on the ground of a court's decision.

(2) Whoever is in possession of such objects shall be bound to surrender them upon the court's request. A person who refuses to surrender them may be fined to an amount not exceeding 20,000.00 Kuna, and in the case of further refusal may be imprisoned. Imprisonment shall last until the object is surrendered or until the conclusion of criminal proceedings, but not longer than one month. It shall be preceded in the same way against an official or responsible person in a state authority or legal entity.

(3) Temporary seizure shall not apply to:

1) files and other documents of state authorities, the publication of which would violate the duty of keeping an official, state or military secret, until decided otherwise by the competent authority,

2) written notices of a defendant to a defence counsel or to persons referred to in Article 244 paragraph 1.1. to 1.4. of this Act, unless voluntarily submitted by the defendant upon a request,

3) tapes possessed by persons referred to in Article 244 paragraph 1.1. to 1.4. of this Act that have been recorded by these persons regarding facts about which these persons are exempted from the duty to testify,

4) records, registry excerpts and similar documents possessed by persons referred to in Article 244 paragraph 1.4. of this Act that have been made by these persons regarding facts disclosed to them by the defendant while performing their respective professions,

5) written records of facts made by journalists and their editors in the media regarding sources of information and data coming to their knowledge in the performance of their profession that were used in the media editorial process and that are possessed by them or by the editorial office they work for.

(4) The ban on the temporary seizure of objects, documents and tapes referred to in paragraph 3.2 – 3.5 of this Article shall not apply:

1) in relation to a defence counsel or a person exempted from the duty to testify in accordance with the provision of Article 244 paragraph 1 of this Act, if there exists a reasonable doubt that he/she has helped the defendant to commit an offence, that he/she has helped the defendant after an offence has been committed or that he/she has acted as an accessory,

2) in relation to objects that are to be seized in accordance with the provisions of the Criminal Code.

(5) The ban on the temporary seizure of objects, documents and tapes referred to in paragraph 3.1 – 3.5 of this Article shall not apply in relation to investigations of criminal offences committed against children and minors referred to in Article 117 of the Juvenile Court Act.

(6) The provisions of paragraph 1 and 2 of this Article also apply to data stored in devices for the automatic or electronic processing of data and to the media on which these data are stored, which shall be submitted to the authorities conducting the proceedings upon their request in a legible and comprehensible form. When obtaining them, the authority conducting proceedings shall proceed pursuant to the regulations related to maintaining the confidentiality of certain data.

(7) The panel of the county court (Article 20 paragraph 2) shall decide on an appeal against a ruling imposing a fine or imprisonment. An appeal against a ruling on imprisonment shall not stay the execution of the ruling.

(8) The police authorities may seize the objects stated in paragraphs 1, 2 and 3 of this Article when proceeding pursuant to the provisions of Article 186 and Article 196 paragraph 1 of this Act or when executing a court's warrant.

(9) When seizing objects it shall be noted where they were found and they shall be described and if necessary their identity shall be determined in another way. A receipt shall be issued for the seized objects.

(10) Compulsory measures stated in paragraphs 2 and 6 of this Article may not be applied against the defendant or against persons exempted from testifying.

(11) Objects seized contrary to the provisions of paragraphs 3 and 4 of this Article cannot be used as evidence in criminal procedure.

Article 234

(1) State authorities may refuse to present or surrender their files and other documents if it appears to them that disclosure of their contents would prejudice the public good. Banks may refuse to reveal data, which represent a bank secret. If presenting or giving files and other documents or data, which represent a bank secret, is denied, the final decision thereon shall be made by the panel of the county court (Article 20 paragraph 2).

(2) Commercial companies and other legal entities may request that data related to their business be not made public.

(3) The investigating judge may require a bank to deliver him information on the bank accounts of a defendant or another person against whom proceedings for the confiscation of pecuniary benefit obtained in consequence of the commission of an offence are being conducted. Such a request may be made even before the commencement of an investigation or before the commencement of proceedings for the confiscation of pecuniary benefit if it is likely that the money obtained by involvement in the commission of criminal offences committed by a group (Article 89 paragraph 22 of the Criminal Code) or a criminal organization (Article 89 paragraph 23 of the Criminal Code) or of a criminal offence of the misuse of drugs (Article 173 of the Criminal Code) punishable by imprisonment for a term of more than three years are placed in those bank accounts.

(4) If following the decision of the panel referred to in paragraph 1 of this Article the bank does not deliver to the investigating judge the data requested, the investigating judge shall immediately inform thereof the National Bank of Croatia and undertake other legal measures.

(5) The court may order by a ruling an individual or legal entity to suspend temporarily the execution of a financial transaction if the suspicion exists that it represents an offence or that it serves to conceal an offence or to conceal the benefit obtained in consequence of the commission of an offence.

(6) By the ruling referred to in paragraph 5 of this Article the court shall order that the financial means assigned for the transaction referred to in paragraph 5 of this Article as well as cash amounts in domestic and foreign currency temporarily seized according to Article 233

paragraph 1 of this Act shall be deposited in a special account to be kept until the termination of the proceedings or until the conditions are met for their recovery.

(7) The State Attorney, the owner of the cash amounts in domestic and foreign currency, the defendant and the legal entity or the natural person who is to proceed according to the ruling referred to in paragraphs 3 and 5 of this Article may take an appeal from the ruling of the investigating judge referred to in paragraphs 3 and 5 of this Article.

Article 235

(1) When files of evidentiary value are temporarily seized, a list of them shall be made. If this is not possible, the files shall be put in a separate cover and sealed. The owner of the files may put his own seal on the cover.

(2) The person from whom the files have been seized shall be summoned to attend the opening of the cover. If this person fails to appear the cover shall be opened, the files examined and a list of them made in his absence.

(3) When examining files, unauthorized persons should not have access to their contents.

Article 236

(1) The investigating judge may order that postal, telephone and other communication agencies retain and deliver to him, against a receipt, letters, telegrams and other shipments addressed to the defendant or sent by the defendant if circumstances exist which indicate that it is likely that these shipments can be used as evidence in the proceedings.

(2) The State Attorney may order only the retaining of shipments, but the agencies stated in paragraph 1 of this Article are bound to release the retaining if they do no receive the decision of the investigating judge within a term of three days from the receipt of the order.

(3) The retained shipments shall be opened by the investigating judge in the presence of two witnesses. When opening, care shall be taken not to damage the seals, while the covers and the addresses shall be preserved. A record shall be drawn up on the opening.

(4) If the interests of the proceedings so allow, the defendant or the addressee may be fully or partially informed of the contents of the shipment, which may be delivered to him as well. If the defendant is absent and if the justified interest exists, the contents of the shipments shall be communicated or the shipment shall be delivered to one of his relatives, and if there are none, the shipment shall be returned to the sender unless this would prejudice the interests of the proceedings.

3. Interrogation of Defendant

Article 237

(1) When the defendant is interrogated for the first time, he shall be asked for his first name and surname, nickname if he has one, the first name and surname of his parents, the maiden name of his mother, the place of his birth, address, the day, month and year of birth, his ethnic group, his nationality, occupation, family situation, whether he is literate, his educational background, where and when he served in the army, whether he has the rank of an officer or military official, whether he is listed in the military register and if so where, whether he was

decorated, what his financial situation is, whether he has ever been convicted and if so when and why, whether he has served a sentence and when, whether criminal proceedings against him for another offence are in progress, and if he is a minor, who his legal guardian is. The defendant shall be instructed that he is bound to appear upon a summons and immediately to notify the court of changes of his address as well as of an intention to change his place of residence and shall be warned of the consequences of failure to comply.

(2) The defendant shall be informed of the charges placed against him/her as well as of the main grounds for suspicion against him/her and the defendant shall be instructed that he need not present his defence or answer any questions.

(3) Thereafter, the defendant shall be informed that he is entitled to be represented by a defence counsel of his own choosing or that a defence counsel shall be appointed in accordance with the provisions of this Act, who will be financed out of the State Budget and who may attend interrogations.

(4) The defendant shall be interrogated orally. During interrogation he may be permitted to use his notes.

(5) During interrogation the defendant shall be given an opportunity to comment in an uninterrupted presentation on all the circumstances against him and to present all the facts supporting his defence.

(6) After completing his statement, the defendant shall be asked questions if it is necessary to fill in gaps or remove contradictions and ambiguities in his statement.

(7) Interrogation shall be performed in such a manner that the defendant's person is fully respected.

(8) It is forbidden to use force, threat or other similar means to obtain a defendant's statement or confession.

(9) The defendant may be interrogated in the absence of a defence counsel only if he has expressly waived this right and if defence is not mandatory.

(10) In the case of failure to comply with the provisions of paragraphs 2, 3, 8 and 9 of this Article or if the defendant's declarations regarding the right to a defence counsel are not entered in the record, the defendant's statement cannot be used as evidence in criminal procedure .

Article 238

(1) When files of evidentiary value are temporarily seized, a list of them shall be made. If this is not possible, the files shall be put in a separate cover and sealed. The owner of the files may put his own seal on the cover.

(2) The person from whom the files have been seized shall be summoned to attend the opening of the cover. If this person fails to appear the cover shall be opened, the files examined and a list of them made in his absence.

(3) When examining files, unauthorized persons should not have access to their contents.

Article 239

(1) The defendant may be confronted with a witness or another defendant if their statements regarding relevant facts do not correspond.

(2) The confronted persons shall be separately interrogated on every circumstance on which their statements do not correspond, and their answers shall be entered in the record.

(3) Not more than two persons can be confronted at the same time.

Article 240

(1) The defendant's statement shall be entered in the record in a narrative form while the questions and answers shall be entered in the record only when necessary.

(2) The defendant may be permitted to dictate his statement into the record himself.

Article 241

(1) The defendant's interrogation shall be carried out through an interpreter in cases prescribed by this Act.

(2) If the defendant is deaf, the questions shall be posed in writing, and if he is mute he shall be asked to answer in writing. If the interrogation cannot be performed in such a manner, a person with whom the defendant is able to communicate shall be called as an interpreter.

(3) If the interpreter has not previously taken an oath, he shall take the oath faithfully to communicate questions put to the defendant as well as statements given by the defendant.

(4) The provisions of this Act related to expert witnesses shall be respectively applied to interpreters as well.

4. Examination of Witnesses

Article 242

(1) Persons who are likely to furnish information regarding the offence, the perpetrator and other relevant circumstances shall be summoned as witnesses.

(2) The injured person, subsidiary prosecutor and private prosecutor may be examined as witnesses.

(3) Every person summoned as witness is bound to appear at the court and to testify, unless otherwise prescribed by this Act.

Article 243

The following persons may not testify as witnesses:

1) a person who, by giving testimony, would violate the duty of keeping an official state or military secret until the competent authority releases him from this duty,

2) a defence counsel of the defendant, except if the defendant so requests,

3) a defendant in proceedings where the provisions of Article 29 of this Act are applied,

4) a religious confessor with regard to information the defendant has confessed to him.

Article 244

(1) The following persons are exempted from the duty to testify:

1) the defendant's spouse or common-law spouse,

2) the defendant's linear relatives by blood, collateral relatives by blood to the third degree and relatives by affinity to the second degree,

3) the defendant's adoptive parent and adopted child,

4) attorneys, notaries public, tax consultants, physicians, dentists, pharmacists, midwives and social workers regarding information disclosed to them by the defendant while performing their respective professions,

5) journalists and their editors in the media regarding sources of information and data coming to their knowledge in the performance of their profession and provided that their sources were used in the editorial process, except in criminal proceedings for offences against honour and reputation committed by the means of the media.

(2) Persons stated in paragraph 1 subparagraphs 4 and 5 of this Article cannot refuse to give a statement if a legal ground exists exempting them from their duty to keep information confidential.

(3) The court conducting the proceedings is bound to remind the persons stated in paragraph 1 of this Article that they are exempt from testifying before their examination or as soon as the court finds out about their relation to the defendant. The reminder and the answer shall be entered in the record.

(4) A minor who due to his age and mental development is unable to understand the meaning of the right to exemption from testifying cannot testify as a witness, but the information obtained from him through expert persons, relatives or other persons who have been in contact with him can be used as evidence.

(5) A person entitled to refuse to testify in respect of one of the defendants shall be exempted from the duty to testify in respect of other defendants as well if his testimony cannot be, by the nature of the matter, limited only to other defendants.

(6) Persons referred to in paragraph 1 subparagraphs 1 to 5 of this Article cannot refuse to testify in relation to criminal offences of criminal law protection of children and minors referred to in Article 117 of the Juvenile Court Act.

Article 245

If a person who may not testify as a witness (Article 233) has given testimony or if a person who is exempted from testifying as a witness (234) has given testimony and was not reminded of his right to exemption from testifying or has not expressly waived this right, or if the reminder and the waiver were not noted in the record or if a minor who is unable to

understand the meaning of the right to exemption from testifying has testified or if the witness's testimony was obtained by force, threat or other similar forbidden means, the court's decision may not be based on such witness testimony.

Article 246

A witness is not under duty to answer particular questions if it is likely that he would thus expose himself or his close relative to serious disgrace, considerable material damage or criminal prosecution. The court shall remind a witness of this right.

Article 247

(1) A witness shall be called to appear by the service of a written summons indicating the first name, surname and occupation of the person summoned as well as the time and place of appearance, the criminal case involved, the note that he is being summoned as a witness, and the instruction on the consequences of an unjustified failure to appear.

(2) The summoning of a minor under sixteen years of age as a witness shall be exercised through his parents or legal guardian unless this is not possible due to a need for urgent action or due to other circumstances.

(3) Witnesses who cannot appear at court due to their old age, illness or serious physical disabilities may give testimony in their place of residence.

Article 248

(1) Witnesses shall be examined separately and in the absence of other witnesses. The witness shall be bound to give his answers orally.

(2) The witness shall first be asked about his first name and surname, his father’s first name, occupation, place of residence, place of birth, age and his relation to the defendant and the injured person.

(3) Thereafter, the witness shall be informed of his duty to tell the truth and not to withhold anything and that giving false testimony is a criminal offence. The witness shall be instructed that he is not bound to answer the questions referred to in Article 246 of this Act and this instruction shall be entered in the record.

(4) When a minor is examined, especially if the minor is the injured person, special care shall be taken lest the examination have a harmful effect on the mental condition of the minor.

(5) When a witness examined is a child who has been injured by the criminal offence, the examination is carried out with the assistance of a psychologist, educator or other expert person. An investigating judge shall order that the examination be video-taped and audio-taped. The examination shall be carried out in the absence of the judge and parties in a room where the child is situated in such a manner that the child can be questioned by the parties through the investigating judge, psychologist, educator or other expert person.

(6) Witnesses who cannot appear in court due to their old age, illness, serious physical disabilities or mental condition may give testimony in their dwellings or on any other premises where they are situated. These witnesses may be questioned by means of technical devices for video and audio taping. If required so by the condition of a witness, the

questioning shall be organized in such a manner that the witness can be questioned by the parties without their presence in a room where the witness is situated. For the purpose of carrying out such a questioning, an expert person referred to in Article 211 paragraph 8 of this Act shall be appointed, and if necessary a physician expert witness or any other expert person or an interpreter.

Article 249

(1) If it is likely that by giving a testimony or by answering any individual question, a witness might expose himself or any other person close to himself to a serious danger to life, health, physical integrity, freedom or property of considerable volume (witness in danger), the witness is entitled to refuse to disclose information referred to in Article 248 paragraph 2 of this Act, to refuse to answer to individual questions or to refuse to testify at all until witness protection measures have been provided.

(2) Witness protection includes a special manner of questioning a witness and of his participation in the proceedings as well as measures for protecting the witness and other persons close to the witness not participating in the proceedings.

(3) Special manners of questioning a witness and of his participation in the proceedings are stipulated in this Act, unless otherwise prescribed by a special act, and they can be implemented even before the commencement of the proceedings.

(4) Protection of a witness and other persons close to the witness not participating in the proceedings is prescribed by a special act.

Article 250

(1) If a witness declares his refusal to testify in accordance with Article 249 paragraph 1 of this Act during the examination, an investigating judge shall interrupt the examination if he believes that the existence of the threat referred to in Article 249 paragraph 1 of this Act is justified, and he shall immediately notify the State Attorney thereof by delivering him a copy of the record with the request to submit within three days at the latest a written justifiable suggestion of implementing a special manner of examination and participation of the witness in the proceedings and a report on measures for the protection of the witness and other persons close to the witness not participating in the proceedings if needed. If the investigating judge finds the refusal to testify not to be justified, he will proceed in accordance with Article 257 of this Act.

(2) If the State Attorney fails to submit the suggestion of implementing a special manner of examining the witness within the period specified in paragraph 1 of this Article, or if the State Attorney suggests that the witness be examined in accordance with general rules, the investigating judge shall request the panel referred to in Article 20 paragraph 2 of this Act to make a decision.

(3) In the case referred to in paragraph 2 of this Article, the panel is obliged to make a decision within the period of three days at the latest.

Article 251

(1) The suggestion for implementing a special manner of participation and examination of a witness in the proceedings is submitted by the State Attorney to the investigating judge in a

sealed cover with the note "Witness in Danger – Confidential". The State Attorney shall specify in his suggestion a special manner of participation in the proceedings and a special manner of examination of a witness suggested as well as the reasons for suggesting them. Enclosed to the suggestion, the State Attorney shall also submit measures of protecting a witness and other persons close to the witness not participating in the proceedings that have been accepted by an authority carrying out the witness protection program as well as information relating to the beginning of their implementation.

(2) The State Attorney can submit the suggestion from paragraph 1 of this Article to the investigating judge before the first examination of the witness.

(3) If, after giving consideration, the investigating judge finds the suggestion submitted by the State Attorney not to be justified, the investigating judge shall request the panel referred to in Article 20 paragraph 2 of this Act to make a decision thereupon.

(4) If the investigating judge accepts the suggestion submitted by the State Attorney, he shall determine a pseudonym for a witness as well as a special manner of examination and of participation in the proceedings. The parties and the witness have the right to appeal against a ruling of the investigating judge.

(5) In cases referred to in paragraphs 3 and 4 of this Article, the panel is obliged to make a decision within the period of three days at the latest.

(6) Data about the witness to be examined and to participate in the proceedings in a special manner shall be put by the investigating judge into a special and sealed cover and submitted for safeguarding to an authority carrying out the witness protection program. This shall be entered in the file under the pseudonym of the witness in danger. The sealed cover containing data on the witness can exceptionally be requested from the authority carrying out the witness protection program and opened only by a second instance court when making a decision on an appeal against a verdict. The note shall be written on the cover stating that it has been opened and the names of the panel members who were familiarized with its contents shall be listed. After the members of the panel have become familiar with its contents, the cover shall be sealed again and returned to the authority carrying out the witness protection program.

(7) After the ruling on the special manner of participating and examining a witness comes into force, the investigating judge shall schedule a hearing and deliver a summons to the witness in a way to ensure that the measures of protecting the witness and other persons close to the witness are carried out.

Article 252

(1) The investigating judge shall examine a witness in a manner stipulated in the ruling referred to in Article 251 paragraph 4 of this Act. If the special manner of examining a witness refers only to non-disclosure of information referred to in Article 248 paragraph 2 of this Act, the examination shall be carried out under a pseudonym. As regards its other parts, the examination of a witness shall be carried out pursuant to the general provisions of this Act relating to the examination of witnesses.

(2) If the special manner of examination and participation of a witness in a proceedings refers not only to non-disclosure of information referred to in Article 248 paragraph 2 of this Act but also to the concealing of the witness's appearance, the examination shall be carried out by

using technical devices for video and audio taping. The technical devices shall be operated by an expert person referred to in Article 211 paragraph 8 of this Act. The appearance and the voice of the witness shall be changed during the examination. In the course of the examination, the witness shall be situated in a room separated from the room in which the investigating judge and other persons attending the examination are situated.

(3) After the examination has been completed, the witness shall sign the record with the pseudonym in the presence of the investigating judge and the court reporter only.

(4) Persons to whom information on the witness referred to paragraphs 1 and 2 of this Article has been disclosed in any capacity are obliged to keep such information confidential.

Article 253

The verdict and the establishment of the unlawfulness of the evidence cannot be based only on the testimony of a witness given in a manner prescribed by the provisions of Articles 249 to 252.

Article 254

(1) After general questions, the witness shall be called upon to state everything known to him about the case, whereupon questions shall be directed to him in order to check, complete or clarify his testimony. It is forbidden to deceive the witness or to ask leading questions.

(2) The witness shall always be asked to indicate the source or his knowledge regarding the testimony given.

(3) Witnesses may be confronted if their testimonies do not correspond regarding the relevant facts. The confronted witnesses shall be separately examined on any circumstance where their testimonies do not correspond, and their answer shall be entered in the record. Only two witnesses may be confronted at a time.

(4) The injured person testifying as a witness shall be asked whether he intends to assert a claim for indemnification in the criminal proceedings.

(5) Taking into consideration his age, physical and mental health or other justifiable interests, the witness may be examined by means of technical devices for the transmission of image and sound, so that the parties may examine him without being present in the room where the witness is located. If necessary, for such a type of examination the expert referred to in Article 198 paragraph 8 of this Act may be appointed.

Article 255

If the witness testifies through an interpreter or if the witness is deaf or mute, he shall testify pursuant to Article 231 of this Act.

Article 256

The witness may be required to swear that he shall tell the truth. The oath reads:

Conscious of the significance of my statement and my legal liability thereto I do solemnly swear to tell the truth, the whole truth and, nothing but the truth, and not to withhold anything which has come to my knowledge.

Article 257

(1) If a duly summoned witness fails to appear and does not justify his absence, or if he leaves without authorization or justifiable reason the place where he is to testify, the court may issue a warrant for compulsory appearance and may impose a fine to an amount not exceeding 20,000.00 Kuna.

(2) If a witness appears and after being informed of the consequences, refuses to testify without legal cause, he may be fined to an amount not exceeding 20,000.00 Kuna and if thereafter he still refuses to testify, he may be imprisoned. Such imprisonment may last until the witness agrees to testify or until his testimony becomes unnecessary or until the proceedings are concluded, but not longer than one month.

(3) The panel of the county court (Article 20 paragraph 2) shall decide on an appeal against a ruling ordering a fine or imprisonment. An appeal against a ruling ordering imprisonment does not stay its execution.

(4) Military persons, members of the police authorities and members of the judicial police may not be imprisoned, but their competent command shall be informed of their refusal to testify in order to impose a punishment therefore.

5. Identification

Article 258

(1) If it is necessary to determine whether a defendant or a witness knows a person or an object, he shall be asked first do describe them and to state the signs by which they differ, and only then they will be shown to him for identification, together with other to him unknown persons i.e. together with similar objects if possible. The same procedure shall be applied when identification is based on other senses (sound, touch, smell, etc.).

(2) Before the identification procedure, the defendant shall be informed as referred to in Article 237 paragraph 2 of this Act, and the witness as referred to in Article 248 paragraph 3 of this Act.

(3) The identification of the defendant shall be entered in the record and the joint photo of all persons lined-up shall be enclosed.

Article 259

(1) If a justified fear exists that the life or physical safety of an identifying person or of other persons close to the identifying person might be jeopardized, or if a justified fear exists that the person who is being identified might influence the identification procedure, the authority carrying out the identification procedure shall arrange the procedure in such a manner that the person who is being identified can neither hear nor see the identifying person.

(2) Citizens are obliged to personally participate in the identification procedure upon having been summoned and to give objects needed for the identification, unless they have a

justifiable reason for the exemption from this duty. If a citizen refuses to participate in the identification procedure without a justifiable reason, he shall be fined to an amount not exceeding 20,000.00 Kuna.

6. Judicial View

Article 260

A judicial view shall be conducted when facts in the proceedings are to be determined or explained by own senses or by aids.

Article 261

(1) In order to test the evidence examined or to determine the facts relevant for the clarification of the matter, the authority conducting the proceedings shall order a reconstruction of the event which shall be conducted in a manner to repeat the acts or situations in the conditions as, according to the evidence examined, they existed at the time when the event took place. If the acts or situations were described differently in the testimony of certain witnesses or in the defendant's statement, the event shall, as a rule, be reconstructed according to each of them.

(2) The reconstruction shall not be conducted in a manner offensive to public order or moral considerations or which endangers the life or health of people.

(3) If necessary, certain evidence may be examined again in the course of the reconstruction.

Article 262

(1) The authority conducting the judicial view or the reconstruction may ask for the assistance of an expert in the techniques of police science, traffic science or another expert who shall, if necessary, undertake measures to discover, secure and describe traces, execute the necessary measurements and recordings, make sketches, or collect other information.

(2) An expert witness may also be summoned to be present at the judicial view or reconstruction if his presence would be useful for an expert's findings and opinion.

7. Taking Fingerprints and Prints of other Body Parts

Article 263

(1) If it is necessary to determine whose fingerprints or prints of other body parts are found on individual objects, such prints can be taken from persons who are likely to have been in the position of getting into contact with these objects.

(2) The prints referred to in paragraph 1 of this Article can be taken without the consent of the person who is likely to have been in the position of getting into contact with individual objects.

(3) The prints referred to in paragraph 1 of this Article are to be taken in accordance with the rules prescribed for the procedure of taking fingerprints as stipulated in Article 189 of this Act.

8. Expert Witness Testimony

Article 264

Expert witness testimony shall be ordered when, with a view to determine or assess relevant facts it is necessary to obtain findings and the opinion of a person who has the necessary expert knowledge.

Article 265

(1) Expert witness testimony shall be ordered by a written order of the authority conducting the proceedings. The order shall state the facts relevant for the expert witness testimony and the name of the expert witness. The order shall be delivered to the parties as well.

(2) If a specialized institution exists for a certain type of expert testimony, or the expert testimony may be given from a state authority, such expert witness testimony, particularly a complex one, shall as a rule be assigned to such an institution or such an authority. The institution or the authority shall appoint one or more experts who shall give expert witness testimony.

(3) When the authority conducting the proceedings appoints an expert witness, this authority shall as a rule appoints one expert witness, and if the expert testimony is a complex one - two or more.

(4) If for certain expert witness testimony, permanent expert witnesses are appointed by the court, other expert witnesses may be appointed only when there is a danger in delay, or when permanent expert witnesses are not available or if other circumstances so require.

Article 266

(1) A person summoned as an expert witness is bound to appear and to give his findings and opinion.

(2) If a duly summoned expert witness fails to appear and does not justify his absence, or if he refuses to give expert testimony, he may be fined to an amount not exceeding 20,000.00 Kuna, and in the case of an unjustified absence may be brought by force before court.

(3) The panel of the county court (Article 20 paragraph 2) shall decide on an appeal against a ruling imposing a fine.

(4) Regardless of the provision of paragraph 2 of this Article, the authority conducting the proceedings may request that the expert witness state a term within which he shall submit his expert findings and opinion, and to assume the obligation to pay the amount referred to in paragraph 2 of this Article into budget funds if he fails this term. The record containing the statement of the expert witness on this obligation is an enforceable document.

Article 267

(1) A person who may not testify as a witness or is exempted from testifying may not be appointed as an expert witness, and neither may a person against whom the offence was committed, and if such a person is appointed, the court's decision may not be based on his findings or opinion.

(2) A reason for the disqualification of an expert witness applies also to the person who is employed by the same state authority or by the same employer as the defendant or the injured person.

(3) As a rule, a person examined as a witness shall not be appointed as an expert witness.

(4) When an interlocutory appeal is allowed against a ruling rejecting the challenge of an expert witness (Article 39 paragraph 4) this appeal shall stay the giving of the expert testimony if there is no danger in delay.

Article 268

(1) Before the commencement of the expert witness testimony, the expert shall be asked to thoroughly examine the object of his testimony, to indicate accurately everything he notices or discovers and to give his opinion without bias and in conformity with the rules of the pertinent science or skill. He shall be given a special instruction that giving false expert witness testimony is an offence.

(2) An expert witness may be asked to swear to give truthful testimony in the manner prescribed in Article 242 of this Act. A permanent court expert witness shall only be reminded of the oath he has already given.

(3) The authority conducting the proceedings shall direct the giving of the expert testimony, show to the expert witness the objects to be examined, ask him questions and when necessary require explanations on the expert findings and opinion.

(4) The expert witness may receive explanations and may be permitted to inspect the files. The expert witness may propose that some evidence be examined or objects and information be obtained which are of relevance to his findings and opinion. If present at the judicial view, reconstruction or other investigatory action, the expert witness may propose the clarification of certain circumstances or that the person who is testifying be asked certain questions.

Article 269

(1) The expert witness shall examine the objects of the expert testimony in the presence of the authority conducting the proceedings as well as the court reporter, except if lengthy examinations are necessary for the expert testimony or if the examinations are carried out in an institution or state authority, or if this is required by moral considerations.

(2) If it is necessary for the purposes of giving expert witness testimony to carry out an analysis of some substance, only part of this substance if possible shall be made available to the expert witness while the rest shall be secured in a necessary quantity in case further analyses are needed.

Article 270

The findings and opinion of the expert witness shall be immediately entered in the record. The expert witness may be permitted to submit subsequently the findings and opinion in writing within a term determined by the authority conducting the proceedings.

Article 271

(1) If the expert witness testimony is assigned to a specialized institution or state authority, the authority conducting the proceedings shall give a reminder that the person referred to in Article 250 of this Act may not participate in giving expert witness testimony nor persons for whom reasons exist for disqualification from expert testimony prescribed in this Act and shall give information on the consequences of giving false testimony.

(2) The materials necessary for expert witness testimony shall be made available to the specialized institution or state authority and if necessary the court shall further proceed according to the provisions of Article 251 paragraph 4 of this Act

(3) The specialized institution or state authority shall deliver the written expert findings and opinion signed by the persons who made the expert witness testimony.

(4) The parties may request the head of the specialized institution or state authority to give them the names of the experts who will provide the expert testimony.

(5) The provisions of Article 251 paragraphs 1 and 3 of this Act shall not apply when the giving of expert witness testimony is assigned to a specialized institution or state authority. The authority conducting the proceedings may request explanations regarding the given expert findings and opinion from the specialized institution or authority.

Article 272

(1) The record on the expert witness testimony or the written expert findings and opinion shall state who gave the testimony as well as the occupation, educational background and field of specialization of the expert witness.

(2) When the expert witness testimony is given in the absence of the parties, they shall be notified that the expert testimony was given and that they may inspect the record on the expert witness testimony or the written expert findings and opinion.

Article 273

If data in the findings of experts do not correspond on essential points, or if their findings are ambiguous, incomplete or contradictory within themselves or with the investigated circumstances, and if these anomalies cannot be removed by a re-examination of the experts, the same or other expert witnesses shall provide new expert witness testimony.

Article 274

If the opinion of the expert witness contains contradictions or other anomalies, or if grounds for suspicion exist that the opinion is inaccurate, and these drawbacks or suspicion may not be removed by a re-examination of the expert witness, the opinion of other expert witnesses shall be requested.

Article 275

(1) A post-mortem examination and autopsy shall be performed whenever there is suspicion, or if it is evident, that death was caused by an offence or that it is related to the commission of

an offence. If the corpse has already been buried, an exhumation shall be ordered for the purpose of its post-mortem examination and autopsy.

(2) While performing an autopsy, necessary measures shall be taken to establish the identity of the corpse and for this purpose the external and internal physical characteristics of the corpse shall be described in detail.

Article 276

(1) When the giving of expert witness testimony is not assigned to a specialized institution, the post-mortem examination and autopsy of a corpse shall be carried out by one physician and if necessary two or more physicians who, if possible, are specialized in forensic medicine. The investigating judge shall direct the giving of expert witness testimony and shall enter the findings and opinion of the expert witness in the record.

(2) A physician who treated the deceased person may not be appointed as an expert witness. He may testify as a witness at the autopsy in order to clarify the course and circumstances of a disease.

Article 277

(1) In their expert opinions the expert witnesses shall specifically state the immediate cause of death, what brought it about, and when the death occurred.

(2) If an injury is found on the corpse, it shall be determined whether such an injury was inflicted by another person, and if so, by what instrument, in which way, how long before the death occurred, as well as whether such an injury was the cause of death. If several injuries are found on the corpse, it shall be established which particular injury caused the death and if there is more than one lethal injury, which particular one or which injuries in combination were the cause of death.

(3) In the case referred to in paragraph 2 of this Article it shall be specifically determined whether death was caused by the very type and the general nature of the injury or due to the idiosyncrasy or the peculiar condition of the injured body or due to accidental circumstances under which the injury was inflicted.

(4) In addition, it shall be determined whether medical assistance provided in time would have prevented death.

Article 278

(1) While performing an examination and autopsy of a fetus, its age in particular shall be determined as well as its capability of independent existence outside the womb and the cause of death.

(2) While performing an examination and autopsy of a new born child, it shall be determined in particular whether it was born alive or dead, whether it was capable of sustaining life, how long it lived and the time and cause of death.

Article 279

(1) If there is suspicion of poisoning, the suspicious substances found in the corpse or elsewhere shall be sent for expert witness testimony to an institution which performs toxicological examinations.

(2) When examining suspicious substances, the expert witness shall separately determine the type, the quantity and the effects of the poison discovered, and if the substances examined were taken from the corpse, the quantity of the poison used shall, if possible, also be established.

Article 280

(1) Expert witness testimony on bodily injuries shall in principle be based on an examination of the injured person and if this is neither possible nor necessary it shall be based on medical documentation or other data stated in the files.

(2) After accurately describing the injuries, the expert witness shall give his expert opinion particularly on the type and severity of each injury and their overall effect regarding the nature or particular circumstances of the case, as well as on what effect these injuries usually have and what effect they had in this specific case, and by what instrument they were inflicted and in which way.

Article 281

(1) If suspicion arises that the defendant's mental capacity is excluded or diminished, that the defendant has committed a criminal offence due to the defendant's addiction to alcohol or drugs or that the defendant is unfit to stand trial due to mental health difficulties, the expert witness testimony on the basis of the psychiatric examination of the defendant shall be ordered.

(2) By a court ruling, the defendant may be committed to a relevant medical institution by force if it is in the opinion of the expert witness necessary for the purpose of the expert witness testimony referred to in paragraph 1 of this Article. During the investigation, the ruling on the commitment shall be rendered by the investigating judge, whereas after the indictment has been submitted it shall be rendered by the panel referred to in Article 18 paragraph 4, i.e. Article 20 paragraph 2 of this Act. During the trial the commitment shall be ordered by the panel or by a single judge conducting the trial. The commitment cannot exceed the period of one month. In the case that a new expert witness testimony is needed, the commitment may be repeatedly ordered only once.

(3) If the expert witness testimony has been ordered for the purpose of assessing the defendant's mental capacity, the expert witness shall establish whether the defendant had any mental illness, temporary mental disorder, mental deficiency or any other severe mental health difficulty at the time the offence was committed and he shall determine the nature, type, degree and duration of the mental health difficulty as well as give his opinion on what effect such a mental condition had on the defendant's ability to understand the meaning of his acts or to control his own will.

(4) If the expert witness establishes that the defendant was not able to understand the meaning of his acts or to control his own will at the time an illegal act was committed, the expert witness shall give his opinion on the degree of probability that the same person might commit a more serious criminal offence due to his mental health difficulties, and if the expert witness

establishes that the defendant's ability to understand the meaning of his acts and to control his own will was reduced, he shall give his opinion on whether there exists any danger that the reasons for such a condition might encourage him to commit a new criminal offence in the future.

(5) If the expert witness testimony has been ordered for the purpose of assessing the defendant's fitness to stand trial, the expert witness shall establish whether the defendant has any mental health difficulty and he shall give his opinion on whether the defendant is able to understand the nature and the purpose of the criminal proceedings, to understand individual procedural steps taken in the proceedings and their consequences, to communicate with the defence counsel and to instruct the defence counsel.

(6) If a defendant who is in detention is sent to a medical institution, the investigating judge shall notify this institution of the grounds for the detention in order to undertake the measures necessary for securing the purpose of the detention.

(7) The time spent in a medical institution shall be included in the term of the detention or in the punishment if one is imposed.

Article 282

(1) A physical examination of the suspect or defendant shall be carried out without his consent if it is necessary to determine facts relevant to the criminal proceedings. A physical examination of other persons may be carried out without their consent only if it is necessary to determine whether there is a certain trace or consequence of an offence on his body.

(2) Taking blood samples and other medical procedures performed according to the rules of medical science in order to analyze and determine other relevant facts for the proceedings may be carried out even without the consent of the suspect or defendant provided no detrimental consequences for his health ensue therefrom.

(3) The procedures referred to in paragraphs 1, 2 and 5 of this Article shall be ordered by the court having jurisdiction except in the case referred to in Article 196 paragraph 2 of this Act.

(4) It is not permitted to apply any medical intervention on the suspect, defendant or witness or to give them such medication which may influence their will when giving their statement.

(5) The investigating judge may order the taking of confidential medical samples for an analysis of the basic genetic material of a living person without his consent if there are grounds for suspicion that he committed an offence punishable by imprisonment as the principle punishment as well as if a probability exists that by such analysis data important for successfully conducting proceedings shall be obtained. The analysis can be carried out in the manner prescribed and permanently supervised by the Ministry of Health. The data thus obtained may be deposited and kept for a term of ten years after the conclusion of the proceedings if the defendant is finally convicted of a serious offence against life and limb (Chapter X of the Criminal Code), against sexual freedom and sexual morality (Chapter XIV of the Criminal Code), against marriage, family and youth (Chapter XVI of the Criminal Code) or against people's health (Chapter XVIII of the Criminal Code).

(6) The Minister of Health shall issue regulations on the procedure for obtaining the samples referred to in paragraphs 2 and 5 of this Article and on the supervision of the taking, depositing, processing and keeping of the data referred to in paragraph 5 of this Article.

Article 283

1) When it is necessary to give expert testimony on business records, the authority conducting the proceedings shall indicate to the expert witnesses the direction and the scope of the expert examination as well as the facts and circumstances to be determined.

(2) If an expert examination of the business records of a commercial company or other legal entity requires that they first put their book-keeping in order, then the expenses incurred in such an operation shall be borne by the commercial company or the legal entity.

(3) The authority conducting the proceedings shall render a ruling on putting the book-keeping in order on the ground of a substantiated written report from the expert witnesses appointed to give expert witness testimony on business records. The ruling shall state the amount of money which the commercial company or other legal entity is bound to pay to the court as an advance for the expenses of putting the book-keeping in order. This ruling is not appealable.

(4) After the book-keeping has been put in order, the authority conducting the proceeding shall render a ruling, based on the report of the expert witness, determining the amount of expenses for putting the book-keeping in order and ordering that this amount be borne by the commercial company or other legal entity. The commercial company or other legal entity may appeal regarding the grounds for the decision on expenses and regarding the amount of the expenses assessed. The panel referred to in Article 20 paragraph 2 of this Act shall decide on the appeal.

(5) The expenses, if the full amount was not paid in advance, shall be paid to the authority which paid the expenses and the fee for the expert witnesses.

CHAPTER TWENTY

INDICTMENT AND OBJECTION TO THE INDICTMENT

Article 284

(1) After the investigation is completed, or when according to the provisions of this Act an indictment without investigation may be preferred (Article 191), the proceedings before the court may continue only on the basis of the indictment preferred by the State Attorney or the subsidiary prosecutor.

(2) The provisions dealing with the indictment and an objection to the indictment shall correspondingly be applied to a private charge except if the indictment is preferred for offences dealt with in a summary proceeding.

Article 285

(1) The indictment shall contain.

1) the name and surname of the defendant with his personal data (Article 225) and the unique citizen register number for a national of the Republic of Croatia, as well as data

about whether and since when he has been in detention or whether he is at large, and if he was released before the indictment was preferred how long he had been detained;

2) a description of the factual aspects of the act which constitute the elements of the definition of the offence, the time and the place of the commission of the offence, the object upon which and the instrument by means of which the offence was committed as well as other circumstances necessary for the accurate description of the offence;

3) the statutory name of the offence together with the provisions of the Criminal Code which according to the prosecutor's motion are to be applied;

4) an indication of the court before which the trial shall be held;

5) the motion on the evidence to be examined at the trial, stating the names of witnesses and expert witnesses, files which need to be read and objects which serve to determine facts;

6) a statement of reasons describing the state of the matter, according to the results of the investigation, indicating the evidence necessary to determine the relevant facts, presenting the defendant's defence and the prosecutor's stance on the defendant's defence.

(2) If the defendant is at large, the indictment may contain a motion to order detention and if the defendant is in detention, a motion to release him

(3) Several offences or several defendants may be joined in one indictment only it according to the provisions of Article 29 of this Act, a jointer is possible and if a single judgement may be rendered.

Article 286

(1) The indictment shall be submitted to the court having jurisdiction in as many copies as there are defendants and defence counsels and one copy for the court.

(2) Immediately upon receiving the indictment, the president of the panel before which the trial shall be held shall determine whether the indictment is properly drawn up (Article 285) , and if he finds that it is not, he shall return it to the prosecutor to correct the errors within a term of three days. For justifiable reasons, upon the prosecutor's motion, the panel may extend this term. If the subsidiary prosecutor or private prosecutor fails to comply within the said term, it shall be deemed that he desists from prosecution and the proceedings shall be discontinued.

Article 287

(1) If a private charge is submitted and no investigation has been conducted, except in the case where a private charge is submitted for an offence dealt with in a summary proceeding, the president of the panel at first instance shall, if he considers that no grounds for prosecution exist due to the circumstances referred to in Article275 subparagraphs 1 and 3 oft his Act, refer the case to the panel of the municipal court (Article 18 paragraph 3) or the panel of the county court (Article 20 paragraph 2) for disposition.

(2) The private prosecutor is entitled to take an appeal from a ruling of the panel.

Article 288

(1) An indictment shall be served without delay to a defendant who is at large, and to a defendant who is in detention within a term of twenty-four hours from receipt.

(2) If detention is ordered against a defendant by a ruling of the panel (Article 111), the indictment shall be served on the defendant at the moment of his arrest, together with the ruling ordering detention.

(3) If a defendant who is deprived of liberty is not kept in the prison of the court before which the trial will be held, the president of the panel shall order the immediate transfer of the defendant to that prison, where the indictment shall be served on him.

Article 289

(1) A defendant is entitled to submit an objection to an indictment within a term of eight days from the day it is served. At the time the indictment is served the defendant shall be informed of such a right.

(2) An objection to an indictment may be submitted by a defence counsel without the defendant's special authorization, but not against his will. The objection may be withdrawn up until the time a decision on the objection is reached.

(3) The defendant may waive the right to submit an objection to an indictment.

Article 290

(1) A belated objection and an objection submitted by an unauthorized person shall be dismissed by a ruling of the president of the panel before which the trial is to be held. The panel of the county court referred to Article 18 paragraph 3 or the panel of the county court referred to in Article 20 paragraph 2 of this Act shall decide on the appeal from this ruling.

(2) If the president of the panel does not dismiss the objection pursuant to the provision of paragraph 1 of this Article, he shall refer it with the files to the panel of the municipal court referred to in Article 18 paragraph 3 or to the panel of the county court referred to Article 20 paragraph 2 of this Act, which shall decide on the objection at the session. If an offence subject to public prosecution is involved, the State Attorney shall be notified of the panel session as shall the defendant and his defence counsel if they have so requested in the objection. The absence of the parties shall not prevent the session from being held.

(3) At the panel session the parties may give explanations concerning their allegations except those concerning the provision of Article 286 paragraph 4 of this Act. The State Attorney may extend the indictment unless there are no conditions for submitting the indictment without investigation as referred to in Article 204 of this Act, and the panel may agree with his motion for a conditional withdrawal from prosecution as referred to in Article 184 paragraph 1 of this Act.

Article 291

(1) If the panel does not dismiss the objection as belated or impermissible, it shall assume an examination of the indictment.

(2) When, upon an objection, the panel determines that there are errors or discrepancies in the indictment (Article 285) or in the proceedings themselves, or that the factual description of the criminal offence does not correspond to the previously gathered evidence, or that a better clarification of the facts of the case is necessary in order to examine the grounds for the indictment, it shall return the indictment to the prosecutor and order the errors to be removed or the investigation to be supplemented or carried out. The prosecutor is bound within a term of three days from the day the decision of the panel is conveyed to him to submit a properly drafted indictment or to submit a request to supplement or to carry out an investigation. For justifiable reasons, upon a prosecutor's request, the panel may prolong this term. If the subsidiary prosecutor or private prosecutor fails to comply with the said term it shall be deemed that he desists from prosecution and the proceedings shall be discontinued. If the State Attorney fails to comply with this term, he is bound to notify the higher State Attorney of the reasons for this failure. In the case that the indictment has been returned for the purpose of removing errors, the prosecutor shall return such supplemented or properly drafted indictment to the panel to decide on its soundness.

(3) If the panel determines that some other court has jurisdiction over the offence which is the object of the charge, it shall declare that the court to which the indictment was submitted lacks jurisdiction and after the ruling becomes final it shall refer the case to the court having jurisdiction.

(4) If the panel determines that the files contain records or information referred to in Article 78 of this Act it shall render a ruling on their exclusion from the files. An interlocutory appeal may be filed to this ruling. After the ruling becomes final and before he refers the case to the president of the panel in order to schedule the trial, the president of the panel referred to in Article 20 paragraph 2 of this Act shall provide that the excluded records and information be sealed in a separate cover and be handed over to the investigating judge for the purpose of keeping them apart from other files. The excluded records and information may not be examined or used in the proceedings.

Article 292

When deciding on an objection to an indictment, the panel shall discontinue the proceedings if it finds that:

1) the act the defendant is charged with is not a criminal offence;

2) circumstances excluding the defendant's culpability exist;

3) the request or the motion of the authorized prosecutor or the approval of the authorized person which is required by law is tacking, or that other circumstances barring prosecution exist;

4) insufficient evidence exists for reasonable doubt to arise that the defendant committed the offence he is charged with, or that the contradictions in the obtained evidence are such that the rendering of a judgement of conviction at the trial would be clearly impossible.

Article 293

(1) When deciding on an objection to an indictment submitted by the State Attorney on the basis of Article 204 paragraph 6 of this Act, or on the request of the president of the panel regarding this indictment (Article 299), or when deciding on a disagreement between the

president of the first instance panel with the private charge in the cases referred to in Article 287 paragraph 1 of this Act, the panel shall, by a ruling, dismiss the indictment or private charge if it determines that the reasons referred to in Article 292 subparagraphs 1 to 3 of this Act exist, provided that the investigatory actions were completed and for the reason stated in subparagraph 4 of that Article.

(2) If upon an objection to the indictment of the State Attorney from paragraph 1 of this Article or upon the request of the president of the panel regarding this indictment (Article 299) an investigation was conducted, and the panel thereafter determines that the reasons referred to in Article 214 of this Act exist, it shall decide by a ruling that the proceedings are to be discontinued.

Article 294

When rendering a ruling referred to in Article 291 paragraph 3 and Articles 292 and 293 of this Act, the panel shall not be bound by the legal qualification of the offence stated by the prosecutor in the indictment.

Article 295

(1) If the panel does not render any of the rulings referred to in Articles 291, 292 and 293 of this Act, it shall reject the objection as unfounded.

(2) By the same ruling the panel shall decide on motions for a jointer and severance of the proceedings.

Article 296

If only some of several defendants submit an objection to an indictment and if the reasons on which the court adjudicates that the charge is unfounded are beneficial to some of the defendants who failed to submit the objection, the panel shall proceed as if they also submitted such an objection.

Article 297

All the decisions of the panel rendered regarding an objection to an indictment must be substantiated, but in such a manner as not to predetermine the decision on issues which shall be decided before the trial court.

Article 298

(1) An appeal may be taken from a panel decision referred to in Article 291 paragraph 3 of this Act and an appeal may be taken by the prosecutor and the injured person from decisions referred to in Articles 292 and 293 of this Act. Other decisions of a panel concerning an objection to an indictment are not appealable.

(2) If only the injured person files an appeal to the ruling of the panel and if this appeal is satisfied, it shall be deemed that he assumes prosecution by taking the appeal.

Article 299

(1) If an objection to an indictment is not submitted or if it is rejected, the panel referred to in Article 18 paragraph 4 or Article 20 paragraph 2 of this Act may, upon the request of the president of the panel before which the trial is to be held, decide on every issue which under this Act is to be decided upon an objection.

(2) The president of the panel may make the request referred to in paragraph 1 of this Article up within the period of fifteen days from the elapse of the period of time referred to in Article 289 paragraph 1 of this Act in the case the objection has not been submitted or from the coming into force of the ruling referred to in Article 290 paragraph 1 and Article 291 paragraph 1 of this Act.

(3) The provisions referred to in Article 290 paragraph 2 and Articles 291 to 298 of this Act shall be respectively applied when deciding on the request referred to in paragraph 1 of this Article.

Article 300

An indictment shall become final when an objection is rejected, and if an objection is not submitted or is dismissed, on the day when the panel, deciding on the request from the president of the panel (Article 299), agrees with the indictment, and if such a request does not exist, on the day when the president of the panel schedules the trial, or after the lapse of the term referred to in Article 299 paragraph 2 of this Act.

B. The Trial and Judgment

CHAPTER TWENTY-ONE

PREPARATIONS FOR THE TRIAL

Article 301

(1) The president of the panel shall order the day, hour and place of the trial by an order.

2) The president of the panel shall schedule the trial at the latest within a term of one month from the day the indictment was received in the court, and if the request referred to in Article 299 of this Act is submitted, the trial shall be scheduled as soon as possible after taking into account the panel's decision. If within this term no trial is scheduled, the president of the panel shall inform the president of the court of the reasons thereof. The president of the court shall undertake the measures to schedule the trial as appropriate.

(3) If the president of the panel determines that the files contain records or information referred to in Article 78 of this Act, he shall render a ruling on their exclusion from the files before the scheduling of the trial and when the ruling becomes final he shall seal them in a separate cover and hand them over to the investigating judge for the purpose of keeping them apart from other files.

Article 302

(1) The trial shall be held in the seat of the court and in the courthouse.

(2) If in certain cases the premises of the courthouse are considered inappropriate for the trial, the president of the court may order the trial to be held in another building.

(3) The trial may also be held in another location within the jurisdictional territory of the court having jurisdiction, provided that the president of the higher court gives his approval following a substantiated request from the president of the court.

Article 303

(1) The accused and his defence counsel, the prosecutor, the injured persons and their legal guardians and legal representatives and the interpreter if necessary shall be summoned to appear at the trial. The witnesses and the expert witnesses proposed by the prosecutor in the indictment or by the defendant in the objection to the indictment shall also be summoned to the trial, except those whose examination at the trial is considered by the president of the panel to be unnecessary. The prosecutor and the accused may repeat at the trial the motions not accepted by the president of the panel.

(2) As regards the contents of the summons for the accused and the witnesses, the provisions of Articles 88 and 247 of this Act shall be applied. When defence is not mandatory, the accused shall be informed in a summons of his right to retain a defence counsel, but if the defence counsel fails to appear at the trial or if the accused retains a defence counsel at the trial, a continuance should not be granted.

(3) A summons shall be served on the accused in such a manner that between it being served and the day of the trial there is sufficient time to prepare a defence, with that period in no event being shorter than eight days. Upon the request of the accused or the prosecutor, and with the accused's consent, this term may be shortened.

(4) The injured person who is not summoned to appear as a witness shall be instructed in the summons that the trial shall be held in his absence and that his statement on a claim for indemnification shall be read. The injured person shall be instructed that his failure to appear shall be considered as unwillingness to assume prosecution in the case where the charge is withdrawn by the State Attorney.

(5) The subsidiary prosecutor and the private prosecutor shall be instructed in a summons that if they fail to appear at the trial without sending their legal representative they shall be deemed to have desisted from prosecution.

(6) The accused, the witness and expert witness shall be instructed in the summons about the consequences of failure to appear at the trial (Articles 322 and 325).

Article 304

(1) Even after the scheduling of the trial, the parties and the injured person may request that additional witnesses or expert witnesses be summoned to the trial and that other evidence be obtained. The parties must state in their substantiated request which facts are to be proven and by what specific evidence.

(2) If the president of the panel rejects a motion to obtain additional evidence, such a motion may be repeated during the trial.

(3) The president of the panel may order the obtaining of additional evidence for the trial even if there is no motion by the parties.

(4) The parties shall be informed of the decision ordering additional evidence to be obtained before the commencement of the trial.

Article 305

If the trial is expected to last for a longer period of time, the president of the panel may request the president of the court to assign one or two judges or lay judges (alternate judge or alternate lay judge) to attend the trial in order to replace members of the panel in case of their inability to perform their duties.

Article 306

(1) If it transpires that a witness or expert witness summoned to the trial but not yet examined will be unable to appear at the trial due to a long-term illness or some other impediment, he may be examined in the place where he resides.

(2) A witness or expert witness shall give testimony and as appropriate be sworn in by the president of the panel or a judge who sits as a member of the panel, or his testimony shall be given to the investigating judge of the court on whose jurisdictional territory the witness or expert witness resides.

(3) The parties and the injured person shall be notified about the time and place of the hearing if this is possible regarding the urgency of the proceedings. If the defendant is in detention, the president of the panel shall decide on the need for his presence at the hearing. When the parties or the injured person are present at the hearing they shall have the rights under Article 198 paragraph 7 of this Act.

Article 307

The president of the panel may, for important reasons upon the motion of the parties or by virtue of the office, re-schedule the day of the trial to a later date.

Article 308

(1) The president of the panel shall discontinue proceedings by a ruling and serve it to the parties and the injured person and he shall notify thereof the persons who were summoned to the trial if:

1) the prosecutor desists from indictment before the commencement of the trial,

2) the existence of obstacles to the continuation of the proceedings referred to in Article 370 items 2, 4, 5 and 6 of this Act has been indisputably established.

(2) In the case of discontinuation of proceedings referred to in paragraph 1 item 1 of this Article, the president of the panel shall instruct the injured person of his right to assume the prosecution (Article 55).

(3) The president of the panel shall interrupt proceedings by a ruling if in the cases referred to in Article 184 paragraph 1 of this Act the State Attorney before the commencement of the

trial declares that he conditionally desists from prosecution and after the State Attorney has desisted from indictment, the proceedings shall be discontinued by the ruling referred to in paragraph 1 of this Article.

CHAPTER TWENTY-TWO

THE TRIAL

1. Public Nature of the Trial

Article 309

The trial shall be held in open court.

(2) Any person of age may be present at the trial.

(3) Persons attending the trial must not carry arms or dangerous instruments, except the defendant's guard who may be armed.

Article 310

From the opening of the session to the conclusion of the trial the panel may at any time, by virtue of the office or on the motion of the parties but always after hearing their statements, exclude the public from the whole or part of the trial if this is necessary for:

1) the protection of the security and defence of the Republic of Croatia;

2) keeping the confidentiality of information which would be jeopardised by a public hearing;

3) keeping public order and peace;

4) the protection of the personal or family life of the defendant, the injured person or of another procedural participant;

5) the protection of the interests of a minor.

Article 311

(1) Exclusion of the public does not relate to the parties, the injured person, their representatives or the defence counsel.

(2) The panel may grant permission that certain officials, scholars or public figures, and upon the defendant's request, his spouse or common-law spouse or close relatives, be present at a trial closed to the public.

(3) The president of the panel shall instruct the persons attending a closed trial that they are bound to keep information learned at the trial confidential, and that failure to do so is an offence.

Article 312

(1) The panel shall decide on the exclusion of the public by a ruling which shall be substantiated and publicly pronounced.

(2) An appeal from the ruling referred to in paragraph 1 of this Article does not stay its execution.

2. Direction of the Trial

Article 313

(1) The president, members of the panel and the court reporter as well as alternate judges and lay judges shall sit continuously at the trial.

(2) The president of the panel is bound to determine whether the panel is composed pursuant to law and whether reasons exist for the disqualification of members of the panel and the court reporter (Article 36 paragraph 1).

Article 314

(1) The president of the panel shall direct the trial, interrogate the accused, examine the witnesses and expert witnesses and call on members of the panel, the parties, the injured person, the legal guardians, the legal representatives, the defence counsel and the expert witnesses to make statements.

(2) It shall be the duty of the president of the panel to take care that the case is thoroughly discussed and that matter which delays the proceedings without contributing to the clarification of the case is removed.

(3) The president of the panel shall decide on the motions of the parties if the panel does not decide on them.

(4) The panel shall decide on a motion about which the parties disagree and about concordant motions of the parties which are not accepted by the president of the panel. The panel shall also decide on an objection to measures undertaken by the president of the panel in directing the trial.

(5) The panel's rulings shall always be pronounced and entered in the record of the trial along with a concise statement of reasons, unless a special appeal against the ruling is permitted.

Article 315

The trial shall be carried out in the order prescribed in this Act, but the panel may order that the regular course of the trial be altered due to special circumstances arid particularly due to the number of defendants, the number of offences or the scope of evidence. The accused who challenges the propriety of the charge or some counts of the charge (Article 337 paragraph 7) may not be interrogated before the presentation of evidence is completed.

Article 316

(1) The maintenance of order and the protection of the court's dignity shall be the duty of the president of the panel. Immediately after the opening of the session, he may remind those attending the trial to behave properly and not to disturb proceedings. The president of the panel may order a search of persons attending the trial.

(2) The panel may order that all those attending the trial as an audience is removed from the courtroom if the measures for maintaining order prescribed in this Act cannot provide for the trial to be held unimpeded.

(3) Photographic, film, television and other recordings with technical devices may not be made in the courtroom. In exceptional cases, the president of the county court may permit a photographic recording and the president of the Supreme Count of the Republic of Croatia may permit a television or other recording of a particular trial. If recording is permitted, the panel may at the trial decide for justifiable reasons that certain parts of the trial may not be recorded.

(4) The parties and the defence counsel may make an audio recording of a trial which is held in open court. Personal data about the defendant, injured person or witnesses which are recorded are confidential and may be used only in the course of the criminal proceedings.

Article 317

(1) If the accused, defence counsel, injured person, legal guardian, legal representative, witness, expert witness, interpreter or other person attending the session disturbs order or fails to comply with the directions of the president of the panel concerning the maintenance of order, the president of the panel shall warn him or punish him by a fine not exceeding 20,000.00 Kuna. The panel may order the accused to be removed from the courtroom, while other persons may not only be removed but also punished by a fine not exceeding 20,000.00 Kuna.

(2) By virtue of a panel’s decision, the accused may be removed from the courtroom for a limited period of time, and if he disturbs order repeatedly for the whole duration of the presentation of evidence. Before the presentation of evidence is completed, the president of the panel shall call in the accused and inform him about the course of the trial. If the accused continues to disturb order and offend the dignity of the court the panel may remove him again from the courtroom. In such a case, the trial shall be concluded in the absence of the accused and the judgment shall be communicated to him by the president of the panel or by a judge who sits as a member of the panel in the presence of the court reporter.

(3) The panel may deny further defence or representation at the trial to a defence counsel or legal representative who, after being punished, continues to disturb order, and in such a case the party shall be called on to retain another defence counsel or legal representative. If it is impossible for the defendant or the injured person to do so immediately without prejudicing their interests or if in the case of mandatory defence another defence counsel or legal representative may not be immediately assigned, the trial shall be recessed or the court shall order a continuance of the trial, while the defence counsel or the legal representative shall be ordered to bear the expenses incurred by the recess or the continuance.

(4) If the court removes the subsidiary prosecutor or the private prosecutor or their legal guardian from the courtroom, the trial shall continue in their absence, but the court shall inform them that they may retain a legal representative.

(5) If the State Attorney or person who is his deputy disturbs order, the president of the panel shall notify thereof the higher State Attorney and he may recess the trial and request the higher State Attorney to appoint another person to represent the prosecution.

(6) After punishing an attorney or attorney apprentice who disturbs order, the court shall notify the Croatian Bar Association thereof.

Article 318

(1) A ruling imposing punishment is subject to appellate review. The panel may revoke such a ruling.

(2) Other decisions concerning the maintenance of order and the direction of the trial are not subject to appellate review.

Article 319

(1) If the accused commits an offence at the trial$_1$ the court shall proceed according to the provision of Article 359 of this Act.

(2) If someone else commits an offence while the trial court is in session, the panel may recess the trial and upon the prosecutor's oral charge proceed to try this offence at once, or it may try this offence after the conclusion of the pending trial.

(3) If grounds for suspicion exist that a witness or expert witness has given a false testimony at the trial, he shall not be immediately tried for that offence. In such a case, the president of the panel may order a separate record to be drawn on the statement of the witness or expert witness which shall be delivered to the State Attorney. This record shall be signed by the witness or expert witness examined.

(4) If the perpetrator of an offence subject to public prosecution may not be tried immediately or if a higher court has jurisdiction over the case, the State Attorney having jurisdiction shall be notified thereof for further action.

3. Prerequisites for Holding a Trial

Article 320

The president of the panel shall open the session and announce the case which is the subject of the trial and the composition of the panel. Thereafter, he shall determine whether all summoned persons have appeared, and if not, shall check whether the summonses were duly served and whether those absent have justified their absence.

Article 321

(1) If the State Attorney or his deputy does not appear at a trial scheduled upon an indictment from the State Attorney, the court shall order a continuance.

(2) If a subsidiary prosecutor or a private prosecutor dots not appear at a trial although duly summoned, and their legal representative also fails to appear, the panel shall discontinue the proceedings by a ruling.

Article 322

(1) If the duly summoned accused fails to appear at a trial without justifying his absence, the panel shall order for him to be brought to the court by force. If bringing him cannot be effected immediately, the panel shall order a continuance of the trial and that the accused be brought to court for the next session. If the accused justifies his absence before being brought to court, the president of the panel shall revoke the warrant for compulsory appearance. The panel may order the accused to bear the expenses incurred by the continuance of the trial.

(2) In proceedings for an offence punishable by imprisonment for a term of less than five years, the trial may be held without the presence of the accused who was duly summoned and who made his statement on the indictment pursuant to Article 337 paragraph 4 of this Act if, according to the state of the matter, the sentence expected is imprisonment for a term of less than six months, a fine, a suspended sentence, or a security measure of the prohibition to operate a motor vehicle or of seizing an object obtained by the commission of an offence or the confiscation of pecuniary benefit. In such a case, another or graver sentence or measure may not be imposed without a new summons and the presence of the accused.

(3) At a trial held in accordance with the provision from paragraph 2 of this Article, the defence counsel may give statements for the benefit of the accused and receive information on all issues related to the conducting of the proceedings and the deciding on the subject matter of the case.

(4) When because of the accused or his defence counsel not having appeared at the trial there exist no preconditions for the trial to take place, the president of the panel may order the present witness or expert witness to be examined without the trial taking place if the prosecution and the defence do not raise an objection against that.

(5) The accused may be tried in his absence only if he has fled or is otherwise not amenable to justice, provided that particularly important reasons exist to try him although he is absent.

(6) Upon the prosecutor's motion, the panel shall render a ruling on a trial in the absence of the accused. An appeal shall stay the execution of the ruling if the ruling has been rendered contrary to the motion of the prosecutor.

Article 323

If a duly summoned defence counsel does not appear at the trial without informing the court of the reason for his absence as soon as he learns about this reason, or if the defence counsel leaves the session without authorization, the accused shall be called on to immediately retain another defence counsel. If the accused fails to do so, the panel may decide to hold the trial without a defence counsel if, after examining all circumstances, it considers that the absence of the defence counsel shall not prejudice his defence. A ruling thereon with a statement of reasons shall be entered in the record of the trial. This ruling is not appealable. If in the case of mandatory defence the accused cannot immediately retain another defence counsel, or if the court cannot appoint a defence counsel without prejudicing the defence, the court shall order a continuance of the trial.

Article 324

(1) If the accused himself has caused the situation or the condition due to which he was prevented from appearing at a trial, the trial shall take place in his absence.

(2) The panel, i.e. a single judge shall render a ruling on the trial taking place in the absence of the accused after having heard the expert witness testimony. The ruling may be rendered before the beginning of the trial. An appeal shall not stay the execution of the ruling.

(3) If the accused does not have a defence counsel, the defence counsel shall be appointed for him as soon as the ruling on the trial taking place in the absence of the accused has been rendered.

(4) When the reasons preventing the accused from appearing at the trial cease to exist, the president of the panel shall inform the accused about the course and the contents of the trial.

(5) If, according to the provisions of Articles 322 and 323 of this Act, conditions for a continuance of the trial exist due to the absence of the accused or due to his not being fit to stand trial, or due to the absence of the defence counsel, the panel may nevertheless decide to hold the trial if, according to the evidence in the file, it is obvious that a judgment rejecting the charge shall be rendered.

Article 325

(1) If a duly summoned witness or expert witness fails to appear without justified reason, the panel may issue a warrant to bring him to court by force immediately.

(2) The trial may commence even in the absence of a summoned witness or expert witness. In such a case the panel shall decide in the course of the trial whether the trial should be recessed or postponed due to the absence of the witness or expert witness.

(3) The panel may punish by a fine not exceeding 20,000.00 Kuna a duly summoned witness or expert witness who fails to justify his absence and it may order that he be brought in for the following session. The panel may revoke its decision on punishment for a justifiable reason.

4. Continuance and Recess of the Trial

Article 326

(1) Except for cases specified in this Act, the panel shall render a ruling ordering a continuance of a trial if it is necessary to obtain new evidence or if the court determines in the course of the trial that the accused is unfit to stand trial or if other obstacles exist to the successful completion of the trial.

(2) Whenever possible, a ruling on the continuance of a trial shall state the date and hour of the resumption of the trial. In the same ruling the panel may order evidence to be obtained which is likely to disappear over a lapse of time.

(3) The ruling from paragraph 2 of this Article is not subject to appellate review.

Article 327

(1) When a continuance is ordered for a trial, the trial must recommence if the members of the panel have changed.

(2) If the trial for which a continuance is ordered is held before the same panel, it shall resume and the president of the panel shall summarize the course of the previous trial, but in such a case the panel may order that the trial recommence.

(3) If the trial is held before another president of the panel it shall recommence and all evidence shall be examined again. The same applies in the case where the continuance is set for more than two months later.

Article 328

(1) Except for cases specified in this Act, the president of the panel may order a recess of the trial for purposes of rest or at the end of the working day or to obtain certain evidence within a short period of time or for preparation for the prosecution or defence.

(2) A recessed trial shall always continue before the same panel.

(3) If the trial may not be resumed before the same panel, or if a recess lasts for more than eight days, the provisions of Article 326 of this Act shall apply.

Article 329

If, in the course of a trial held before a panel composed of one judge and two lay judges, or two judges and three lay judges, the facts upon which the charge is founded indicate that an offence is involved for which a panel composed of two judges and three lay judges or three judges and four lay judges has jurisdiction, the panel shall be enlarged and the trial shall recommence.

5. Record of the Trial

Article 330

(1) A record shall be made of actions in the trial which shall contain an essential summary of the entire course of the trial.

(2) The president of the panel may, upon a motion of the parties, order the course of the trial to be recorded by technical devices. In such a case, the record of the trial is comprised of the transcript of the audio tape of the trial as well as of the record of the course of the trial as stipulated in Article 332 paragraph 5 of this Act. The trial audio tape transcript shall be made within a term of three working days, the transcript shall be reviewed and authenticated by the president of the panel and added to the file as a constituent part of the record of the trial.

(3) Regarding audio or other technical recording of the course of the trial, the provisions of Article 316 paragraphs 3 and 4 of this Act shall be applied. The president of the panel shall give authorization for such recording.

(4) The president of the panel may, upon a motion of the parties or by virtue of the office, order that statements he considers particularly important be entered in the record verbatim.

(5) If necessary, and especially if a statement is entered in the record verbatim, the president of the panel may order that this part of the record be read aloud immediately, and it shall always be read if the party, defence counsel or the person whose statement is entered in the record so requires.

Article 331

(1) The record must be completed with the closing of the session. The record shall be signed by the president of the panel and the court reporter.

(2) The parties are entitled to review the completed record and its supplements, to make remarks regarding the contents and to request a correction of the record.

(3) Corrections of incorrectly written names, numbers or other obvious errors in writing may be ordered by the president of the panel upon a motion of the panties or the person examined or by virtue of the office. Other corrections and supplements of the record may be ordered only by the panel.

(4) Remarks and motions of the parties regarding the record, as well as corrections and supplements made to the record, shall be noted in the supplement to the completed record. The reasons for not sustaining certain motions and remarks shall also be noted in the supplement to the record. The president of the panel and the court reporter shall sign the supplement to the record.

Article 332

(1) The introduction of the record shall state the name of the court before which the trial is held, the time and place of the session, the first name and surname of the president of the panel, members of the panel, court reporter, prosecutor, accused, defence counsel, injured person and his legal guardian or legal representative, interpreter, the offence under consideration, and whether the trial is open or closed to the public.

(2) The record shall in particular contain data on the indictment which was read or orally presented at the trial and on whether the prosecutor amended or extended the charge, what motions were filed by the parties, and what decisions were rendered by the president of the panel or the panel, which evidence was examined, whether records or other briefs were read or the recordings reproduced and what remarks the parties made regarding the records or briefs read or the recording reproduced. If the trial was closed to the public, the record must state that the president of the panel reminded those present of the consequences of unauthorized disclosure of the confidential information they learned at the trial.

(3) The statements of the accused, witness and expert witness shall be entered in the record in such a manner as to present their essential content. These statements shall be entered in the record only if they contain changes or supplements to their previous statements. Upon a motion of a party, the president of the panel shall order the record of a previous statement to be read in part or in whole.

(4) Upon a motion of a party, the court shall enter in the record a question and answer which the panel rejected as impermissible.

(5) In the record of the trial which is kept simultaneously with audio or other recordings, important statements of the parties, and if necessary, essential parts of statements of the accused, witnesses or expert witnesses shall be entered, if deemed necessary by the president of the panel.

Article 333

(1) The record shall state the entire ordering pant of the judgement (Article 376 paragraphs 3 to 5), along with a note on whether the judgement was pronounced in open court. The ordering part entered in the record of the trial is considered to be the original document.

(2) If the court renders a ruling on detention (Article 102 paragraph 4), this must also be entered in the record.

6. Commencement of the Trial and Introductory Speeches of the Parties

Article 334

(1) When the president of the panel determines that all summoned persons have appeared, or when the panel decides to hold the trial in the absence of some of the summoned persons or when the panel decides to postpone a decision on such issues, the president of the panel shall call on the accused to give his personal data, except data about prior convictions (Article 237), in order to determine his identity.

(2) Data concerning prior convictions and sentences served by the accused shall be read after the presentation of evidence is completed (Article 338 paragraph 4).

Article 335

(1) After the identity of the accused is established, the president of the panel shall direct the witnesses and expert witnesses to designated places where they shall wait until called upon to testify. If necessary, the president of the panel may allow the expert witnesses to remain in the courtroom to follow the course of the trial.

(2) All accused persons shall remain in the courtroom during the whole course of the trial.

(3) If the injured person is present and has not yet submitted his claim for indemnification, the president of the panel shall remind him that he may submit a motion for the realization of such a claim in the criminal proceedings and shall instruct him of the rights stated in Article 55 of this Act.

(4) If the subsidiary prosecutor or private prosecutor has to testify as a witness they shall not be removed from the courtroom.

(5) The president of the panel may undertake measures necessary to prevent collusion between the witnesses, expert witnesses and the parties.

Article 336

(1) The trial begins with the reading of an indictment, private charge or motion to indict.

(2) As a rule the indictment and the private charge shall be read by the prosecutor, but the president of the panel may instead orally present the contents of the indictment preferred by the subsidiary prosecutor or the private charge or the motion to indict. The prosecutor shall be allowed to add his statement to the presentation of the president of the panel.

(3) If the injured person is present, he may give reasons for his claim for indemnification and if he is absent, his motion shall be read by the president of the panel.

Article 337

(1) After the indictment, private charge or motion to indict is read or its contents are orally presented, the president of the panel shall ask the accused if he understands the charge. If the president of the panel is convinced that the accused has not understood the charge, he shall once again present its contents to him in such a manner that it is made understandable for the accused.

(2) The president of the panel shall first instruct the accused according to the provision of Article 4 and, if he has not retained a defence counsel, also according to the provision of Article 5 paragraph 2 of this Act.

(3) Thereafter, the accused shall be asked to enter his plea on each count of the charge. If necessary, the court may recess the trial and schedule a separate hearing for this interrogation.

(4) If the accused pleads guilty to all counts of the charge, the president of the panel shall instruct him that he may give statements on all the circumstances tending to incriminate him and present all facts favourable to him. Thereafter, the accused may be interrogated. The accused shall give his statement in a free presentation, after which he may be interrogated. First the defence counsel shall interrogate him and then the prosecutor. Then the president of the panel and the members of the panel may interrogate the accused in order to fill in gaps, remove contradictions and ambiguities in his statement. The injured person, legal guardian, legal representative, co-accused and witnesses may interrogate the accused directly following the authorization of the president of the panel.

(5) The president of the panel shall forbid a question or an answer to a question already asked if it is considered impermissible (Article 238) or if it is not related to the case. If the president of the panel forbids a certain question to be asked or an answer to be given, the parties may request the panel for a disposition.

(6) The statement of the accused according to the provision of paragraph 4 of this Article does not exempt the court from its obligation to examine further evidence. If the confession of the accused is complete and in accordance with the evidence already gathered, the court shall examine only those pieces of evidence which are related to the decision on the sentence.

(7) If the accused pleads not guilty to all or certain counts of the charge, he shall be interrogated at the end of the presentation of evidence, unless otherwise requested by the accused.

7. Presentation of Evidence

Article 338

(1) Presentation of evidence extends to all facts deemed by the court to be important for a correct adjudication.

(2) The co-accused persons who plead guilty to all counts of the charge shall be interrogated at the beginning of evidence presentation, those who request to be interrogated before the close of all evidence shall be interrogated as soon as requested, whereas those who plead not guilty to all or individual counts of the charge shall be interrogated at the close of all evidence, unless otherwise requested.

(3) The accused who is to be interrogated at the close of all evidence pursuant to the provision of Article 337 paragraph 7 of this Act may participate in the examination of individual pieces of evidence at the trial (judicial view, reconstruction, confrontation, expert witness testimony etc.) before being interrogated.

(4) Other evidence shall be examined in the order determined by the president of the panel. As a rule, the evidence proposed by the prosecutor is examined first, and then the evidence proposed by the defence and in the end the evidence ordered by the panel by virtue of the office.

(5) If the injured person who is present testifies as a witness, his examination shall be carried out before other witnesses give their testimonies.

(6) The data from the criminal register as well as other data about convictions for offences may be read only as the last evidence before interrogation of the accused at the close of all evidence, unless the panel shall make decisions on the measures from Chapter IX.

Article 339

(1) Until the conclusion of the trial the parties and the injured person may propose that new facts be investigated and new evidence be obtained and they may repeat motions already rejected by the president of the panel or the panel.

(2) Well-known facts need not be determined. No motion may be submitted to determine facts whose existence the law presumes to be to the benefit of the accused, but their non-existence may be proved.

(3) The panel may decide to examine evidence which is not proposed by a motion or if such a motion is withdrawn.

(4) A motion to obtain evidence may be rejected:

1) if it relates to evidence obtained in an illegal way, to evidence whose use is not allowed under law or to a fact which may not be proven under law (impermissible motion);

2) if the fact which should be determined according to the motion is already determined or is irrelevant for a decision or if no connection exists between the fact which should be determined and the relevant facts, or if this connection cannot be established for legal reasons (irrelevant motion);

3) if reasons for suspicion exist that some important fact may not be determined with the proposed evidence or that this may be done only with great difficulty, or if this evidence could not be obtained in the previous course of proceedings and it is likely that it will not be possible to obtain it within an appropriate term (inappropriate motion);

4) if it is unclear, incomplete or if, according to the state of the matter determined so far and the actions in the proceedings undertaken by the person who submitted the motion, it is obvious that the motion is intended to significantly delay the proceedings.

(5) A ruling rejecting a motion for the examination of new evidence must be reasoned. The panel may alter or revoke it in the further course of the proceedings.

(6) The provisions of paragraphs 1, 2, 3, 4 and 5 of this Article shall be applied to a motion to perform a judicial view or some other action aimed at direct observation for fact-finding purposes.

Article 340

(1) With regard to the examination of witnesses and expert witnesses at the trial, the provisions dealing with their examination in the investigation shall respectively apply, unless the provisions of this chapter provide otherwise.

(2) A witness who has not been examined shall not be present when evidence is examined.

(3) If a minor is present at the trial as a witness or injured person, he shall be removed from the courtroom as soon as his presence is no longer needed.

Article 341

(1) Before a witness testifies, the president of the panel shall remind him of the duty to present to the court everything known to him relating to the case and warn him that giving false testimony is an offence.

(2) The panel may decide that the witness shall swear according to Article 242 of this Act to tell the truth. If the witness has already given such an oath in the investigation, the court may simply remind him of this oath.

Article 342

(1) Before an expert witness testifies, the president of the panel shall remind him to give his expert findings and opinion to the best of his knowledge and that giving false expert findings and opinion is an offence.

(2) The panel may decide to have the expert witness, before giving his expert testimony, swear to tell the truth. The oath shall be given in a manner corresponding to the manner in which a witness swears to tell the truth (Article 256). The permanent court expert witness shall only be reminded of the oath given.

(3) The expert witness shall present orally at the trial his expert findings and opinion. If before the trial the expert witness has prepared his expert findings and opinion in writing, he may be allowed to read them aloud, in which case his written report shall be enclosed with the record.

Article 343

(1) In the course of testimony given by the witness or expert witness, the parties as well as the president and the members of the panel may ask them questions directly. Unless agreed upon otherwise, the party who proposed the taking of this evidence shall ask the questions first and then the adverse party. Thereafter, the president and the members of the panel shall ask the questions. If the court has ordered the examination of an item of evidence without a motion submitted by the parties, the president of the panel shall ask the questions first, then the members of the panel and at the end the prosecutor, defendant and defence counsel. The injured person, legal guardian, legal representative and expert witnesses may ask questions directly, subject to the authorization of the president of the panel.

(2) The president of the panel shall forbid a question or reject the answer to an already asked question if the question is impermissible (Article 238), or if it does not relate to the case. If the president of the panel forbids a certain question or answer, the parties may request a decision of the panel thereon.

Article 344

If at a previous hearing the witness or expert witness stated facts which he no longer recalls, or if he changes his statement, the previous statement shall be presented to him or he shall be warned of the variance and asked to explain why he is not giving the same statement as previously and if necessary, his previous statement or part of it shall be read.

Article 345

(1) Witnesses and expert witnesses who have testified shall remain in the courtroom unless the president of the panel upon hearing the opinion of the parties releases them or removes them temporarily from the courtroom.

(2) Upon a motion of the parties or by virtue of the office, the president of the panel may order that the witnesses and expert witnesses who have testified be removed from the courtroom and be called on later to testify again in the presence or absence of other witnesses or expert witnesses.

Article 346

(1) If it becomes known at the trial that a summoned witness or expert witness is unable to appear before the court or that his appearance involves considerable difficulties, the panel may, if it deems his statement to be important, order that he gives his testimony to the president of the panel or judge of the panel outside the trial, or that the testimony be given to an investigating judge in whose jurisdictional territory the witness or expert witness resides.

(2) The panel may proceed as mentioned in paragraph 1 of this Article if the examined person is a minor (Article 248 paragraph 5) or witnesses from Article 248 paragraph 6 of this Act. The provisions on special manner of examining witnesses from Article 248 paragraphs 4 and 6 of this Act shall accordingly apply to the examination of such witnesses.

(3) If a child injured by a criminal offence is to be examined on the trial as a witness, the panel may decide that the child be examined by the president of the panel outside the trial. The examination of the child shall always be performed as provided in Article 248 paragraph 5 of this Act.

(4) The provisions of Articles 249 to 253 of this Act shall accordingly apply to the examination of a witness in danger (Article 249 paragraph 1). It is allowed to file a special appeal to the decision of the panel on accepting the proposal of the State Attorney for examination of the witness in danger.

(5) If necessary to carry out a judicial view or reconstruction outside the trial, the panel may decide that it shall be performed by the president of the panel or a member of the panel.

(6) The parties and the injured person shall always be informed when and where the witness shall testify and the judicial view or reconstruction be performed, and they shall be instructed of their right to attend these actions, if not otherwise provided by this Act. If the accused is in

detention, the panel shall decide on the need for his presence at these actions. The parties and the injured person who are present at the performance of these actions have the rights provided in Article 211 of this Act.

Article 347

(1) The records of a judicial view, of a search of a dwelling and a person and of the seizure of objects, of a recognition and taking fingerprints and prints of other body parts, documents, books, files and other briefs as well as technical recordings of evidentiary value shall be read or reproduced at the trial in order to establish their contents, and if so decided by the panel, the contents of the documents and other briefs may be orally summarized. Documents of evidentiary value shall be submitted in their original form.

(2) Objects which may serve to clarify the subject matter may in the course of the trial be shown to the accused and if needed to the witnesses and expert witnesses as well.

Article 348

(1) Records containing the statements of witnesses, the co-accused or already convicted participants in the offence as well as other records and other documents regarding expert witness findings and opinion may be read according to a decision of the panel only in the following cases:

1) if the persons who gave the statements have died, become afflicted with mental disorder or cannot be found, or if their appearance before the court is impossible or involves considerable difficulties due to old age, illness or other important reasons,

2) if the witnesses or expert witnesses refuse to testify at the trial without legal cause,

3) if the witness or expert witness is examined pursuant to the provision of Article 322 paragraph 4 of this Act,

4) if the parties agree that the direct examination of a witness or expert witness who has failed to appear, irrespective of whether summoned or not, be replaced by reading the records of his previous testimony,

5) if the witnesses or expert witnesses have been examined before the same panel and the trial is conducted for the offence for which an imprisonment over eight years is prescribed, or before the same president of the panel and the trial is conducted for the offence for which an imprisonment up to eight years is prescribed, without the consent of the parties.

(2) Records of the previous testimony given by persons exempt from the duty to testify (Article 244) may not be read if those persons have not been summoned to the trial at all or if they have availed themselves of their right to refuse to testify. The panel shall decide that such records be excluded from the files and be kept separately (Article 78). The panel shall proceed in the same way also with respect to other records and information referred to in Article 78 of this Act if a decision on their exclusion has not been rendered previously. An interlocutory appeal may be filed against the ruling on the exclusion, unless the court decides to continue the trial immediately. When deciding on the appeal, the higher court may also order that the new trial be held before the first-instance court before a completely different judicial panel.

(3) After the ruling becomes final, the excluded records and information shall be sealed in a separate cover and handed over to the investigating judge to keep them apart from other files and they may not be examined or used in the proceedings. The exclusion of records and information must be performed before the close of all evidence.

(4) The reasons for reading the record shall be stated in the record of the trial, and when reading the former record, it shall be stated whether the witness or the expert witness swore to tell the truth or whether he had taken an oath previously.

Article 349

In the cases referred to in Articles 344 and 348 of this Act as well as in other cases when necessary, the panel may decide that besides reading the record at the trial, a mechanically recorded interrogation or testimony be reproduced (Article 79) as well.

Article 350

After having heard the testimony of each of the witnesses or expert witnesses and after having read each of the records or other briefs, the president of the panel shall ask the parties and the injured person if they have any comments to make.

Article 351

(1) Before the interrogation of the accused, who, according to the provision of Article 338 paragraph 2 of this Act, is interrogated at the close of the evidence, the president of the panel shall ask the parties whether they have any motions to supplement the presentation of evidence.

(2) If nobody makes a motion to supplement the examination of evidence or if the motion is rejected (Article 339 paragraph 4), the president of the panel shall begin to interrogate the accused.

Article 352

(1) When the accused who is interrogated at the trial deviates from his previous statement, the president of the panel shall warn him of the discrepancy and seek an explanation therefore, and when necessary, he shall read the previous statement of the accused or a part of this statement.

(2) If the accused before being interrogated at the trial does not want to give his statement or answer to an individual question, his previous statements or a part thereof shall be read.

Article 353

The president of the panel shall forbid a question or reject the answer to an already asked question if the question is impermissible (Article 238), or if it does not relate to the case. If the president of the panel forbids a certain question or answer, the panties may request a decision of the panel thereon.

Article 354

(1) When the interrogation of the first accused is completed, the court shall begin to interrogate the other accused, if any. Each accused is entitled to ask questions the other co-accused and to give objections to their statements.

(2) If the statements of certain co-accused differ regarding the same circumstance, the president of the panel may confront the co-accused.

Article 355

The panel may exceptionally decide that the accused be temporarily removed from the courtroom if the co-accused or witness refuses to give a statement in his presence or if the circumstances indicate that they would not tell the truth in the presence of the accused. Upon the return of the accused to the session, the statement of the co-accused or witness shall be read to him. The accused has the right to ask questions of the co-accused or witness and the president of the panel shall ask him whether he has any remarks regarding these statements. If necessary, the court may order a confrontation.

Article 356

The accused may in the course of the trial confer with his defence counsel, but he may not confer with his defence counsel or anybody else about how he shall respond to the questions asked.

Article 357

If the panel, having interrogated the defendant according to the provisions of Articles 352 to 356 of this Act, establishes that no other evidence should be examined, the president of the panel shall announce that the presentation of evidence is completed.

8. Amendments and Extension of the Charge

Article 358

(1) If in the course of the trial the prosecutor establishes that the evidence examined alters the factual situation as described in the indictment, he may until the close of the evidence orally amend the indictment or submit a new one.

(2) The parties may request a recess of the trial for the purpose of the preparation of a new indictment or a new defence.

(3) If the panel allows a recess of the trial for the purpose of the preparation of a new indictment, it shall order the term in which the prosecutor is to prepare a new indictment. A copy of the new indictment shall be served on the accused, but no objection against this indictment is allowed. If the prosecutor fails to submit the indictment within the term ordered, the panel shall continue the trial on the ground of the previous one.

(4) After the amendments, extension or submission of the new indictment, the accused shall give his statement regarding the soundness of the indictment according to the provision of Article 337 paragraph 4 of this Act.

Article 359

(1) If the accused commits an offence while the trial is in progress or if in the course of the trial a previously committed offence by the accused is discovered, the panel shall, as a rule, pursuant to the charge of the authorized prosecutor which may be orally presented, extend proceedings to that offence as well. An objection against this charge is not allowed.

(2) To enable sufficient preparation for a defence, the court may in such a case order a continuance of the trial and may after hearing the statements from the pates decide that the accused shall be tried separately for the offence referred to in paragraph 1 of this Article.

(3) If a higher court has jurisdiction over the offence from paragraph 1 of this Article, the panel shall upon hearing the statements from the prosecutor decide on whether to refer the case presently being tried to the competent higher court as well.

9. Closing Arguments

Article 360

After the presentation of evidence is completed, the president of the panel shall call on the parties, the injured person and defence counsel to present their oral arguments. The prosecutor presents his argument first, and then the injured person, the defence counsel and the accused.

Article 361

In the closing arguments, the prosecutor shall present his assessment of the evidence examined at the trial and thereafter shall present his conclusions about the facts relevant for the decision and his substantiated motion regarding the culpability of the accused, the provisions of the Criminal Code which shall be applied as well as the aggravating and mitigating circumstances which should be taken into account in sentencing. The prosecutor is not entitled to propose the level of punishment, but he may propose that the court order a judicial admonition or suspended sentence.

Article 362

The injured person or his legal representative may in their closing argument make a statement of reasons to support a claim for indemnification and point out the evidence regarding the culpability of the accused.

Article 363

(1) The defence counsel or the accused personally shall in their closing argument present the defence and comment on the statements made by the prosecutor or the injured person.

(2) Following his defence counsel, the accused is entitled to present his closing argument, to state whether he approves of the defence presented by his defence counsel and to supplement it.

(3) The prosecutor and the injured person are entitled to respond to the defence and the defence counsel and the accused are entitled to comment on these responses.

(4) The accused shall always have the last word.

Article 364

(1) The duration of the closing arguments of the parties may not be limited.

(2) (2) The president of the panel may, subject to a previous warning, interrupt a person who in his closing argument offends public order and morality or offends another person or repeats himself or expatiates on obviously irrelevant matters. The record of the trial must give information on the interruption of the closing argument and the reasons for it.

(3) When more than one person represents the prosecution or more than one defence counsel represents the defence, closing arguments may not be repeated. The representatives of the prosecution or defence shall by mutual agreement select the issues about which each shall speak.

(4) After all the closing arguments are completed, the president of the panel is bound to ask whether anyone wishes to make a further statement.

Article 365

(1) If after having heard all closing arguments the panel establishes that no additional evidence need be examined, the president of the panel shall announce that the trial is closed.

(2)Thereupon, the panel shall retire for deliberation and voting for the purpose of rendering a judgement.

CHAPTER TWENTY-THREE

THE JUDGMENT

1. Rendering a Judgment

Article 366

(1) Unless the court in the course of deliberations decides that the trial should be reopened to supplement the proceedings or to clarify certain issues, the court shall render a judgement.

(2) The judgement shall be rendered and pronounced in open court in the name of the Republic of Croatia.

Article 367

(1) The judgement may relate only to the person who is charged and to the act which is the object of the charge as specified in the indictment submitted, amended or extended at the trial.

(2) The court is not bound by the prosecutor's legal qualification of the offence.

Article 368

(1) The court shall found its judgement only on the facts and evidence presented at the trial.

(2) The court is bound to conscientiously assess each piece of evidence individually and in relation to other evidence and on the basis of such assessment to reach a conclusion on whether or not a particular fact has been proved.

2. Types of Judgments

Article 369

(1) By its judgement, the court may either reject the charge, acquit the accused of the charge, or pronounce the accused guilty.

(2) If the charge contains more than one offence, the judgement shall specify whether and for which offence the charge is rejected or whether and for which offence the accused is acquitted or whether and for which offence the accused is pronounced guilty.

Article 370

The court shall render a judgement rejecting the charge:

1) if the court lacks subject matter jurisdiction;

2) if the proceedings were conducted without the request of the authorized prosecutor;

3) if the prosecutor withdrew the charge in the course of the trial;

4) if the required motion or approval for prosecution is lacking, or if the authorized person or state authority withdrew the motion or approval;

5) if the accused has already been convicted or acquitted of the same offence by a final judgement, or if the proceedings against him were discontinued by a final ruling, except in the case of a ruling discontinuing the proceedings referred to in Article 403 of this Act;

6) if the accused has been exempted from prosecution by an amnesty or pardon, or if the period of limitation for the institution of prosecution has expired, or if other circumstances barring prosecution exist.

Article 371

The court shall render a judgement of acquittal:

1) if the act he is charged with is not a criminal offence according to law;

2) if circumstances excluding the culpability exist;

3) if it has not been proven that the accused committed the offence he is charged with.

Article 372

(1) In a judgement of conviction the court shall state:

1) the act for which the accused is found guilty, stating the facts and circumstances which constitute the elements of the definition of the offence as well as those on which the application of certain provisions of the Criminal Code depends;

2) the legal name and description of the offence as well as the provisions of the Criminal Code which were applied;

3) The punishment the accused is sentenced to, or whether the punishment is remitted according to the provisions of the Criminal Code, or whether the punishment of imprisonment is replaced with community service work;

4) the decision on a suspended sentence;

5) the decision on security measures and the confiscation of pecuniary benefit;

6) the decision on including the time spent In detention or served under an earlier sentence;

7) the decision on the costs of the proceedings, on the claim for indemnification and on the publication of the final judgement in the media.

(2) If the accused is sentenced to a fine, the judgement shall state the term within which the fine is to be paid as well as the amount of the daily income and the total number of daily incomes.

(3) When the court imposes a punishment of imprisonment, the accused who is in detention may be ordered by a ruling of the president of the panel to serve the sentence even before the judgement becomes final if he requests so.

3. Pronouncement of Judgment

Article 373

(1) After the court renders a judgement, the president of the panel shall pronounce it immediately. If the court is unable to render a judgement on the same day the trial has concluded, it shall postpone the pronouncement of the judgement for not more than three days and determine the time and place of the pronouncement.

(2) The president of the panel shall, in the presence of the parties, their legal guardians, legal representatives and defence counsel, read out the ordering part of the judgement in open court and briefly state the reasons for such a judgement.

(3) The judgement shall be pronounced even if the party, legal guardian, legal representative or defence counsel is absent. If the accused is absent, the panel may order that he be orally informed of the judgement by the president of the panel or that the judgement only be served on him.

(4) If the trial was closed to the public, the judgement shall always be read out in open court. The panel shall decide on whether and to what extent the pronouncement of the reasons for the judgement shall be closed to the public.

(5) All those present shall rise to listen to the pronouncement of the judgement.

Article 374

(1) After the judgement is pronounced, the president of the panel shall inform the parties of their right to appeal and of their right to respond to an appeal.

(2) If a suspended sentence is imposed on the accused, the president of the panel shall inform him of the meaning of a suspended sentence and on the conditions he has to comply with.

(3) The president of the panel shall instruct the panties that they have to report to the court any change of address until the proceedings are concluded.

4. Drawing up and Serving a Judgment

Article 375

(1) The pronounced judgement shall be issued in writing within a term of one month after its pronouncement. This term shall be prolonged for fifteen days if the trial has lasted longer than three consecutive days, or for a further fifteen days if the trial has lasted longer than eight days and did not have to be reopened pursuant to the provision of Article 310 paragraph 2 of this Act.

(2) The terms for the issuance of a judgement in writing from paragraph I of this Article may exceptionally be prolonged if the president of the panel which rendered the judgement in the criminal case cannot observe them for unforeseen reasons or for reasons beyond his control and if he notifies the president of the court thereof.

(3) The judgement shall be signed by the president of the panel and the court reporter.

(4) A certified copy of the judgement shall be sent to the prosecutor, the accused personally and his defence counsel. If the accused is in detention, certified copies of the judgement shall be sent within terms which are half the time of the terms referred to in paragraph 1 of this Article.

(5) An instruction regarding the right to appeal shall be sent to the accused, private prosecutor and subsidiary prosecutor.

(6) The court shall send a certified copy of the judgement along with an instruction on the right to appeal to the injured person if he is entitled to appeal, to the person whose object was seized by this judgement and to the legal entity against which the court ordered the confiscation of pecuniary benefit. A copy of the judgement shall be sent to the injured person who is not entitled to appeal in the case referred to in Article *56* paragraph 2 of this Act with an instruction on his right to petition for reinstatement to the prior state of affairs. The final judgement shall be sent to the injured person if he so requests.

(7) If, by the application of the provisions for imposing an aggregate sentence for offences committed in concurrence, the court imposes a sentence taking into account the judgements rendered by other courts, a certified copy of the final judgement shall be sent to these courts.

Article 376

(1) A written copy of the judgment shall correspond fully to the judgment which is pronounced. The judgment shall be composed of the introduction, the ordering part, and the statement of reasons.

(2) The introduction of the judgment shall contain: the statement that the judgment is pronounced in the name of the Republic of Croatia, the name of the court, the first name and surname of the president and the members of the panel as well as of the court reporter, the first name and surname of the accused, the offence he is charged with, whether he was present at the trial, the date of the trial, whether the trial was open to the public, the first name and surname of the prosecutor, defence counsel, legal guardian and legal representative present at the trial and the date on which the rendered judgment was pronounced.

(3) The ordering part of the judgment shall contain the personal data of the accused (Article 237 paragraph 1) and the decision declaring the accused guilty of the offence he is charged with or acquitting him of the charge, or rejecting the charge against him.

(4) If the accused is found guilty, the ordering part of the judgment shall contain the necessary information referred to in Article 372 of this Act, and if he is acquitted or the charge is rejected, it shall contain a description of the offence he was charged with and the decision on the costs of the criminal proceedings as well as the decision on the claim for indemnification if such a claim was submitted.

(5) In the case of concurrence of offences, the court shall in the ordering part of the judgment indicate the punishment imposed for each individual offence and after that the aggregate punishment imposed for all the offences committed in concurrence.

(6) The statement of reasons for judgment shall contain the reasons for each count of the judgment.

(7) The court shall indicate indisputable facts and clearly and thoroughly indicate which disputable facts are considered proven or unproven and for what reasons, with special emphasis on the credibility of contradictory evidence, the reasons for which the motions of the parties were rejected, the reasons for its decision not to examine directly a witness or expert witness but to read the written testimony or expert witness findings, and the reasons for its decision on questions of law, particularly regarding the existence of the offence and the culpability of the accused and regarding the application of certain provisions of the Criminal Code to the accused and his offence.

(8) If the accused is sentenced to a punishment, the statement of reasons shall indicate the circumstances the court took into account in fixing the punishment. Particular emphasis shall be given to reasons for the decision that the punishment be reduced or remitted, that the imprisonment be replaced with community service work, or that a suspended sentence or security measure or confiscation of pecuniary benefit be imposed. If the court imposes a fine in daily incomes, the statement of reasons shall indicate the evidence and circumstances relevant for the decision on the amount and number of daily incomes, and its assessment of the personal and financial circumstances of the accused.

(9) If the accused is acquitted, the statement of reasons shall indicate the reasons for such a decision referred to in Article 371 of this Act.

(10) In the statement of reasons for a judgment rejecting the charge, the court shall not discuss the subject matter of the case but shall limit itself only to the reasons for rejecting the charge.

Article 377

When imposing only a fine or suspended sentence on the accused, the court shall not give a statement of reasons in writing if the parties and the injured person have waived their rights to appeal against the judgement.

Article 378

(1) The president of the panel shall correct errors in names and figures and other obvious mistakes in writing and counting, defects in form and discrepancies between the written copy and the original of the judgement by a separate ruling upon the request of the parties or by virtue of the office.

(2) If there is a discrepancy between the written copy and the original of a judgement regarding the data referred to in Article 372 paragraph 1 subparagraphs 1 to 5 and subparagraph 7 of this Act, the ruling on the correction shall be served on the persons referred to in Article 375 of this Act. In such a case, the term for appeal against the judgement begins from the day this ruling, which is not appealable, is served.

C. Proceedings of Judicial Review

CHAPTER TWENTY-FOUR

ORDINARY JUDICIAL REMEDIES

1. Appeal from a Judgment of the Court at First Instance

a) Right to Appeal

Article 379

(1) Authorized persons may take an appeal from a judgement rendered at first instance within a term of fifteen days from the day the copy of the judgement is served.

(2) If the judgement is served on the accused and on his defence counsel (Article 375 paragraph 4), but on different days, the term for appeal shall commence on the later date.

(3) An appeal filed in due time by an authorized person shall stay the execution of the judgement.

Article 380

(1) An appeal may be filed by the parties, the defence counsel and the injured person.

(2) The spouse or common-law spouse of the accused, his linear relative, legal guardian, adoptive parent, adopted child, brother, sister and foster parent may file an appeal to the benefit of the accused. In such a case the term for the appeal shall commence on the day the copy of the judgment is served on the accused or his defence counsel.

(3) The State Attorney may file an appeal to the prejudice or to the benefit of the accused.

(4) The injured person may challenge a judgment only regarding the court's decision on the costs of the proceedings, but if the State Attorney assumes the prosecution from the subsidiary prosecutor, the injured person may file an appeal for all the reasons for which the judgment may be appealed.

(5) An appeal may be filed by a person whose object was seized or from whom pecuniary benefit acquired by the commission of an offence was confiscated as well as by a legal entity to which the confiscation of pecuniary benefit was ordered.

(6) The defence counsel and persons referred to in paragraph 2 of this Article may file an appeal without the special authorization of the accused, but not against his will.

(7) The appeal for the reasons of incorrectly or incompletely established factual situation (Article 383 subparagraph 3) cannot be filed by the accused who pleaded guilty to all counts of the charge or if the judgment was passed pursuant to the provision of Article 203 of this Act, unless the accused became aware of the evidence on the exclusion of illegality or guilt after the judgment was passed.

Article 381

(1) The accused may waive the right to appeal only after the judgement is served on him. The accused may waive his right to appeal before this if the prosecutor and the injured person who is entitled to appeal for all the reasons for which the judgement may be appealed (Article 380 paragraph 4) waive their right to appeal, except if the accused, according to the judgement, shall serve a sentence of imprisonment. The accused may withdraw an appeal already filed until the decision of the appellate court is rendered. The accused may also withdraw an appeal filed by his defence counsel or the person referred to in Article 380 paragraph 2 of this Act.

(2) The prosecutor and the injured person may waive the right to appeal from the moment the judgement is pronounced until the expiry of the term for taking an appeal and they may withdraw an already filed appeal until the decision of the appellate court is rendered.

(3) A waiver and withdrawal of an appeal may not be revoked.

b) Contents of an Appeal

Article 382

(1) An appeal shall contain:

1) the designation of the judgment appealed from,

2) the grounds for challenging the judgment (Article 383),

3) the reasons for the appeal,

4) the motion to vacate or revise the challenged judgment in whole or in part,

5) the signature of the person who files the appeal.

(2) If the accused or other person referred to in Article 380 paragraph 2 of this Act files an appeal and the accused does not have a defence counsel or if the appeal is filed by the injured person, subsidiary prosecutor or private prosecutor without a legal representative, and if the appeal is not composed in accordance with the provisions of paragraph 1 of this Article, the court at first instance shall call on the appellant to supplement within a specified term the appeal with a written brief or orally on the record at that court. If the appellant fails to comply with such a summons, the court shall dismiss his appeal if it does not contain the data referred to in paragraph 1 subparagraphs 2, 3 and 5 of this Article, and if the appeal does not contain the data referred to in paragraph 1 subparagraph 1 of this Article it shall be dismissed if it cannot be established to which judgment it relates. If the appeal is filed to the benefit of the accused, the court shall forward it to the court at second instance provided that it can be established to which judgment it relates, and if it cannot, the court shall dismiss the appeal.

(3) If the appeal is filed by the injured person, subsidiary prosecutor or private prosecutor who has a legal representative or by the State Attorney, and if the appeal does not contain the data referred to in paragraph 1 subparagraphs 2, 3 and 5 of this Article, or if the appeal does not contain the data referred to in paragraph 1 subparagraph 1 of this Article and if it cannot be established to which judgment it relates, the court shall dismiss the appeal. An appeal filed to the benefit of the accused who has a defence counsel shall be referred to an appellate court despite the shortcomings stated if it can be established to which judgment it relates, and if this cannot be established, the court shall dismiss the appeal.

(4) New facts and new evidence may be presented in the appeal but the appellant is bound to indicate the reasons for failing to present them earlier. The accused who completely confirmed the soundness of all counts of the charge may present in his appeal only those new facts and new evidence which are important for the ruling on penalty. When pointing to new facts, the appellant shall present evidence supporting these facts, and when proposing new evidence, he shall state the facts to be proven with this evidence.

c) Grounds for Challenging a Judgment

Article 383

A judgement may be challenged:

1) for substantive violation of the criminal procedure provisions;

2) for violation of the Criminal Code;

3) for erroneous or incomplete determination of the factual situation;

4) in regard to the decision on criminal sanctions, confiscation of pecuniary benefit, costs of criminal proceedings, claims for indemnification as well as the decision to publish the judgement in the media.

Article 384

(1) A substantive violation of criminal procedure provisions exists:

1) if the court was not composed in accordance with the law or if a judge or lay judge who did not participate in the trial or who was disqualified by a final decision participated in the rendering of a judgment,

2) if a judge or lay judge who participated in the trial (Article 36 paragraph 1) should have been disqualified,

3) if the trial was held in absence of a person whose presence at the trial was mandatory under law or if the accused, defence counsel, subsidiary prosecutor or private prosecutor was, contrary to their request, denied the right to use their language at the trial and to follow the course of the trial in their language (Article 7),

4) if the public was excluded from the trial in violation of the law,

5) if the court violated the provisions of criminal procedure related to whether a charge of an authorized prosecutor, a motion of an injured person, or the approval of the authority having jurisdiction exists,

6) if the judgment was rendered by a court which, due to a lack of subject matter jurisdiction, could not render the judgment in this case or if the court incorrectly rejected the charge on the ground of lack of subject matter jurisdiction,

7) if the court by its judgment did not completely decide on allegations set forth in the charge,

8) if the accused who, when asked to enter his plea, pleaded not guilty regarding all or certain counts of the charge (Article 337 paragraphs 3 and 6), without request in terms of Article 338 paragraph 2 of this Act, was interrogated before the presentation of evidence was completed.

9) if the judgment exceeds the charge (Article 367 paragraph 1),

10) if the judgment violates the provisions of Article 398 of this Act,

11) if the ordering part of the judgment is incomprehensible, self-contradictory or contrary to the statement of reasons for judgment, if the judgment fails to contain any reasons or fails to contain reasons relating to the relevant facts or if these reasons are entirely unintelligible or contradictory to a significant degree or if a significant contradiction exists in the relevant facts between what is stated in the statement of reasons for judgment on the contents of certain documents or records on statements given in the proceedings and the documents or records themselves.

(2) A substantive violation of criminal procedure provisions exists if the judgment is founded on evidence referred to in Article 9 paragraph 2 of this Act.

(3) A substantive violation of the provisions of criminal procedure also exists if the court, in the course of the preparation for the trial, or in the course of the trial, or when rendering the judgment, fails to apply or incorrectly applies any of the provisions of this Act or violates a right of the defence at the trial, provided that this influences or could have influenced the rendering of the judgment.

Article 385

A violation of the Criminal Code exists if criminal law is violated regarding the issue of:

1) whether the act for which the accused is being prosecuted constitutes a criminal offence;

2) whether circumstances excluding the culpability of the accused exist;

3) whether circumstances excluding prosecution exist and in particular whether the period of limitation for the institution of prosecution has expired or prosecution is barred due to amnesty or pardon or whether the trial constitutes double jeopardy;

4) whether a law which cannot be applied is applied in respect of the offence charged;

5) whether the court exceeds its statutory power in a decision on a punishment, suspended sentence, judicial admonition or in a decision on a security measure or confiscation of pecuniary benefit;

6) whether provisions on including the time spent in detention or for a previously served sentence are violated.

Article 386

(1) The judgement may be challenged on the ground of erroneous or incomplete determination of the factual situation.

(2) An erroneous determination of the factual situation exists if the court determines a relevant fact wrongly or when the contents of documents, records on evidence examined or technical recordings seriously question the correctness or credibility of the determination of the relevant fact.

(3) An incomplete determination of the factual situation exists if the court fails to determine a relevant fact.

Article 387

(1) The judgment may be challenged in regard to a decision on a punishment, suspended sentence and judicial admonition when the court, in rendering this decision, does not exceed its statutory powers (Article 385 subparagraph 5), but improperly fixes the punishment in the light of aggravating and mitigating circumstances, or when the court applies or fails to apply provisions relating to the reduction of punishment or remission of punishment, or to a suspended sentence or judicial admonition, although grounds therefore exist.

(2) A decision on a security measure or confiscation or pecuniary benefit may be challenged, even though there exists no violation of criminal law referred to in Article 385 subparagraph 5 of this Act, if the court renders this decision incorrectly or does not order a security measure or the confiscation of pecuniary benefit although legal conditions therefore exist. A decision on the cost of criminal proceedings may be challenged for the same reasons.

(3) A decision on the claim for indemnification or on the publication of the judgment in the media may be challenged when the court renders a decision on these issues in violation of the legal provisions.

d) Appellate Proceedings

Article 388

(1) An appeal shall be filed with the court which rendered the judgement at first instance in a sufficient number of copies for the court, the opposing party and the defence counsel to reply thereto.

(2) A belated (Article 402) or impermissible (Article 403) appeal shall be dismissed by a ruling of the president of the panel at first instance.

Article 389

The first instance court shall deliver a copy of the appeal to the opposing party, who may submit a reply. The appeal together with all the files shall be delivered by the court at first instance to the court at second instance, which shall also consider the reply to the appeal received until the session of the panel.

Article 390

(1) When, upon an appeal, the file arrives at the appellate court, the president of the appellate panel shall assign a reporting judge. If an offence subject to public prosecution is involved, the reporting judge shall deliver the file to the State Attorney having jurisdiction, who shall be bound to review it and return it to the court without delay.

(2) When the State Attorney returns the file, the president of the panel shall schedule the session of the panel. The State Attorney shall be notified of the session of the panel.

(3) The reporting judge may, as appropriate, obtain a report on the violations of the criminal procedure provisions from the court at first instance, and may also, through the same court or through the investigating judge from the court in whose jurisdictional territory the action shall be carried out, or in any other way, check the allegations in the appeal regarding new evidence and new facts or obtain the necessary reports or files from other authorities or legal entities.

(4) If the reporting judge determines that the files contain records and information referred to in Article 78 of this Act, he shall deliver the files to the court at first instance before the session of the appellate panel is held in order for the president of the panel at first instance to render a ruling on their exclusion from the file, and when the ruling becomes final he shall seal them in a separate cover and hand them over to the investigating judge for the purpose of keeping them apart from other files.

Article 391

(1) The accused and his defence counsel, subsidiary prosecutor or private prosecutor who, within the term for appeal or for a reply to an appeal, requested that they be notified of the session or proposed that a trial be held before the appellate court, shall be notified of the panel session. The president of the panel or the panel may decide that the parties be notified of the panel session, even if they have not so requested, if their presence would be of benefit for the clarification of the case.

(2) If the accused is in detention or serving a sentence and has a defence counsel, his presence shall be provided only if the president of the panel or the panel considers it expedient.

(3) The session of the panel shall begin with the report of the reporting judge on the facts of the case. The panel may request from the parties present at the session necessary explanations on the appeal allegations. The parties may propose that certain files be read in order to supplement the report and may, subject to the approval of the president of the panel, give necessary explanations of their positions stated in the appeal or the reply to the appeal, without repeating what the report contains.

(4) The session may be held in the absence of the parties who were duly summoned, and if the accused did not report to the court changes of residence or domicile, the panel session may be held although he was not informed of the session.

(5) The court may close the session to the public only subject to the conditions prescribed in this Act (Articles 309 to 311).

(6) The record of the panel session shall be enclosed with the files from the courts at first and second instance.

(7) The rulings referred to in Articles 402 and 403 of this Act may be rendered even without the notification of the parties of the panel session.

Article 392

(1) The appellate court shall render a decision either at the session of the panel or at a trial.

(2) The appellate court shall decide at the session of the panel whether to hold a trial.

Article 393

(1) A trial before an appellate court shall be held only if necessary to examine new evidence or to repeat already examined evidence due to an erroneous or incomplete determination of the factual situation, and if justifiable reasons exist not to remand the case to the court at first instance for a new trial.

(2) The following persons shall be summoned for trial before a court at second instance: the accused, his defence counsel, the prosecutor, the injured person, the legal guardians and legal representatives of the injured person, the subsidiary prosecutor, private prosecutor, as well as witnesses and expert witnesses if the court decides that they shall be examined.

(3) If the accused is in detention, the president of the panel of the appellate court shall take necessary steps to have the accused present at the trial.

(4) If the subsidiary prosecutor or the private prosecutor fails to appear at the trial before the appellate court, the proceedings shall not be discontinued but the trial shall be conducted in their absence.

Article 394

(1) A trial before an appellate court shall begin with the report of the reporting judge, who shall present the facts of the case without giving his opinion on whether the appeal is founded.

(2) Upon a motion or by virtue of the office, the judgement or part of the judgement to which the appeal relates shall be read out and, if appropriate, the record of the trial as well.

(3) Thereafter, the appellant shall be called onto substantiate his appeal and the adverse party to reply to him. The accused and his defence counsel shall always have the last word.

(4) The parties may present new evidence and facts at the trial.

Article 395

Except as otherwise provided for in Articles 389 to 394 of this Act, the provisions on a trial before a court at first instance shall be correspondingly applied to the proceedings before an appellant court.

e) Scope of Appellate Review

Article 396

(1) A court at second instance shall confine its review of the judgment to the part which is challenged by the appeal and to the grounds for which it is challenged (Article 383). The court shall always by virtue of the office review:

1) whether there is a violation of the criminal procedure provisions referred to in Article 384 paragraph 1 subparagraphs 1, 5, 6, 8 to 11, paragraph 2 of this Article and whether the trial was, in violation of the provisions of this Act, held in the absence of the accused and his defence counsel,

2) whether the Criminal Code was violated to the prejudice of the accused.

(2) If the appeal filed to the benefit of the accused does not contain data referred to in Article 382 paragraph 1 subparagraph 3 of this Act, the court at second instance shall confine itself to the review of the violations stated in paragraph 1 subparagraphs 1 and 2 of this Article and to the review of the decision on punishment, security measures and the confiscation of pecuniary benefit (Article 387).

(3) Upon an appeal of the prosecutor, the judgment at first instance may also be vacated or revised to the benefit of the accused.

Article 397

The violation referred to in Article 384 paragraph 1 subparagraph 2 of this Act may be cited in the appeal only if the appellant was unable to present this violation in the course of the trial or if he presented it but the court at first instance did not take it into account.

Article 398

If only an appeal to the benefit of the accused is taken, the judgement may not be modified to his prejudice.

Article 399

An appeal on the ground of an erroneous or incomplete determination of the factual situation or a violation of the Criminal Code, taken to the defendant's benefit, shall include an appeal from the decision on a criminal sanction and on the confiscation of pecuniary benefit.

Article 400

If the court at second instance, upon anybody's appeal, determines that the reasons for which it rendered a decision to the benefit of the accused are also beneficial to a co-accused who did not appeal or did not appeal in this respect, it shall proceed by virtue of the office as if such an appeal was filed.

f) Decisions of a Court at Second Instance on Appeal

Article 401

(1) A court at second instance may, at the session of the panel or upon a trial, dismiss an appeal as belated or impermissible, or reject an appeal as unfounded and affirm the judgement at first instance, or vacate this judgement and remand the case to the court at first instance for retrial and anew decision, or revise the judgement at first instance.

(2) The court at second instance shall decide in one decision on all the appeals against the same judgement.

Article 402

Upon finding that an appeal was taken after the legal term for an appeal had expired, such an appeal shall be dismissed by a ruling as belated.

Article 403

Upon finding that an appeal was taken by a person unauthorized to take an appeal or by a person who waived his right to appeal or who withdrew his appeal or that the appeal is not permissible under law, such an appeal shall be rejected by a ruling as unfounded.

Article 404

When it establishes that the reasons for an appeal are lacking and that the violations of law referred to in Article 379 paragraph 1 of this Act do not exist, the court at second instance shall by a judgement reject the appeal as unfounded and affirm the judgement at first instance.

Article 405

(1) When satisfying an appeal or by virtue of the office, a court at second instance shall vacate the judgment at first instance by ruling and remand the case for retrial if it establishes a substantial violation of the criminal procedural provisions, except in cases referred to in Article 407 paragraph 1 of this Act or if it considers that, for reasons of an erroneously and incompletely determined factual situation, a new trial should be held before the court at first instance.

(2) The judgment at first instance may not be vacated to the prejudice of the accused for reasons referred to in Article 384 paragraph 1 subparagraph 8 of this Act.

(3) A court at second instance may order that a new trial before the court at first instance be held before a completely different panel.

(4) A court at second instance may only partially revise the judgment at first instance if certain parts of the judgment may be separated without causing prejudice to correct adjudication.

(5) If the accused is in detention, a court at second instance shall review whether the reasons for detention still exist and render a ruling on the prolongation or vacation of detention and immediately send it to the court at first instance. This ruling is not subject to appellate review.

Article 406

If, while reviewing an appeal, the court at second instance determines that it has subject matter jurisdiction over the case as a court at first instance, it shall vacate the judgement at first instance, remand the case to its panel having jurisdiction and notify the court at first instance thereof.

Article 407

(1) Upon an appeal or by virtue of the office, the court at second instance shall revise the judgement at first instance by a judgement if it establishes that the relevant facts were correctly determined in the judgement at first instance and that, regarding the factual situation determined and by the correct application of law, a different judgement should have been rendered and, taking the state of the matter into consideration, in the case of violations referred to in Article 384 paragraph I subparagraphs 5, 9 and 10 of this Act.

(2) If, due to the reversal of the judgement at first instance, conditions are met for ordering or vacating detention on the ground of Article 105 paragraph 5 and Article 108 paragraph 4 of this Act, the court at second instance shall render a separate ruling thereon, which is not subject to appellate review.

Article 408

(1) In the statement of reasons for its judgement or for its ruling, the court at second instance shall assess the allegations in the appeal and state the violations of law which it took into account by virtue of the office.

(2) When the judgement at first instance is vacated due to substantial violations of the criminal procedure provisions, the statement of reasons shall indicate which provisions were violated and what these violations were.

(3) When the judgement at first instance is vacated due to an erroneous or incomplete determination of the factual situation, the defects in determining the factual situation shall be stated, and in particular, the defects regarding the decision on the motions of the parties to obtain and examine certain evidence (Article 322), as well as why new evidence and facts are important for rendering a correct decision.

Article 409

(1) The court at second instance shall return all files to the court at first instance, together with such numbers of copies of its decision as required for delivery to the parties and other persons concerned.

(2) If the accused is in detention, the court at second instance is bound to deliver its decision together with the files to the court at first instance at the latest within a term of three months from the day of receipt of the files from that court.

Article 410

(1) The court at first instance to which the case was remanded for trial shall proceed on the basis of the previous indictment. If the judgement at first instance was partially vacated, the court at first instance shall proceed on the basis of that part of the indictment to which the vacated part of the judgement relates.

(2) At the retrial the parties may present new facts and new evidence.

(3) The court at first instance shall be bound to perform all procedural actions and discuss all disputed questions which were specified by the court at second instance in its decision.

(4) When rendering a new judgement, the court at first instance shall be bound by the prohibition referred to in Article 398 of this Act.

(5) If the accused is in detention, the panel of the court at first instance shall proceed pursuant to the provision of Article 111 paragraph 2 of this Act

2. Appeal from a Judgment of the Court at Second Instance

Article 411

(1) An appeal may be taken from the judgement of a court at second instance with a higher court (a court at third instance) only in the following cases:

1) if the court at second instance has imposed a punishment of long-term imprisonment or if it has affirmed the judgement at first instance which imposed such a punishment;

2) if the court at second instance, after conducting a trial, has determined the factual situation differently from the court at first instance and has based its judgement on the factual situation determined in this way;

3) if the court at second instance has revised the judgement of acquittal rendered by the court at first instance and rendered a judgement of conviction.

(2) A court at third instance shall decide on an appeal from the judgement at second instance at a session of the panel according to the provisions dealing with appellate proceedings. A trial may not be held before that court.

(3) The provisions of Article 383 of this Act shall be applied to the co-accused who was not entitled to take an appeal from the judgement at second instance.

3. Appeal from a Ruling

Article 412

(1) Parties and persons whose rights have been violated may take an appeal from a ruling of the investigating judge and from other rulings of the court at first instance, unless the appeal is not explicitly barred by this Act.

(2) Unless otherwise prescribed by this Act, rulings rendered by the panel before and in the course of the investigation are not subject to appellate review.

(3) Rulings rendered for the purpose of preparing the trial and the judgement may be challenged only in an appeal from the judgement.

(4) Rulings rendered by the Supreme Court of the Republic of Croatia are not subject to appellate review.

Article 413

(1) An appeal shall be taken with the court which rendered the ruling.

(2) Unless otherwise prescribed by this Act, an appeal shall be taken within three days of the day when the ruling was served.

Article 414

Unless otherwise prescribed by this Act, an appeal taken from a ruling shall stay its execution.

Article 415

(1) Unless otherwise prescribed by this Act, the court at second instance shall decide at a public session of the panel on an appeal from a ruling of the court at first instance.

(2) An appeal from the ruling of an investigating judge shall be decided by the panel of the same court, unless otherwise prescribed by this Act (Article 20 paragraph 2).

(3) When deciding on an appeal, the court may dismiss the appeal as belated or impermissible or reject the appeal as unfounded or may satisfy the appeal and revise or vacate the ruling and, if necessary, remand the case for retrial.

(4) In the appellate proceedings, the court shall by virtue of the office establish whether the court at first instance had subject matter jurisdiction, whether the ruling was rendered by an authorized authority and whether the Criminal Code was violated to the prejudice of the accused or a violation of criminal procedure provisions exists referred to in Article 384 paragraph 1 subparagraph 11 of this Act.

Article 416

The provisions of Articles 379, 381 paragraph 3, Articles 382 to 388, Article 390 paragraphs 1, 3 and 4 and Articles 398 and 400 of this Act shall apply to the proceedings on an appeal from a ruling.

Article 417

Unless otherwise prescribed in this Act, the provisions of Articles 412 and 416 of this Act shall be applied to all other rulings rendered pursuant to this Act.

CHAPTER TWENTY-FIVE

EXTRAORDINARY JUDICIAL REMEDIES

1. Reopening of Criminal Proceedings

Article 418

Criminal proceedings completed by a final ruling or a final judgement may be reopened on the request of an authorized person only in cases and under conditions prescribed by this Act.

Article 419

(1) A final judgement may be revised even without the reopening of criminal proceedings:

1) if in two or more judgements relating to the same convicted person several punishments were imposed without the subsequent fixing of an aggregate sentence for offences committed in concurrence;

2) if, when imposing an aggregate sentence by the application of provisions on concurrence, a punishment which was already encompassed within the punishment imposed according to the provisions on concurrence by a previous judgement was taken as established;

3) if a final judgement imposing an aggregate punishment for several offences is partially unenforceable due to an act of amnesty, pardon, or for other reasons,

(2) In the case referred to in paragraph 1 subparagraph 1 of this Article the court shall by a new judgement revise previous judgements regarding the decisions on sentences and impose an aggregate sentence. The court at first instance which imposed the most severe punishment shall have jurisdiction for rendering a new judgement, and if the punishments are of the same type, the court which fixed the highest level of punishment, or if the punishments are equal, the court which imposed the punishment last, shall have jurisdiction.

(3) In the case referred to in paragraph I subparagraph 2 of this Article, a court shall revise its judgement which, in imposing an aggregate sentence, wrongly took into account a sentence which had already been included in some previous judgement.

(4) In the case referred to in paragraph I subparagraph 3 of this Article, a court at first instance shall revise a previous judgement with regard to the sentence, and either pronounce a new sentence or determine what part of the sentence imposed by a previous judgement should be executed.

(5) The new judgement shall be rendered by the court at a session of the panel upon the motion of the State Attorney if the proceedings were conducted upon his request, or upon the request of the convicted person, after the opposing party has been heard.

(6) If in the case referred to in paragraph 1 subparagraphs 1 and 2 of this Article judgements of other courts were taken into account while imposing the sentence, a certified copy of the new final judgement shall be delivered to those courts as well.

Article 420

If a request for investigation was dismissed or rejected by a final decision because there was no request from the authorized prosecutor, or there was no necessary motion or approval for prosecution, or the proceedings were discontinued by a final ruling for the same reasons, or the charge was dismissed, or the charge was rejected by a final judgement, or if the proceedings were discontinued by a final decision because the perpetrator after having committed the offence became inflicted with some permanent mental illness, the proceedings shall be resumed on the motion of the authorized prosecutor as soon as the causes of the above - mentioned decisions cease to exist.

Article 421

(1) Except for the cases referred to in Article 420 of this Act, if a request for investigation is rejected by a final decision or if criminal proceedings were discontinued by a final decision in the course of the investigation or before the opening of the trial, or if the charge was dismissed, the reopening of criminal proceedings is permissible upon the request of the authorized prosecutor (Article 425) if new evidence is presented which is capable of satisfying the court that the conditions for reopening criminal proceedings are met.

(2) The criminal proceedings which where discontinued by a final decision before the opening of a trial may be reopened if the State Attorney desisted from the prosecution while the injured person failed to assume the prosecution if, in desisting from the prosecution, the State Attorney is proven to have committed the offence of abuse of the official authority of the State Attorney. With regard to proving the State Attorney's offence, the provisions of Article 422 paragraph 2 of this Act shall apply.

(3) If the proceedings were discontinued because the subsidiary prosecutor desisted from prosecution or if it is deemed under law that he desisted, the subsidiary prosecutor shall not be entitled to request the reopening of proceedings.

Article 422

(1) Criminal proceedings terminated by a final judgement may be reopened to the benefit of the defendant:

1) if the judgement is proven to have been based on a false document or the false testimony of a witness, expert witness or interpreter;

2) if the judgement is proven to have resulted from a criminal offence committed by the State Attorney, judge, lay judge or person who carried out investigatory actions;

3) if new facts or new evidence are presented which alone or in relation to previous evidence appear likely to lead to the acquittal of the person who was convicted or to his conviction on the basis of a more lenient criminal law provision;

4) If a person was convicted more than once for the same offence or if more than one person was convicted for the same offence which could have been committed only by one person or by some of them;

5) if in the case of conviction for an extended criminal offence or any other offence which under the law includes several acts of the same kind, new facts or new evidence are presented indicating that the convicted person did not commit an act included in the adjudicated offence, provided that these facts are likely to affect substantially the fixing of punishment.

(2) In the cases referred to in paragraph 1 subparagraphs 1 and 2 of this Article, it must be proven by a final judgement that the persons mentioned above were convicted of the respective offences. If proceedings against these persons cannot be instituted by reason of their death or the existence of circumstances barring prosecution, the facts under paragraph I subparagraphs 1 and 2 of this Article may be determined by other evidence.

Article 423

(1) Exceptionally, criminal proceedings may be reopened to the prejudice of the defendant if proceedings were terminated by a final judgement rejecting the charge:

1) if the judgement rejecting the charge was rendered because the court lacked subject matter jurisdiction and the authorized prosecutor institutes proceedings before the court having jurisdiction, requesting at the same time the reopening of proceedings;

2) if the judgement rejecting the charge was rendered because proceedings were conducted without the request of the authorized prosecutor and the authorized prosecutor requests the reopening of proceedings;

3) if the judgement rejecting the charge was rendered because the prosecutor withdrew the charge in the course of the trial and it is proven that the withdrawal resulted from the offence of an abuse of the official authority of the State Attorney;

4) if the judgement rejecting the charge was rendered because the required motion or approval for prosecution was lacking and the motion or the approval were subsequently given;

5) if it is established that amnesty, pardon, the period of limitation for the institution of prosecution or other circumstances barring prosecution do not apply to the offence for which the judgement rejecting the charge was rendered.

(2) In the case referred to in paragraph 1 of this Article, the reopening of proceedings is not permitted if more than one month has elapsed from the moment when the prosecutor learned of the circumstances upon which he may have based there-quest for reopening proceedings.

(3) In the case of the reopening of proceedings for the reason referred to in paragraph 1 subparagraph 3 of this Article, the provision of Article 422 paragraph 2 of this Act shall be applied.

(4) In the case referred to in paragraph 1 subparagraph 1 of this Article, after the ruling on the reopening of criminal proceedings becomes final, the panel of the court deciding on the request for the reopening of proceedings shall deliver it to the court having jurisdiction over the case.

Article 424

(1) A request for the reopening of criminal proceedings may be submitted by the parties and defence counsel and, after the death of the convicted person, by the State Attorney and the persons referred to in Article 380 paragraph 2 of this Act.

(2) The request may also be submitted after the convicted person has served a sentence, notwithstanding the period of limitation for the institution of prosecution, amnesty or pardon.

(3) If the court which would have jurisdiction to decide on the reopening of criminal proceedings acquires knowledge that reason for the reopening of proceedings exists, it shall notify the convicted person or person entitled to submit a request thereon.

Article 425

(1) The panel of the municipal court referred to Article 18 paragraph 3 or the panel of the county court referred to in Article 20 paragraph 2 of this Act which rendered the decision at first instance in previous proceedings shall decide on the request for the reopening of criminal proceedings.

(2) The request shall state what the legal grounds are for the reopening and what evidence substantiates the facts on which the request is founded. If the request fails to state this information, the court shall call on the person who submitted the request to supplement his request within a determined term.

(3) No judge who participated in rendering the judgement in the previous proceedings shall sit as a member of the panel which decides on the request.

Article 426

(1) The court shall dismiss a request by ruling if it determines on the basis of the request itself and the file of the previous proceedings that the request was submitted by an unauthorized person, or that the legal grounds for the reopening of proceedings are lacking, or that the facts and evidence on which the request is founded have already been presented in a previous request for the reopening of proceedings which was rejected by a final court's ruling, or that the facts and evidence presented are clearly inadequate to allow for the reopening, or that the person submitting the request did not proceed in accordance with Article 425 paragraph 2 of this Act.

(2) If the court does not dismiss the request, it shall serve a copy of the request to the adverse party who is entitled to reply to the request within a term of eight days. Upon receipt of the reply or when the term for the reply elapses, the president of the panel shall himself or via an investigating judge made inquiries into the facts and gather evidence that are set forth in the request and the reply thereto.

(3) Upon completion of the inquiries, the court shall immediately decide on the request for reopening of the proceedings by a ruling pursuant to Article 421 of this Act. In other cases

concerning the offences subject to public prosecution, the president of the panel shall order that the file be delivered to the State Attorney who shall without delay return the file with his opinion.

Article 427

(1) Having received the files from the State Attorney, the court shall on the basis of the results of the inquiries, unless it orders that they be supplemented, either satisfy the request and allow the reopening of proceedings or reject the request if new evidence does not support the reopening of criminal proceedings.

(2) If the court determines that the reasons for which it allowed the reopening of proceedings also exist for other co-accused who did not submit the request, it shall proceed by virtue of the office as if such a request exists.

(3) In the ruling granting the reopening of criminal proceedings, the court shall decide that a new trial be scheduled immediately, or that the case be referred back for investigation, or it shall order that an investigation be conducted if there was no investigation before.

(4) If the court considers, in the light of the evidence presented, that upon retrial the convicted person could be sentenced to such a punishment that after allowance is given for time served under the earlier sentence he should be released, or that he could be acquitted, or that the charge could be rejected, it shall order the execution of the judgement to be postponed or stayed.

(5) When a ruling on the reopening of criminal proceedings becomes final, the execution of punishment shall be stayed and the court shall, upon a motion of the State Attorney, order detention if the conditions referred to in Article 102 of this Act exist.

Article 428

(1) New proceedings based on a ruling granting the reopening of criminal proceedings shall be conducted in pursuance of the same provisions which were applied in the original proceedings. In the course of the new proceedings, the court shall not be bound by rulings rendered in previous proceedings.

(2) If the new proceedings are discontinued before the beginning of the trial, the court shall vacate a previous judgement by a ruling discontinuing the proceedings.

(3) When the court renders a judgement in the new proceedings, it shall pronounce that the previous judgement is partially or entirely set aside or that it remains in force. When fixing the punishment pronounced in the new judgement, the court shall make allowance for time served under the earlier sentence and if the reopening was only for some of the offences for which the convicted person was convicted, the court shall impose a new aggregate sentence pursuant to the provisions of the Criminal Code.

(4) In the new proceedings, the court is always bound by the prohibition referred to in Article 398 of this Act.

Article 429

(1) If it becomes possible to conduct a trial in his presence, criminal proceedings in which a person was convicted in absentia (Article 322 paragraphs 4 and 5) shall be reopened even outside the conditions referred to in Articles 422 and 423 of this Act, provided that the convicted person or his defence counsel submit a request for the reopening of criminal proceedings within a term of one year from the day the convicted person acquired knowledge of the judgement by which he was convicted in absentia.

(2) In its ruling granting the reopening of criminal proceedings, according to the provisions of paragraph I of this Article the court shall order an indictment to be served on the convicted person if it was not served on him earlier and may order that the case be referred back for investigation, or that an investigation be conducted if there was no investigation before.

(3) After the lapse of the term referred to in paragraph 1 of this Article, the reopening of proceedings shall only be permitted subject to the conditions set forth in Articles 422 and 423 of this Act.

Article 430

The provisions of this chapter on the reopening of criminal proceedings shall also be applied in the case where a request to alter a final court's decision is submitted on the basis of a decision of the Constitutional Court of the Republic of Croatia which annulled or vacated the law on the basis of which the final decision was rendered, or on the basis of a decision of the European Court for Human Rights which refers to some ground for the reopening of criminal proceedings or for an extraordinary review of the final judgement.

2. Extraordinary Mitigation of Punishment

Article 431

Mitigation of a punishment imposed by a final judgement shall be permitted when, after the judgement becomes final, circumstances appear which did not exist at the time the judgement was rendered or did exist but were unknown to the court, provided that they would clearly lead to a more lenient sentence.

Article 432

(1) A request for extraordinary mitigation of punishment may be submitted by the convicted person and, subject to his consent, by his defence counsel, as well as by his relatives authorized to take an appeal from the judgement to his benefit.

(2) A request for extraordinary mitigation of punishment does not stay the execution of punishment unless the president of the panel at first instance decides otherwise for justifiable reasons.

Article 433

(1) The Supreme Court of the Republic of Croatia shall decide on a request for extraordinary mitigation of punishment, except in the case referred to in paragraph 4 of this Act.

(2) A request for extraordinary mitigation of punishment shall be submitted to the court at first instance.

(3) The president of the panel of the first instance court shall dismiss a request submitted by an unauthorized person.

(4) The court at first instance shall inquire whether grounds for mitigation exist and, after having heard the State Attorney if the proceedings were conducted upon his request, it shall deliver the files along with its substantiated motion to the court having jurisdiction to decide on the request for extraordinary mitigation of punishment. If the court at first instance, after carrying out inquiries, establishes that circumstances exist which justify anew decision on the amount of daily incomes of a fine, the provisions of Article 419 of this Act shall apply and the final judgement shall be revised in this part of the decision on punishment. An appeal to the Supreme Court of the Republic of Croatia may be taken from the judgement of the first instance court.

(5) If an offence for which proceedings were conducted upon the request of the State Attorney is involved, the court which decides on a request for extraordinary mitigation of punishment shall deliver the files to the State Attorney of the Republic of Croatia before rendering a ruling. He may submit a written motion to the court.

(6) The court shall reject a request if it establishes that legal conditions for extraordinary mitigation of punishment are not met. If the request is satisfied, the court shall by a ruling revise the final judgement regarding the decision on punishment.

Article 434

The court shall revoke a ruling by which it satisfied the request for extraordinary mitigation of punishment if it is proven (Article 422 paragraph 2) that the ruling was based oh a false document or the false testimony of a witness or expert witness.

3. Request for the Protection of Legality

Article 435

(1) The State Attorney of the Republic of Croatia may submit a request for the protection of legality against a final court's decisions and against judicial proceedings which preceded such final decisions if there was a violation of law.

(2) The State Attorney of the Republic of Croatia shall submit a request for the protection of legality against a court's decision rendered in proceedings and in a manner which presents a violation of basic human rights and liberties guaranteed by the Constitution, domestic and international law.

(3) A request for the protection of legality may not be taken from a decision which decided on a request for the protection of legality.

Article 436

(1) The Supreme Court of the Republic of Croatia shall decide on a request for the protection of legality.

(2) If the State Attorney withdraws a request for the protection of legality before the decision of the Supreme Court of the Republic of Croatia is rendered, the request shall be dismissed by a ruling.

(3) The court shall decide on the request at a panel session. Before the case is presented for a decision, the reporting judge shall, if necessary, obtain information on the violation of law alleged in the request.

(4) The State Attorney shall always be notified of the session.

(5) The Supreme Court of the Republic of Croatia may decide to suspend or postpone the execution of a final judgement until a decision on the request for the protection of legality is rendered. This ruling is not appealable.

Article 437

(1) When deciding on a request for the protection of legality, the court shall limit its review only to those violations of law which the State Attorney set forth in his request.

(2) If the court establishes that the ground on which it rendered a decision to the benefit of the convicted person also exists for any co-accused regarding whom a request for the protection of legality was not submitted, it shall proceed by virtue of the office as if such a request was submitted.

(3) If the request for the protection of legality is submitted to the benefit of the convicted person, the court shall, when rendering a decision, be bound by the prohibition referred to in Article 398 of this Act.

Article 438

The court shall by its judgement reject as unfounded a request for the protection of legality if it establishes that the violation of law which the State Attorney stated in his request does not exist.

Article 439

(1) If the court establishes that a request for the protection of legality is well-founded, it shall render a judgement whereby it shall, according to the nature of the violation of law, either revise the final decision or vacate in whole or in part both the decisions of the first instance court and the higher court or only the decision of the higher court and remand the case for a new decision or retrial to the first instance court or the higher court.

(2) If a request for the protection of legality was submitted to the prejudice of the defendant and the court establishes that it is founded, it shall only determine that the violation of law exists, without effecting the final decision.

(3) If, according to the provisions of this Act, the court at second instance was not authorized to remove a violation of law made in the judgement at first instance or in the court proceedings that preceded it, and the court deciding on the request for the protection of legality which was submitted to the benefit of the defendant determines that the request is well-founded and that, in order to remove the violation of law which occurred, the decision at

first instance should be vacated or revised, it shall vacate or revise the decision at second instance as well, although the latter did not violate the law.

Article 440

If, while the court is deciding on a request for the protection of legality, a serious suspicion arises regarding the correctness of the relevant facts determined in the decision against which the request was submitted, so that it is not possible to decide on the request for the protection of legality, the court shall by the judgement in which it decides on the request for the protection of legality vacate such a decision and order that a new trial be held before the same court or another court at first instance having subject matter jurisdiction.

Article 441

(1) If the final judgement is vacated and the case is remanded for retrial, the previous indictment or the part of it which relates to the vacated part of the judgement shall be taken as the basis for trial.

(2) The court shall be bound to perform all procedural actions and discuss all issues pointed out by the Supreme Court of the Republic of Croatia.

(3) The parties may present new facts and new evidence before the court at first instance or second instance.

(4) When rendering a new decision, the court shall be bound by the prohibition referred to in Article 398 of this Act.

(5) If, in addition to the decision of the lower court, the decision of the higher court is also vacated, the case shall be remanded to the lower court through the higher court.

4. Request for the Extraordinary Review of Final Judgment

Article 442

(1) In cases prescribed by this Act, a defendant sentenced by a final judgement to imprisonment or juvenile imprisonment may submit a request for the extraordinary review of the final judgement due to a violation of law.

(2) A request for the extraordinary review of a final judgement shall be submitted within a term of one month from the day the defendant receives the final judgement.

(3) A defendant who does not take an appeal from the judgement is not entitled to submit a request for the extraordinary review of the final judgement unless the judgement at second instance imposed a punishment of imprisonment instead of a remission of punishment, suspended sentence, judicial admonition or fine, or it imposed a juvenile imprisonment sentence instead of an educational measure.

(4) A request for the extraordinary review of a final judgement may not be submitted against a judgement of the Supreme Court of the Republic of Croatia.

Article 443

The Supreme Court of the Republic of Croatia shall decide on a request for the extraordinary review of the final judgement.

Article 444

A request for the extraordinary review of the final judgement may be submitted:

1) for the violation of the Criminal Code to the prejudice of the convicted person referred to in Article 385 paragraphs 1 to 4 of this Act or for the violation from subparagraph 5 of that Article if the court exceeded its statutory power in a decision on punishment, security measure or confiscation of pecuniary benefit;

2) for the violation of the criminal procedural provisions referred to in Article 384 paragraph 1 subparagraphs 1, 5, 8, 9 and 10 or in Article 367 paragraph 2 of this Act or for the participation in the rendering of a decision at second or third instance of a judge or lay judge who should have been disqualified (Article 36 paragraph 1) or if the defendant was, contrary to his request, denied the right to use his language at the trial or at the trial before the court at second instance (Article 7)

3) for the violation of the defendant's right to defence at the trial or for the violation of the criminal procedural provisions in appellate proceedings if this violation could have influenced the judgement.

Article 445

(1) A convicted person and defence counsel may submit a request for the extraordinary review of the final judgement.

(2) A request for the extraordinary review of the final judgement shall be submitted to the court at first instance.

(3) A request submitted belatedly or by an unauthorized person or submitted in the case of a conviction to a punishment or measure regarding which the request may not be submitted (Article 442 paragraph 1) or is not permitted under law (Article 442 paragraphs 3 and 4) shall be dismissed by a ruling by the president of the panel of the first instance court or by the Supreme Court of the Republic of Croatia.

(4) The Supreme Court of the Republic of Croatia shall deliver a copy of there-quest along with the files to the State Attorney of the Republic of Croatia who may, within a term of fifteen days from the day of receipt of the request, submit a reply to it.

(5) Regarding the contents of the request, the court at first instance or the Supreme Court of the Republic of Croatia may decide to postpone or stay the execution of the final judgement. The appeal from such a ruling shall not stay its execution.

Article 446

Regarding a request for the extraordinary review of the final judgement, the provisions of Article 436 paragraphs 2 and 3, Articles 437 and 438, Article 439 paragraphs 1 and 2, Article 440 paragraph 1 and Article 441 of this Act shall apply. When applying Article 422 paragraph

1 of this Act, the court may not limit itself only to the determination of the violation of law, and the provision of paragraph 2 of Article 442 shall be applied only in the part relating to the imposition of the sentence.

D. Special Provisions on Proceedings before a Municipal Court

CHAPTER TWENTY-SIX

SUMMARY PROCEEDINGS

Article 447

In proceedings before a municipal court for offences punishable by fine or imprisonment for a term less than five years as a principal punishment, the provisions of Articles 448 to 464 of this Act shall apply, and unless these provisions provide otherwise, other provisions of this Act shall respectively apply.

Article 448

(1) Criminal proceedings shall be instituted upon the motion to indict of the State Attorney, a subsidiary prosecutor or upon a private charge.

(2) The State Attorney may submit a motion to indict merely upon a crime report.

(3) A motion to indict and a private charge shall be submitted in the number of copies as needed for the court and for the defendant.

Article 449

(1) Prior to preferring a motion to indict, the prosecutor may move that the investigating judge undertake certain investigatory actions. If the investigating judge agrees with such a motion, he shall undertake the investigatory actions and thereafter deliver the records to the prosecutor. Investigatory actions shall be carried out as expeditiously as possible.

(2) If the investigating judge does not agree with the motion to undertake investigatory actions, he shall request a decision of the county court panel (Article 20 paragraph 2).

(3) In the cases referred in paragraph 1 and 2 of this Article, when the State Attorney receives the records or files, he may decide to prefer a motion to indict or to dismiss the crime report by a ruling.

Article 450

(1) If a crime report was submitted by an injured person and the State Attorney fails within a term of three months either to prefer a motion to indict or to notify the injured person of the dismissal of the crime report, the injured person shall be entitled to institute a prosecution as a prosecutor by submitting a motion to indict to the court, except if the State Attorney has decided not to institute prosecution in the cases referred to in Article 184 of this Act.

(2) In the case referred to in paragraph 1 of this Article, if the injured person desists from prosecution or is deemed under law to have desisted from prosecution, the State Attorney may, notwithstanding the conditions prescribed for the reopening of proceedings, institute proceedings anew if he has not dismissed the crime report of the injured person.

Article 451

(1) A motion to indict or a private charge shall contain the data referred to in Article 285 paragraph 1 subparagraphs 1 to 5 of this Act and the motion that the defendant be pronounced guilty and convicted under law, whereas the motion to indict shall state the type and measure of a legal sanction requested to be passed.

(2) A motion to indict may contain a motion to order detention.

Article 452

(1) When the court receives a motion to indict or a private charge, the judge (president of the panel or a single judge) shall first examine whether the court has jurisdiction, whether certain investigatory actions should be carried out and whether grounds for the dismissal of the motion to indict or the private charge exist.

(2) If the judge (president of the panel or a single judge) does not render any of the rulings referred to in paragraph 1 of this Article, he shall immediately schedule the trial.

(3) If the judge (president of the panel or a single judge) considers that certain investigatory actions should be carried out, he shall carry them out himself, or shall request that they be performed by the investigating judge.

Article 453

(1) If the judge (president of the panel or a single judge) establishes that another court has jurisdiction over the case, he shall refer the case to that court after the ruling becomes final, and if he establishes that a higher court has jurisdiction, he shall refer the case to the State Attorney who represents the prosecution before the higher court for further action. If the State Attorney considers that the court which referred the case to him has jurisdiction to try the case, he shall request disposition from the panel of the court before which he appears.

(2) After the trial is scheduled, the court cannot by virtue of the office declare that it lacks territorial jurisdiction.

Article 454

(1) The judge (president of the panel or a single judge) shall dismiss a motion to indict or a private charge if it establishes that reasons for the discontinuance of proceedings referred to in Article 214 paragraph 1 subparagraphs 1 to 3 of this Act exist, and if investigatory actions were also carried out for the reason prescribed in Article 214 paragraph 1 subparagraph 4 of this Act.

(2) A ruling shall be delivered to the State Attorney, the subsidiary prosecutor or private prosecutor as well as to the defendant.

Article 455

(1) The judge (president of the panel or a single judge) shall summon to the trial the defendant, his defence counsel, the prosecutor, the injured person and their legal guardians and legal representatives, witnesses, expert witnesses and an interpreter, and if necessary he shall obtain objects which serve to determine facts at the trial.

(2) The summons served on the defendant shall state that he may appear at the trial with evidence for his defence, or that he should in time propose evidence to the court so that it can be obtained for the trial. The defendant shall be reminded in the summons that the trial will be held even in his absence if legal conditions (Article 459 paragraph 3) therefore exist. Along with the summons the defendant shall also be served with a copy of the motion to indict or the private charge, and he shall be instructed pursuant to the provisions of Article 5 paragraph 1 of this Act that, in the case where a defence counsel is not mandatory, a continuance of the trial need not be granted due to the absence of the defence counsel from the trial or due to the retaining of a defence counsel only at the trial.

(3) A summons shall be served on the defendant in such a way as to leave him adequate time between the serving of the summons and the day of the trial for the preparation of the defence, but not less than three days. Upon the defendant's consent, this term may be shortened.

Article 456

The trial shall be held in the seat of the court. In urgent cases, particularly when a judicial view should be carried out, or when this is necessary to facilitate the presentation of evidence, the trial may, with the approval of the president of the court, also be held at the place of the commission of the offence, or at the place where the judicial view should be carried out if these places are within the jurisdictional territory of the court.

Article 457

(1) An objection of territorial incompetence may only be raised before the commencement of the trial.

(2) The judge who carried out the investigatory actions shall not be disqualified from participation in the trial as the president of the panel or as a single judge.

Article 458

(1) The panel or a single judge may determine that the trial be recorded by an audio or other technical devices. The recording is a constituent part of the record of the trial.

(2) In case from paragraph 1 above, only rulings of the court, and as assessed by the president of the panel or the judge, important statements of the parties shall be entered into the record of the trial. The record shall state which evidence is examined. This record may be made by a court advisor or a court apprentice.

(3) The transcript of the recording of the trial shall be made and added to the file only in cases referred to in Article 460 paragraph 9 and Article 461 of this Act. The transcript shall be reviewed and authenticated by the president of the panel or a member of the panel.

(4) The Minister in charge of justice affairs shall pass special provisions which shall specify technical conditions, the manner of audio recording, protection of recording from being

erased or damaged as well as the contents of the record from paragraphs 2 and 3 of this Article.

Article 459

(1) The trial shall be held even if the duly summoned State Attorney fails to appear. In such a case the injured person is entitled to represent the prosecution at the trial within the limits of the motion to indict.

(2) The trial may also be held in the absence of a private prosecutor whose domicile is outside the jurisdictional territory of the court to which the private charge is submitted, provided the private prosecutor submitted a motion that the trial be held in his absence.

(3) If a duly summoned defendant fails to appear at the trial or the summons could not be served on him because he did not report to the court changes of residence or domicile, the court may decide to hold the trial in his absence, provided that his presence is not necessary and that he has already been interrogated or given his statement regarding the soundness of the charge.

Article 460

(1) The trial shall commence by announcing the contents of the motion to indict or of the private charge. Whenever possible, the commenced trial shall be completed without interruptions.

(2) The accused shall be interrogated at the beginning of the evidence procedure notwithstanding of his attitude towards the indictment.

(3) The defendant, witness and expert witness shall first be examined by a judge or the president of the panel. Thereafter, the examination shall proceed in the manner that the defendant is first interrogated by the defence counsel, if any, and witnesses and expert witnesses by the party who proposed them.

(4) If the defendant pleads guilty to all counts of the charge, and the court after having interrogated the defendant assesses his confession to be in compliance with the evidence examined so far, in further evidence procedure it shall examine only those evidence referring to the ruling on penal sanctions.

(5) If the defendant in case referred to in paragraph 4 of this Article gives his consent to the type and scope of the penal sanctions from the motion to indict, the court in its judgment must not pronounce any other type of penal sanctions or a more severe punishment than proposed.

(6) If in the course of the trial the single judge establishes that the facts upon which the charge is founded indicate that an offence was committed for which a panel has jurisdiction, he shall constitute a panel and the trial shall commence anew.

(7) After the conclusion of the trial, the court shall render a judgment immediately and pronounce it together with essential reasons. Immediately upon the pronouncement of the judgment, the parties and the injured person who have a right to appeal (Article 461 paragraph 2) may request a written copy of the judgment with the statement of reasons. If the parties do not request a written copy of the judgment with a statement of reasons, the short statement of reasons shall be entered into the record of the trial, whereas the copy of the judgment need not

contain the statement of reasons. Such judgment must be made in writing and must be delivered within three working days. If an imprisonment sentence is pronounced to the defendant, the copy of the judgment shall always contain the statement of reasons.

(8) After the pronouncement, the court shall instruct the parties in terms of Article 374 paragraph 1 and Article 461 of this Act.

(9) If the course of the trial was recorded in terms of Article 458 of this Act, the transcript of the audio recording shall be made within three working days if the imprisonment sentence was pronounced to the defendant or if the parties and the injured person who have right to appeal from the judgment (Article 461 paragraph 2) have announced the appeal within the term from Article 461 paragraph 4 of this Act or an appeal from the judgment has been submitted.

Article 461

(1) An appeal may be taken from the judgment within a term of eight days from the day on which the copy of the judgment is served.

(2) If the State Attorney was not present at the trial (Article 459 paragraph 1), the injured person shall be entitled to file, in the capacity of the prosecutor, an appeal from the judgment, regardless of whether an appeal is also taken by the State Attorney.

(3) The parties and the injured person or the injured party in the capacity of the prosecutor, have right to appeal from the judgment due to the fact that the State Attorney was not present at the trial (Article 459 paragraph 1) and may waive the right to appeal immediately upon the pronouncement of the judgment. In such a case, a copy of the judgment without a statement of reasons shall be served to them within three days. If an imprisonment was pronounced by the judgment, the copy of the judgment must always contain the data referred to in Article 376 paragraph 8 of this Act.

(4) If the course of the trial was recorded in terms of Article 458 of this Act, the parties and the injured person or the person from paragraph 2 above may announce an appeal within three days from the copy of the judgment from Article 460 paragraph 8 of this Act being served to them. In such a case, the term for the appeal from paragraph 1 above shall commence for the appellants from the date of the audio recording being delivered to them.

(5) The announcement of an appeal submitted to the court after the elapse of three days from paragraph 4 of this Act shall be deemed an appeal from the judgment.

(6) A substantial violation of the criminal procedural provisions to which the court at second instance pays attention by virtue of office exists if the copy of the judgment was not written and served within the terms referred in Article 460 paragraph 7 of this Act or if contrary to the provision of Article 460 paragraph 9, the transcript of the audio recording of the trial was not made.

Article 462

(1) Before scheduling a trial for offences subject to private prosecution which are within the jurisdiction of a single judge, the single judge may summon only the private prosecutor and the defendant to a hearing for the preliminary clarification of the matter if he considers it

expedient for the prompt termination of proceedings. Along with the summons, the defendant shall be served with a written copy of the private charge.

(2) If a reconciliation of the parties and the withdrawal of the private charge or rejection of the charge do not occur, the single judge may immediately open the trial, of which the private prosecutor and the defendant shall be specially notified when served the summons.

(3) If the single judge does not open the trial, he shall render a decision with regard to the evidence to be examined at the trial and shall schedule the trial.

Article 463

Within territories where reconciliation panels are established, the court may direct the parties to these panels for the purpose of an attempt at reconciliation, provided that both parties have a domicile within the territory of a reconciliation panel.

The court shall determine the term within which reconciliation shall be attempted, and after this term expires or if reconciliation fails, proceedings shall continue.

Article 464

When a court at second instance decides on an appeal from a judgement at first instance rendered in summary proceedings, both parties shall be notified of the session of the court at second instance if the judgement at first instance imposed a punishment of imprisonment, or if both parties requested to be notified of the session, or if the president of the panel or the panel at second instance consider that the presence of the parties or one of them would be expedient for the clarification of the matter.

CHAPTER TWENTY-SEVEN

PROCEEDINGS FOR THE ISSUANCE OF A CRIMINAL ORDER

Article 465

(1) For offences in the jurisdiction of a single judge which come to the State Attorney's knowledge on the basis of a credible crime report, the State Attorney may request in a motion to indict that the court issue a criminal order imposing by it a certain punishment or measure on the defendant without holding a trial.

(2) The State Attorney may request the imposition of one or more of the following punishments or measures:

1) a fine to the amount of ten to one hundred average daily incomes in the Republic of Croatia (Article 51 paragraph 4 of the Criminal Code),

2) suspended sentence for passing a judgment of imprisonment for a term of less than three years or a fine, or a judicial admonition,

3) confiscation of pecuniary benefit obtained in consequence of the commission of an offence and publication of the criminal code in the media,

4) prohibition to operate a motor vehicle or seizure of objects.

Article 466

(1) A single judge shall dismiss a request to issue a criminal order in cases referred to in Article 454 of this Act if it concerns an offence for which such a request may not be submitted or if the State Attorney requests the imposition of a punishment or a measure which is not permitted under law. The judicial panel (Article 18 paragraph 3) shall decide on the State Attorney's appeal from a ruling on dismissal within a term of 48 hours.

(2) If the single judge considers that the information in the motion to indict does not offer sufficient grounds to issue a criminal order or that according to such information the imposition of some other punishment or measure rather than the one requested by the State Attorney can be expected, he shall, upon receipt of a motion to indict, schedule a trial and summon to it persons pursuant to the provisions of Article 455 of this Act. In such a case, along with a summons, only a copy of the motion to indict shall be delivered to the defendant without the State Attorney's request that a criminal order be issued.

Article 467

(1) If the single judge agrees with the request, he shall issue a criminal order by a judgement.

(2) The criminal order shall state that the State Attorney's request is satisfied and that a punishment or measure from the request shall be imposed on the defendant whose personal data shall be clearly indicated. The ordering part of the judgement on a criminal order shall contain the necessary information referred to in Article 372 paragraph 1 of this Act, including the decision on a claim for indemnification if the motion for its realization was submitted. A statement of reasons shall state the evidence which justifies the issuance of the criminal order.

(3) The criminal order shall contain an instruction to the defendant pursuant to the provisions of Article 468 paragraph 2 of this Act and stating that after the expiry of the term for submitting an objection, if no objection is submitted, the criminal order shall become final and the punishment imposed on the defendant shall be executed.

Article 468

(1) The criminal order shall be delivered to the defendant and his defence counsel if he has one, as well as to the State Attorney and the injured person.

(2) The defendant or his defence counsel may, within a term of eight days of receipt, submit an objection against the criminal order in writing or orally on the record with the court. The objection need not contain a statement of reasons; it may propose evidence to the benefit of the defence. The accused may waive his right to submit an objection, but he may not withdraw the submitted objection after the trial has been scheduled. Payment of the fine before the lapse of the term for submitting an objection shall not be deemed to be a waiver of the right to an objection.

(3) The president of the panel shall grant reinstatement to the prior state of affairs to the defendant who, for justifiable reasons, fails within the prescribed term to submit an objection. The provisions of Articles 84 and 85 of this Act shall apply when deciding on a petition for reinstatement to the prior state of affairs.

(4) If a single judge does not dismiss the objection as belated or because it is submitted by an unauthorized person, he shall schedule the trial on the State Attorney's motion to indict and further proceed according to the provisions of Articles 455 to 460 of this Act.

(5) A judicial panel (Article 20 paragraph 2) shall decide on an appeal from the ruling on the dismissal of the objection against the criminal order.

Article 469

When rendering a judgment regarding the objection, a single judge shall impose that the criminal order regarding the defendant who made the objection be put out of force. In this respect, the single judge is bound neither by the State Attorney's request referred to in Article 465 paragraph 2 of this Act nor by the prohibition referred to in Article 398 thereof.

CHAPTER TWENTY-EIGHT

SPECIAL PROVISIONS ON THE IMPOSITION OF JUDICIAL ADMONITION

Article 470

(1) When, according to the provisions of the Criminal Code, the imposition of judicial admonition comes into consideration, the court shall impose this criminal sanction by a judgement.

(2) Except as otherwise provided in this chapter, the provisions of this Act concerning the judgement of conviction shall apply respectively to the judgement on judicial admonition.

(3) Beside the personal data of the accused, the ordering part of the judgement imposing judicial admonition shall state that the accused is found guilty of the offence charged and shall give the legal name of the offence. The ordering part shall also state the data required and referred to in Article 355 paragraph 1 subparagraphs 5 arid 7 of this Act.

(4) In the statement of reasons for the judgement, the court shall state the reasons that guided it in the imposition of judicial admonition.

Article 471

The judgment on judicial admonition, together with essential reasons, shall be pronounced immediately after the completion of the trial. On this occasion the president of the panel shall remind the accused that a punishment is not imposed on him for the offence he has committed, but that according to the rules of behaviour in his social environment and according to the moral considerations he deserves an admonition which shall warn him not to commit offences any more. If the judgment on judicial admonition is pronounced in the defendant's absence, the court shall include such a warning in the statement of reasons. The provision of Article 461 paragraph 3 of this Act shall apply to the waiver of the right to appeal and to the issuance of a written copy of the judgment.

Article 472

(1) The judgement on judicial admonition may be challenged for the reasons referred to in Article 385 subparagraphs 1 to 3 of this Act, but also because the circumstances which justify the imposition of judicial admonition do not exist.

(2) If the judgement on judicial admonition contains a decision on security measures, on the costs of criminal proceedings, on the confiscation of pecuniary benefit or on a claim for indemnification, this decision may be challenged because the court did not correctly apply the security measure or the confiscation of pecuniary benefit, or because it rendered a decision on the costs of criminal proceedings or on a claim for indemnification contrary to the legal provisions.

Article 473

In addition to the issues referred to in Article 385 subparagraphs 1 to 4 of this Act, a violation of the Criminal Code shall also exist in the case of the imposition of judicial admonition when the court exceeds its statutory power in a decision on judicial admonition, a security measure or the confiscation of pecuniary benefit.

Article 474

(1) If an appeal from the judgement on judicial admonition is taken by the prosecutor to the prejudice of the defendant, the court at second instance may render a judgement of conviction and impose a punishment or suspended sentence if it establishes that the court at first instance correctly determined the relevant fact but that upon the correct application of the law punishment should have been imposed.

(2) Upon an appeal from the judgement on judicial admonition taken by any authorized person, the court at second instance may render a judgement rejecting the charge or a judgement of acquittal if it establishes that the court at first instance correctly determined the relevant facts arid that the rendering of one of these judgements is possible upon the correct application of the law.

(3) When the conditions referred to in Article 387 of this Act exist, the court at second instance shall render a judgement rejecting the appeal as unfounded and affirm the judgement of the first instance court on judicial admonition.

PART THREE

SPECIAL PROCEEDINGS

CHAPTER TWENTY-NINE

PROCEEDINGS REGARDING MENTALLY DISTURBED DEFENDANTS

Article 475

(1) The provisions of this Act, except for the provisions of Chapter XXVI shall also apply in the proceedings against persons without mental capacity at the time of committing an offence, if not otherwise especially provided in this chapter.

(2) The proceedings against the persons without mental capacity at the time of committing an offence shall be initiated and conducted only at the request of the State Attorney.

(3) The State Attorney may, in cases referred to in Article 204 paragraph 6 of this Act, in the investigation request or during the investigation propose that the necessary evidence and facts be gathered to establish whether the defendant who committed an offence was without mental capacity at the time of committing the offence and whether the conditions for ordering confinement of the defendant in accordance with the provisions of the Act on the Protection of Mentally Disturbed Persons have been met.

Article 476

(1) If a defendant committed a criminal offence without mental capacity, the State Attorney shall request in the indictment that the court should establish that the defendant committed an offence without mental capacity and that the confinement of the defendant be ordered according to the provisions of the Act on the Protection of Mentally Disturbed Persons.

(2) After the indictment referred to in paragraph 1 of this Article is preferred, the defendant must have a defence counsel.

(3) In such cases, the court shall proceed with a special expedition.

Article 477

(1) Apart from the cases where detention may be ordered against the defendant under this Act, detention shall also be ordered if it is possible that the defendant for whom the State Attorney made a request referred to in Article 475 paragraph 2 of this Act could commit a severe criminal offence due to a severe mental disturbance. Before ordering detention, the opinion of an expert witness, a psychiatrist on the dangerousness of the defendant shall be obtained. The management of the prison shall be informed on ordering detention on this basis for the purpose of detention of the defendant in a medical institution in terms of the provision of Article 116 paragraph 3 of this Act.

(2) Detention referred to in paragraph 1 above may last while the defendant is dangerous, but should not exceed the terms prescribed in Articles 110, 111 and 114 of this Act.

Article 478

(1) Upon the completion of the trial, the court shall decide on the State Attorney's request referred to in Article 476 paragraph 1 of this Act. The legal representative of the defendant, or, if there is no legal representative, his spouse or common-law spouse, or his close relative shall be notified of the trial.

(2) The defence counsel or the defendant shall, when giving their statement regarding the charge, declare whether the defendant committed an offence.

(3) If the defendant is unfit to stand trial due to a mental disturbance, he shall be deemed to deny the soundness of the charge.

(4) If the defendant is unfit to stand trial due to a mental disturbance, the trial shall be held in his absence. However, before the trial, the president of the panel, in the presence of the expert witness, shall try to examine the defendant for the purpose of assessing the circumstances referred to in Article 281 of this Act. The State Attorney, the defendant, the defence counsel and the legal representative of the defendant shall be notified of the time and place of the

examination. The examination shall also be performed in absence of the duly invited State Attorney and legal representative.

(5) If the trial is held in the absence of the defendant, the records on his previous examination shall be read.

(6) The expert witness who made a psychiatric examination of the defendant shall be examined about the ability of the defendant to stand trial and his mental capacity as well as about the existence of legal conditions for ordering confinement.

Article 479

(1) If in the course of the trial the State Attorney establishes that the examined evidence indicate that the defendant committed the offence with mental capacity or with diminished mental capacity, the State Attorney shall not submit the request for ordering confinement and shall change the charge.

(2) In case from paragraph 1 of this Article, the trial shall be held anew, and the president of the panel shall notify the defendant of his changed legal position. If necessary for the preparation of the defence, the court may, upon the request of the defence, adjourn the trial.

(3) The records on previous statements of witnesses or expert witnesses examined in absence of the defendant may not be read without the consent of the parties pursuant to the provisions of Article 478 paragraph 4 of this Act.

Article 480

(1) If the State Attorney made a request referred to in Article 476 paragraph 1 of this Act, and the court, upon the completion of the trial, establishes that the defendant committed the offence without mental capacity and that the conditions exist for ordering the compulsory placement of the defendant in a mental institution in accordance with the Act on the Protection of Mentally Disturbed Persons, it shall render a judgment whereby it is determined that the defendant committed an offence, that he committed it without mental capacity and shall by a ruling order his confinement in a mental institution for six months.

(2) The court shall, when passing the judgment and the ruling from paragraph 1 of this Article, order or prolong the detention due to the reason referred to in Article 477 paragraph 1 of this Act.

(3) If the State Attorney made a request referred to in Article 476 paragraph 1 of this Act, and the court, upon the completion of the trial, establishes that the defendant committed the offence without mental capacity, but no conditions exist for ordering the compulsory placement of the defendant in a mental institution in accordance with the Act on the Protection of Mentally Disturbed Persons, it shall render a judgment of acquittal and the ruling by which the request for ordering confinement is denied.

(4) If the State Attorney made a request referred to in Article 476 paragraph 1 of this Act, and the court establishes that the reasons referred to in Article 370 of this Act exist, it shall render a judgment rejecting the charge.

(5) If the State Attorney made a request referred to in Article 476 paragraph 1 of this Act, and the court establishes that the reasons referred to in Article 371 of this Act exist, apart from the exclusion from guilt due to the mental incapacity, it shall render a judgment of acquittal.

(6) If the court does not establish that at the time of committing a criminal offence the defendant was without mental capacity, it shall render a judgment rejecting the charge. In such case, the State Attorney may immediately upon the judgment having been rendered, give an oral statement by which he waives the right to appeal and may file a new charge for the same criminal offence. The trial shall be held before the same panel on the basis of the new charge, against which the objection shall not be allowed. For the purpose of preparation of defence, the trial can be adjourned by the court. Previously examined evidence shall not be examined anew, unless the panel establishes that single pieces of evidence need to be examined anew. The written judgment rejecting the charge shall be served to the parties only on their request. An appeal from the judgment shall not be admissible.

Article 481

(1) The judgment and ruling referred to in Article 480 paragraph 1 and 3 of this Act shall be delivered to the State Attorney, the defendant himself, his defence counsel and the legal representative of the defendant, and if the legal representative does not exist, to the spouse, common-law spouse or to the closest relative of the defendant.

(2) All persons who have the right to appeal from the judgment (Article 380) may, within fifteen days from the day of its receipt, make an appeal from the judgment and the ruling referred to in Article 380 paragraphs 1 and 3 of this Act.

(3) The court at second instance shall hold a session of the panel in the presence of the defendant, if deemed purposeful. Its ruling with all the documents shall be sent to the first instance court at the latest within the term lasting for a half of the term prescribed in Article 409 paragraph 2 of this Act.

(4) The president of the panel shall, on request of the defendant, render a ruling ordering the execution of ruling on confinement of the defendant before its legal validity.

(5) The president of the panel shall, immediately upon the enforceability of the ruling ordering the confinement, submit all necessary documents to the competent court for the confinement procedure in accordance with the Act on the Protection of Mentally Disturbed Persons.

CHAPTER THIRTY

PROCEEDINGS FOR THE CONFISCATION OF PECUNIARY BENEFIT

Article 482

(1) Objects which must be seized according to the Criminal Code shall also be seized when criminal proceedings do not terminate with a judgement of conviction, provided that this is required by considerations of public safety or the protection of the honour and dignity of citizens.

(2) The authority before which proceedings were held at the time they were terminated shall render a separate ruling thereon.

(3) The ruling on the seizure of objects from paragraph 1 of this Article shall also be rendered by a court when it has failed to render such a decision in a judgement of conviction.

(4) A certified written copy of the decision on the seizure of objects shall be delivered to the owner of the object if he is known.

(5) The owner of the object is entitled to file an appeal from the decision referred to in paragraphs 2 and 3 of this Article if he considers that there is no legal ground for the seizure of the object. If the ruling referred to in paragraph 2 of this Article is not rendered by a court, the panel (Article 18 paragraph 3 or Article 20 paragraph 2) of the court having jurisdiction to try at first instance shall decide on the appeal.

Article 483

(1) Pecuniary benefit obtained as a result of the commission of an offence shall be determined in the criminal proceedings by virtue of the office.

(2) The court and other authorities before which criminal proceedings are conducted shall in the course of proceedings obtain evidence and investigate circumstances which are relevant for the determination of pecuniary benefit.

(3) If the injured person's claim for indemnification concerns the recovery of an object acquired in consequence of the commission of an offence or regards the amount which corresponds to the value of the object, the pecuniary benefit shall only be determined for the part which exceeds the claim for indemnification.

Article 484

(1) When the confiscation of pecuniary benefit obtained in consequence of the commission of an offence comes into consideration, the person to whom the pecuniary benefit was transferred as well as the representative of the legal entity shall be summoned for interrogation in pre-trial proceedings and at the trial. The summons shall state that the proceedings will be held even in their absence.

(2) The representative of the legal entity shall be heard at the trial after the defendant who pleads guilty and otherwise at the beginning of the presentation of evidence. The court shall proceed in the same manner regarding the person to whom the pecuniary benefit was transferred, unless he is summoned as a witness.

(3) The person to whom the pecuniary benefit was transferred and the representative of the legal entity are entitled to propose evidence concerning the determination of the pecuniary benefit and, upon the authorization of the president of the panel, to ask questions of the defendant, witnesses and expert witnesses.

(4) If the court establishes that the confiscation of pecuniary benefit comes into consideration while the trial is in progress, it shall recess the trial and summon the person to whom the pecuniary benefit was transferred as well as the representative of the legal entity.

Article 485

The amount of pecuniary benefit shall be fixed at the discretion of the court whenever its assessment entails undue difficulties or a significant delay in the proceedings.

Article 486

When the confiscation of pecuniary benefit is under consideration, the court shall, by virtue of the office, and pursuant to the provisions dealing with enforcement proceedings, order provisional security measures. In such a case, the provisions of Article 142 paragraph 2 of this Act shall respectively apply.

Article 487

(1) The court may order the confiscation of pecuniary benefit by a decision in which the defendant is found guilty of the offence charged.

(2) In the ordering part of the judgement the court shall state which object is to be seized or which sum confiscated.

(3) A certified copy of the decision shall also be delivered to the person to whom the pecuniary benefit was transferred, as well as to the representative of the legal entity, provided that the court orders the confiscation of pecuniary benefit from such an entity.

Article 488

The provisions of Article 381 paragraphs 2 and 3 and Articles 389 and 393 of this Act shall respectively apply in regard to an appeal from the decision on the confiscation of pecuniary benefit.

Article 489

The person referred to in Article 484 of this Act may submit a request for there-opening of criminal proceedings regarding the decision on the confiscation of pecuniary benefit.

Article 490

Except as otherwise provided by the provisions of this chapter regarding the implementation of security measures or the confiscation of pecuniary benefit, other provisions of this Act shall respectively apply.

CHAPTER THIRTY-ONE

PROCEEDINGS FOR THE REVOCATION OF A SUSPENDED SENTENCE

Article 491

(1) When a court orders in a suspended sentence that the punishment will be imposed if the defendant does not restore pecuniary benefit, does not make compensation for damages or does not meet other obligations, and if the convicted person fails to meet these obligations within a prescribed term, the court at first instance shall institute proceedings for the

revocation of the suspended sentence upon a motion submitted by the authorized prosecutor or injured person.

(2) The judge assigned to the case shall interrogate the defendant, if he is available, and conduct the necessary inquiries for the purpose of determining facts and obtaining evidence important for the decision.

(3) Thereafter, the president of the panel shall schedule a session of the panel and notify the prosecutor, convicted person and injured person thereof. Non-appearance by the duly notified parties and injured person does not prevent the session of the panel from being held.

(4) If the court determines that the convicted person has failed to meet an obligation ordered by the judgment, the court shall render a judgment revoking the suspended sentence and ordering the execution of the imposed punishment, or ordering a new term within which the obligation must be met, or replacing this obligation by another obligation or discharging the convicted person from the obligation. If the court determines that there are no grounds for rendering any of these decisions, it shall by ruling discontinue proceedings for the revocation of the suspended sentence.

CHAPTER THIRTY-TWO

PROCEEDINGS FOR RENDERING A DECISION ON REHABILITATION

Article 492

(1) When, under the law, the rehabilitation occurs by a lapse of a certain period of time and provided that a convicted person within that period does not commit a new offence, the authority in charge of the criminal register shall by virtue of the office render a ruling on rehabilitation.

(2) Before rendering a ruling on rehabilitation, necessary inquiries shall be conducted and, in particular, data shall be obtained on whether criminal proceedings are pending for any new offence committed before the lapse of the term prescribed for the expungement of conviction. If the criminal proceedings are pending, the proceedings for rendering a decision on rehabilitation shall be terminated.

(3) Data on the offence for which the rehabilitation occurs may not be reviewed by anyone.

Article 493

(1) If the authority having jurisdiction does not render a ruling on rehabilitation, the convicted person may request that a determination be made that the rehabilitation occurs by force of law.

(2) If the authority having jurisdiction fails to comply with the request of the convicted person within a term of thirty days from the day of receipt of the request, the convicted person may require that the court at first instance render a ruling on rehabilitation.

(3) The court shall decide on this request after having heard the State Attorney if the proceedings were instituted upon his request.

CHAPTER THIRTY-THREE

PROCEEDINGS FOR COMPENSATION OF DAMAGES AND REALISATION OF OTHER RIGHTS OF UNJUSTIFIABLY CONVICTED OR ILLEGALLY ARRESTED PERSONS

Article 494

(1) The right to compensation of damages for unjustifiable conviction shall be held by a person against whom a criminal sanction was imposed by a final decision or who was pronounced guilty but whose punishment was remitted, and subsequently, upon an extraordinary judicial remedy, the proceedings were reopened and finally discontinued or the convicted person was acquitted by a final judge-mentor the charge was rejected, except if the proceedings were discontinued or the charge rejected because in the new proceedings the subsidiary prosecutor or private prosecutor desisted from prosecution on the basis of an agreement with the defendant.

(2) A convicted person is not entitled to compensation of damages if he deliberately caused his conviction through a false confession or otherwise, unless he was forced to do so.

(3) In the case of conviction for offences committed in concurrence, the right to compensation of damages may also relate to respective offences in regard to which the conditions for approving compensation are met.

Article 495

(1) The period of limitation to claim the right to compensation of damages shall expire in three years from the day the first instance judgement of acquittal or judgement rejecting the charge became final or from the day the first instance ruling discontinuing the proceedings became final, and if a higher court decided on an appeal, from the day of receipt of the decision of the higher court.

(2) Before bringing a civil action for the compensation of damages, the injured person is bound to submit his request to the Ministry of Justice in order to reach a settlement on the existence of damage and the type and amount of compensation.

Article 496

(1) If the request for the compensation of damages is not accepted or if the court does not decide on it within a term of three months of the request being submitted, the injured person may bring a civil action for the compensation of damages with the court having jurisdiction. If a settlement was only reached on one part of the claim, the injured person may bring a civil action regarding the rest of the claim.

(2) While the proceedings referred to in paragraph 1 of this Article are pending, the period of limitation referred to in Article 495 paragraph 1 of this Act does not run.

(3) A civil action for the compensation of damages shall be brought against the Republic of Croatia.

Article 497

(1) Heirs shall inherit only the right of the injured person to compensation of pecuniary damage. If the injured person has already filed a claim, the heirs may resume the proceedings within the limits of the claim for compensation of pecuniary damage already filed.

(2) After his death, the heirs of the injured person may resume proceedings for the compensation If damages or institute proceedings provided that the injured person died before the period of limitation expired and provided the injured person did not waive his claim.

Article 498

(1) Entitled to compensation of damages shall also be the person:

1) who was detained and where criminal proceedings were not instituted or were discontinued by a final ruling or who was acquitted by a final judgement or where the charge was rejected;

2) who served a sentence of imprisonment and upon an extraordinary judicial remedy where a court imposed a sentence of a shorter duration than the sentence served or where a non-custodial sentence was imposed or if he was pronounced guilty when the punishment was remitted;

3) who, due to an error or the unlawful action of state authorities, was arrested or detained without legal grounds, or was provisionally confined, detained or kept in prison for a longer period of time than is prescribed by law;

4) whose time spent in custody exceeded his sentence.

(2) A person arrested according to Article 98 of this Act without legal ground is entitled to compensation of damages if detention was not ordered against him or if the time during which he was arrested was not included in the punishment for the offence or misdemeanour.

(3) A person who caused his arrest by illicit acts is not entitled to compensation of damages. In the cases referred to in paragraph 1 subparagraph 1 of this Article a person is not entitled to compensation of damages, despite the existence of the circumstances referred to in Article 98 of this Act.

(4) In the cases referred to in paragraphs 1 and 2 of this Article the provisions of this chapter shall respectively apply.

Article 499

(1) Where an unjustifiable conviction or illegal deprivation of liberty is announced in the media and the reputation of this person is damaged thereby, the court shall, upon his request, publish in newspapers or through other media a decision declaring that the previous conviction was unjustified or that the arrest was illegal. If the case is not announced in the media, the announcement shall, upon this person's request, be delivered to his employer. After the death of the convicted person, his spouse, common-law spouse, children, parents, brothers or sisters are entitled to submit such a request.

(2) The request referred to in paragraph 1 of this Article may also be submitted if the claim for the compensation of damages was not submitted.

(3) Regardless of the conditions referred to in Article 498 of this Act, the request referred to in paragraph I of this Article may also be submitted when the legal qualification of the offence was altered upon an extraordinary judicial remedy, if, due to the legal qualification in the original judgement, the reputation of the convicted person was damaged.

(4) The request referred to in paragraphs 1 to 3 of this Article shall be submitted to the court at first instance within a term of six months. The panel (Article 18 paragraph 3 or Article 20 paragraph 2) shall decide on the request. In deciding on the request, the provisions of Article 494 and Article 498 paragraph 3 of this Act shall respectively apply.

Article 500

The court at first instance shall by virtue of the office render a ruling which annuls the entry of an unjustifiable conviction into the criminal register. The ruling shall be delivered to the Ministry of Justice. After the entry has been annulled, data from the criminal registry shall not be available to anyone.

Article 501

A person allowed to inspect and copy files concerning an unjustifiable conviction or illegal deprivation of liberty may not use data from such files in a manner which would be detrimental to the rehabilitation of the person against whom criminal proceedings were conducted. The president of the court shall remind the person allowed to inspect the files thereon, and this shall be noted on the file and signed by this person.

Article 502

(1) A person whose employment or social security was terminated due to an unjustifiable conviction or illegal arrest shall have the same years of service or years of social security recognized as if he had been employed during the time of the loss of years of service due to an unjustifiable conviction or illegal arrest. A period of unemployment shall also be included in the years of service or social security if caused by the unjustifiable conviction or illegal arrest rather than by the guilt of this person.

(2) When deciding on a right affected by the length of years of service or years of social security, the authority or institution having jurisdiction shall take into account the years of service or social security recognized by the provision of paragraph 1 of this Article.

(3) If the authority or institution referred to in paragraph 2 of this Article does not take into account the years of service or social security recognized by the provision of paragraph 1 of this Article, the injured person may request that the court referred to in Article 500 paragraph 1 of this Act that determines that recognition of such a period occurred by force of law. A civil action shall be brought against the authority or institution which contests the recognition of years of service or social security and against the Republic of Croatia.

(4) On request of the authority or institution competent for the realization of the right referred to in paragraph 2 of this Article, the prescribed contribution shall be paid out from budget funds for the period of time to which the person is entitled under paragraph 1 of this Article.

(5) The years of social security recognized pursuant to the provision of paragraph 1 of this Article shall be fully included in the years of pension.

Article 503

Special regulations and rulings passed as acts of mercy, by which an amnesty shall be granted to the offenders or by which the offenders are absolved from guilt for criminal offences committed in the period from August 17, 1990 until August 23, 1996, do not represent a basis for applying the provisions of Articles 494 to 502 of this Act.

CHAPTER THIRTY-FOUR

PROCEEDINGS FOR THE ISSUANCE OF A WANTED NOTICE AND PUBLIC ANNOUNCEMENT

Article 504

If the defendant's domicile or residence is unknown when, pursuant to the provisions of this Act, his address is necessary, the court shall request the police authorities to look for the defendant and inform the court of his address.

Article 505

(1) The issuance of a wanted notice may be ordered if the defendant is in flight, against whom criminal proceedings are instituted for an offence subject to public prosecution and punishable for a term of one year or more, provided that a ruling on detention exists.

(2) The issuance of a wanted notice shall be ordered by the investigating judge, the president of the panel or a single judge before whom the criminal proceedings are pending.

(3) The issuance of a wanted notice shall also be ordered if the defendant escapes from an institution where he is serving a sentence regardless of the duration of the punishment or detention, or from an institution where he is subject to an institutional measure.

(4) The order of the court or the director of the institution shall be delivered to the police authorities for execution.

Article 506

(1) Where information concerning particular objects in relation to an offence are required or if these objects need to be located, and in particular if this is necessary to determine the identity of an unknown corpse, the issuance of a public announcement shall be ordered, containing a request that the required information be communicated to the authority conducting the proceedings.

(2) The police authorities may publish photographs of corpses and missing persons if grounds for suspicion exist that the death or disappearance of such persons occurred because of an offence.

Article 507

The authority which ordered the issuance of a wanted notice is bound to withdraw it immediately after the wanted person or the object has been found, or after the period of limitation for the institution of the prosecution or for the execution of punishment has expired, or when other reasons appear indicating that the wanted notice or the announcement is no longer necessary.

Article 508

(1) The wanted notice and the announcement shall be issued by the police authorized to act on the territory of the state agency before which criminal proceedings are pending or in the territory where the institution is located from which the detained person has escaped or where the person is serving a sentence or is subject to an institutional measure.

(2) Media may be used in order to inform the public of the wanted notice and public announcement.

(3) If it is likely that the person in regard to whom a wanted notice has been issued is abroad, the Ministry of Interior may also issue an international wanted notice for a fugitive.

CHAPTER THIRTY-FIVE

TRANSITIONAL AND FINAL PROVISIONS

1. Revision and other Extraordinary Judicial Remedies from Decisions of the Courts of the Former SFRY

Article 509

(1) Persons who during the communist rule were convicted by the courts of former Yugoslavia for political criminal offences, politically motivated criminal offences and other criminal offences may, through revision, request the annulment of a decision of conviction or another corresponding legal act, provided that their conviction was the result of an abuse of political power.

(2) An abuse of political power shall exist in cases where a decision of conviction was rendered which, in its ordering part or in proceedings preceding it, violates internationally recognized principles of the rule of law and democratic society or is contrary to the public order of the Republic of Croatia.

(3) If the person referred to in paragraph 1 of this Act died, the revision may be submitted by his heirs in legal order of succession.

(4) The revision may be submitted within a term of two years from the entry of this Act into force.

Article 510

(1) The revision shall contain: personal data of the convicted person, data on the judgement being challenged, data on facts and evidence upon which it is founded, a statement of reasons

and the signature of the person who submits the revision, and if an heir submits it, evidence that the convicted person died and that the submitter is his legal heir.

(2) The revision shall be submitted to the county court in whose jurisdictional territory the court which rendered the first instance decision had its seat.

(3) If the revision is submitted to an incompetent court or if the court at first instance has its seat outside the Republic of Croatia, the provisions of Articles .28 and 34 of this Act shall apply.

(4) A copy of the revision shall be delivered to the State Attorney having jurisdiction, who is entitled to give his opinion within a term of one month.

Article 511

(1) The county court panel of three judges shall decide on the revision at its session.

(2) The president of the panel shall, by a ruling, dismiss a belated, incomplete or impermissible revision. An appeal may be taken from such a ruling within a term of fifteen days.

(3) The person submitting a revision, his legal representative and the State Attorney shall be summoned to the panel session. The session may be held even if duly summoned persons fail to appear at the session.

Article 512

(1) The panel may request that the state authorities having jurisdiction collect and deliver data important for deciding on the revision.

(2) The person submitting a revision, his legal representative and the State Attorney may give statements at the session in order to clarify particular issues related to the revision.

Article 513

(1) The panel shall decide on the revision by a judgement or ruling.

(2) The panel shall, by a ruling, dismiss a belated, incomplete or impermissible revision unless the president of the panel has already done so.

(3) The panel shall, by a judgement, reject the revision as unfounded if it determines that it was submitted against a decision convicting the moving party of a war crime or other criminal offence which the Republic of Croatia is bound to prosecute under the rules of international law, a criminal offence whose perpetration has caused a loss of life or serious bodily injury, or if the convicted person has acquired unlawful pecuniary benefit for himself or someone else, or if the conviction concerns an offence contrary to the public order of the Republic of Croatia. The court shall reject the revision if it determines that the reasons for which it was submitted, do not exist.

(4) If the panel determines that the revision is well-founded, it shall by a judgement fully or partially annul the ordering part of the challenged decision in the disposition on criminal liability.

Article 514

(1) The person who submits the revision and the State Attorney may take an appeal from the decision of the county court panel within a term of fifteen days.

(2) The Supreme Court of the Republic of Croatia in a panel of five judges shall decide on the appeal.

(3) The Supreme Court of the Republic of Croatia may by its decision affirm, revise or vacate the decision of the county court on revision.

Article 515

(1) Unless otherwise prescribed in Articles 510 to 517 of this Act, the provisions of this Act dealing with the rendering of a decision by a panel at its session upon an appeal from judgement shall apply to the proceedings on revision and to appellate proceedings against the county court's decision on revision.

(2) The court shall decide on the costs of the proceedings on revision pursuant to the provision of Article 131 of this Act.

Article 516

The court shall decide on the right to compensation of damages, the return of confiscated or seized property and other consequences of the annulled judgement on the basis of the provisions of a separate law.

Article 517

Pursuant to the provisions of this Act, a national of the Republic of Croatia and a person having permanent domicile in the Republic of Croatia may submit an extraordinary judicial remedy against a decision of a military court of former Yugoslavia which became final by October 6th , 1991.

Article 518

In a panel of five judges the Supreme Court of the Republic of Croatia shall decide on a request for the protection of legality taken from a decision of the panel of the Supreme Court of the Republic of Croatia which was until October 6, 1991, within the jurisdiction of the Federal Court of former Yugoslavia.

2. Other Transitional Provisions

Article 519

If, due to a shortage of judges, a court which decides at first instance cannot constitute the panel prescribed in the provisions of Article 18 paragraph 3 and Article 20 paragraph 2 of this Act, proceedings within the jurisdiction of this panel shall be conducted by a panel of the immediately superior court.

3. Cessation of Validity of Law and Deciding on Proceedings in Progress

Article 520

(1) Criminal proceedings instituted before this Act entered into force shall continue pursuant to the provisions of the Criminal Procedure Act ("Narodne novine" – Official Gazette of the Republic Croatia No .34/93, 38/93 and 28/96), unless otherwise prescribed by the provisions of this chapter.

(2) If before this Act entered into force a decision was rendered from which according to the provisions of the Criminal Procedure Act ("Narodne novine" - Official Gazette of the Republic of Croatia No. 34/93,38/93 and 28/96) a judicial remedy may be taken, and such a decision is not yet delivered to persons entitled to legal remedy, or the term for submitting the judicial remedy is still running, or the judicial remedy was submitted but the decision on it is not yet rendered, the provisions of this Act shall apply regarding the right to judicial remedy and the proceedings on legal remedy.

Article 521

If on the day when the Criminal Procedure Act entered into force (Official Gazette No. 110/97) any term was still running, such a term shall be counted pursuant to the provisions of the Criminal Procedure Act (Official Gazette No. 110/97), except if the previous term was longer or if the provisions of this chapter prescribe otherwise.

Article 522

(1) The ministries having jurisdiction shall render more detailed regulations on the implementation of respective provisions of this Act not later than six months after its entry into force.

(2) Within a term of six months from the day of the entry of this Act into force, the Ministry of Interior shall erase all convictions from the criminal register for which the conditions are met for legal rehabilitation.

Article 523

By the entry of this Act into force, the Criminal Procedure Act (Official Gazette of the Republic of Croatia No. 52/91, 34/93, 38/93 and 28/96) ceases to be valid, except from the provisions of Articles from

- Chapter XXX (Proceedings for Offering International Judicial Assistance and Execution of International Treaties in Criminal Matters),

- Chapter XXXI (Proceedings for Extradition of Defendants and Convicted Persons), which shall be applied until the passing of separate laws.

Article 524

(1) After the entry into force of the Act on Amendments to the Criminal Procedure Act (Official Gazette No. 58/02), the proceedings in the criminal case for offences referred to in Article 19 subparagraph 1.b) of the Criminal Procedure Act (Official Gazette No. 110/97) shall be finished before the court having jurisdiction at the moment of filing the charge.

(2) If the trial is pending in the criminal case in which the proceedings were instituted before the entry into force of the Act on Amendments to the Criminal Procedure Act (Official Gazette No. 58/02), the proceedings shall be continued according to the former provisions, unless otherwise prescribed by the provisions of Chapter XXXII of the Criminal Procedure Act (Official Gazette No. 110/97).

(3) If the trial in the criminal case conducted according to the former provisions shall be started anew, the statement of the defendant regarding the charge shall be taken in terms of Article 320 paragraph 3 of the Criminal Procedure Act (Official Gazette No. 58/02) and the proceedings shall be continued according to the provisions of the Act on Amendments to the Criminal Procedure Act (Official Gazette No. 58/02). The court shall proceed in the same way when the judgment is vacated due to a judicial remedy and the case returned for the new proceedings.

(4) If until the entry into force of the Act on Amendments to the Criminal Procedure Act (Official Gazette No. 58/02) a ruling was rendered against which a judicial remedy is allowed according to the former provisions and such a ruling has not yet been delivered to the persons who have right to a judicial remedy or the term for submitting a judicial remedy is still running, or a judicial remedy has been submitted but not yet decided upon, the provisions of the law according to which the ruling was rendered shall be applied in the proceedings.

Article 525

After the entry into force of the Act on Amendments to the Criminal Procedure Act (Official Gazette No.58/02), the provisions on the terms of duration of detention prescribed in the Act shall be applied in all proceedings in which detention was ordered according to the former provisions.

Article 526

The ministries having jurisdiction shall pass the regulations referred to in Articles 38, 48, 49, 59, 76, 79 and 165 of the Act on Amendments to the Criminal Procedure Act (Official Gazette No. 58/02) within six months upon its entry into force at the latest.

Article 527

The provisions of Article 3, Article 90 and Articles 157 to 169 of the Act on Amendments to the Criminal Procedure Act (Official Gazette No. 58/02) shall be applied from January 1, 2003.