

# **THE CRIMINAL PROCEDURE CODE**

**OF**

## **THE REPUBLIC OF MOLDOVA**

### **GENERAL PART: TITLE I**

#### **GENERAL PROVISIONS ON CRIMINAL PROCEEDING**

##### **CHAPTER I: NOTIONS**

###### **Article 1. The notion and the goal of criminal procedure**

(1) The criminal proceeding is the activity of the criminal prosecution bodies and of courts with the participation of other parties and individuals in the procedure, carried out according to the provisions of the present Code.

(2) The goal of the criminal procedure is the protection of individuals, society and state against crimes, as well as the protection of individuals and of the society against abusive acts committed by officials investigating or trying the alleged or committed crimes, so that any individual who committed a crime will be punished according to his or her guilt and no innocent be prosecuted and convicted.

(3) The criminal prosecution bodies and the courts that carry out the criminal procedure have the obligation to undertake such activities so that no innocent person will be suspected, accused or convicted and so that no person will be arbitrarily or unnecessarily submitted to procedural constraints.

###### **Article 2. The Criminal Procedure Law**

(1) The criminal procedure is regulated by the provisions of the Constitution of the Republic of Moldova, by the international treaties to which Moldova is a party and by the present Code.

(2) The general principles and standards of the international law and of the international treaties to which the Republic of Moldova is a party constitute an integrated part of the procedural criminal law and they directly generate the human rights and pberties in the criminal procedure.

(3) The Constitution of the Republic of Moldova is above any criminal procedure legislation. In case the law that regulates the criminal procedure is inconsistent with the Constitution has no legal power.

(4) Legal norms of the criminal procedure in other national laws may only be applied with the condition that they are included in the present Code.

(5) In the criminal procedure, laws and other normative acts that revoke or pmit the human rights and freedoms, violate the independence of justice, the principle of adversarial trial and that are against the unanimously recognized standards of the international law, the provisions of the international treaties to which the Republic of Moldova is a party, cannot have legal power.

###### **Article 3. The Action of the Criminal Procedure Law in Time**

(1) In the criminal procedure, the law that is in force during the criminal prosecution or during the trying of the case in court will be applied.

(2) The criminal procedure law can have an ultra active effect, which means that the dispositions of the law in a period of transition to a new criminal procedure law can be applied to the procedural actions regulated by the new law. The ultra active effect will be stipulated by the new law.

#### **Article 4. The Action of the Criminal Procedure Law in Space**

(1) The criminal procedure law is unique for all the territory of the Republic of Moldova and compulsory for all criminal prosecution bodies and courts, irrespective of the place where the crime was committed.

(2) Other ways of action of the criminal procedure law can be set through international treaties to which the Republic of Moldova is a party.

#### **Article 5. Application of the Criminal Procedure Law to Foreign and Stateless Citizens**

(1) On the territory of the Republic of Moldova, the procedure in criminal cases regarding foreign and stateless citizens is carried out in compliance with the present Code.

(2) On individuals who benefit from diplomatic immunity, the criminal proceeding will be carried out in compliance with the Vienna Convention regarding diplomatic relations, as of April 18, 1961, as well as with the other international treaties to which the Republic of Moldova is a party.

#### **Article 6. Terms and Expressions used in the present Code**

The terms and expressions used in the present Code have the following definitions, on condition that special mentions do not exist:

1. "Act of procedure" – a document in which any procedural action provided by the present Code will be consigned. Procedural documents can be: ordinance, minutes, indictment, court order, sentence, court decision, judgment, etc;
2. "Agents authorized to serve summons" – collaborators of the police, of the local public administration bodies and the courts, as well as other person authorized by the criminal prosecution bodies or the courts to serve summons, under the conditions provided by the present Code;
3. "Defense" – the procedural activity carried out by the defense party for the purpose to eliminate, totally or partially, the criminal charges or mitigation of punishment, to protect the rights and interests of the persons suspected or accused for a committed crime, as well as for the rehabilitation of the persons illegally submitted to the criminal prosecution;
4. "Arrest" – a preventive measure applied based on the court judgment under the conditions provided by the law;
5. "Criminal Case" – criminal procedure carried out by the criminal prosecution body and by the court based on one concrete case regarding one or several committed or allegedly committed crimes;
6. "Urgent case" – real jeopardy that the evidences can be lost or destroyed, the suspect or

accused can hide in a suspected place or that other crimes can be committed;

7. "Ordinary remedy" – remedy provided by the law for challenging of the non-final court judgments (appeal), or, according to the case, those irrevocable (recourse);

8. "Extraordinary remedy" – remedy provided by the law for challenging of the irrevocable court judgments (revision, annulment recourse);

9. "Decision" – decision through which the court pronounces on the appeal, recourse, annulment recourse, as well as the judgment of the appeal and recourse court in the retrying of the case;

10. "Flagrante depcto" – the crime detected in the moment of its committing or before the effects of the crime have been consumed;

11. "Domicile" - a house or a building serving for temporary or permanent living for one or several persons (house, apartment, villa, hotel room, cabin on a sea or river ship), as well as rooms directly attached to them, as an indivisible part (verandah, terrace, attic, balcony, cellar and other places of common use). Under the notion of domicile, according to the meaning in the present Code, notions as: private land sector, car, private sea and river ships, office, are also included;

12. "Expert"- a person that has pertinent special knowledge in a certain field and is assigned in the way provided by law to carry out an expertise;

13. "Court Judgment" – a judgment of the court adopted in a criminal case: sentence, decision, court order and judgment;

14. "Guidepnes of the Plenary of the Supreme Court of Justice" – an act adopted by the Plenary of the Supreme Court of Justice at the settlement of the cases of its competence;

15. "Crime committed during the hearing" – criminal act committed during the hearing of the court;

16. "Court" – any court, part of the judicial system of the Republic of Moldova, that tries criminal cases in the first instance, in appeal or recourse, or by extraordinary remedy, as well as those that settle complaints against actions and acts of the criminal prosecution bodies and of bodies assigned to enforce the court judgments and sanction to the application of the procedure action;

17. "Appeal Court" – a court that tries the appeal initiated against non-final sentence (appeal courts);

18. "Recourse Court" – a court that tries the recourse initiated against court judgments adopted according to the provisions of the present code;

19. "Interpreter" – a person, invited by the competent bodies to participate in the criminal proceedings, to translate orally from one language into another or to translate signs of deaf-mute, making thus possible the communication between two or several persons;

20. "Undercover investigator" – official person who confidentially performs an operational investigation activity, as well as the other person who confidentially cooperates with the criminal prosecution bodies;

21. "Court order" – a decision adopted by the court before the sentence or judgment is

delivered;

22. "First instance court" – settlement by a sentence of the merits of the criminal case as a result of a direct examination of evidences by the competent court with the participation of the parties;

23. "Judge" – a graduate counsel appointed in the way provided by law, authorized to try cases brought to the court;

24. "Instruction judge" – a judge given prerogatives belonging to the prosecution and of judiciary control on procedural actions made during the criminal investigation.

25. "Materials" – written documents, objects attached to the criminal case that has importance in establishing the circumstances of the case, etc;

26. "Protection Measures" – measures taken by the criminal prosecution body or by the court towards the persons or assets, imposing the preventive measures, safety measures or criminal punishment;

27. "Means of proof" – means provided by the procedure law, by the provisions of which the evidences in the criminal case are administrated;

28. "Ordinance" – decision of the criminal prosecution body, adopted during the criminal proceeding;

29. "Party in a Trial" – persons who, during the criminal proceeding, exercise prosecution or defense functions based on the equality of rights and the principle of adversarial trial;

30. "Party of Defense" - persons enabled by the law to carry out the defense activity (the suspect, the accused, the defendant, the civilly accountable party and their representatives);

31. "Party of Prosecution" – persons assigned by the law to carry out or to request the carrying out of the criminal prosecution (the prosecutor, the prosecution body, the damaged party, the civil party and their representatives);

32. "Damage"- moral, physical, or assets damage that can be financially evaluated;

33. "Evidences" – elements of the fact, obtained according to the provisions of the present code to serve for the establishment of the facts, important for the fair settlement of the criminal case;

34. "Pertinent evidences" – evidences related to the criminal case;

35. "Conclusive evidences" – pertinent evidences that may influence the settlement of the criminal case;

36. "Utile evidences" – conclusive evidences, necessary in the settlement of the case by the information contained;

37. "Prosecutor" – an official person named in the way provided by law to lead and carry out the criminal prosecution and to submit the accusation to the court on behalf of the state (the Prosecutor General, his deputies, the prosecutors hierarchically subordinated to the Prosecutor General);

38. "Representative" – a person authorized, according to the law, to represent the interests

of the damaged party, the civil party, and the civilly accountable party;

39. "Legal Representatives" – parents, adoptive parents, tutors, trustees, spouse of the accused, of the defendant, of the convicted and of the damaged party, as well as representatives of the institutions entrusted with their supervision;

40. "Apprehension" – a measure taken by the competent body to deprive a person of liberty for a term of up to 72 hours;

41. "Close Relatives" – children, parents, adoptive parents, adopted children, brothers and sisters, grandparents, grandchildren;

42. "Sentence" – a decision by which the criminal case is settled in substance by the first instance court;

43. "Specialist" – a person who possesses sound knowledge of a certain discipline or of a certain matter and is involved in the criminal procedure in the way provided by law in order to contribute to the finding of the truth;

44. "Fundamental fault committed in the previous proceeding affecting the delivered judgment" – an essential violation of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, by other international treaties, by the Constitution of the Republic of Moldova and other national laws;

45. "Conventional unit" – conventional unit for measurement of the fine, provided by the Criminal Code;

46. "Person who has reached the full age" – a person who has reached the age of 18 years;

47. "Juvenile" – a person who has not reached the age of 18 years;

48. "Translator" – a person who translates in written a text from one language into another;

49. "Night time" – period of time between 22.00 and 06.00 hours;

50. "Day time" – period of time between 06.00 and 22.00 hours;

## **CHAPTER II**

### **GENERAL PRINCIPLES OF THE CRIMINAL PROCEDURE**

#### **Article 7. Legality in the Criminal procedure**

(1) The criminal procedure is carried out strictly according to the unanimously recognized principles and standards of the international law, to the international treaties to which the Republic of Moldova is a party, to the provisions of the Constitution of the Republic of Moldova and to the present Code.

(2) In case of disagreement between the provisions of the present Code and the international treaties regarding the fundamental human rights and freedoms to which the Republic of Moldova is a party, the international regulations have priority.

(3) In case of stating by the court, during the trial of the case, that the legal norm to be applied contravenes to the provisions of the Constitution and is interpreted in a legal act that may be compelled with the constitutionality control, the trial of the case will be suspended, the Supreme Court of Justice will be notified and will further notify the

Constitutional Court.

(4) In case of stating by the court, during the trial of the case, that the legal norm to be applied contravenes to the provisions of the legislation and is interpreted in a legal act that may not be compped with the constitutionality control, the court will directly apply the law.

(5) In case of stating by the court, during the trial of the case, that the national legal norm to be applied contravenes to the provisions of the international treaties regarding human rights and fundamental freedoms to which the Republic of Moldova is a party, the court will directly apply the international regulations, justifying the judgment.

(6) The decisions of the Constitutional Court regarding the interpretation of the Constitution and unconstitutionality of some legal provisions are compulsory for the criminal prosecution bodies, courts and persons participating in the criminal proceeding.

(7) Explanatory decisions of the Plenary of the Supreme Court of Justice in the matters concerning the application of the legal provisions in the judicial practice are recommendable for the criminal prosecution bodies and for the courts.

### **Article 8. Presumption of innocence**

(1) Any person accused of a crime will be presumed to be innocent until his/her guilt is proved in the way provided by the present Code through a legal public trial, during which all the guarantees necessary to the defense were assured, and found by a definitive court decision.

(2) No one has to prove his or her innocence.

(3) Conclusions on the guilt of the individual for the commission of a crime cannot be based on suppositions. In proving somebody's guilt, all doubts that cannot be eliminated under the conditions of the present Code will be interpreted in favor of the suspect, accused and defendant.

### **Article 9. Equality before the law and authorities**

(1) All people are equal before the law, the criminal prosecution bodies and the courts, irrespective of sex, race, color, language, repgion, poptical opinion or any other opinion, national or social origin, affipation to a national minority, wealth, birth or any other situation.

(2) Special conditions of criminal prosecution and trial regarding certain categories of persons that, according to the law, benefit from a certain degree of immunity will be applied in accordance with the provisions of the Constitution, international treaties, the present Code and other laws.

### **Article 10. Observance of the Human Rights, Freedoms and Dignity**

(1) All bodies and persons participating in the criminal proceeding are obliged to observe human rights, freedoms and dignity.

(2) The temporary limitation of rights and freedoms of the person and the application of constraints by the competent bodies are admitted only in those cases and strictly in the way provided by the present code.

(3) During the criminal proceeding, no person can be submitted to a torture or to cruel, inhuman or degrading treatments, cannot be detained in humipating conditions, cannot be

forced to participate in procedural actions that harm human dignity.

(4) Any person has the right, by means not forbidden by the law, to defend his rights, freedoms and dignity, illegally damaged or pmitted during the criminal proceeding.

(5) The damage caused to the human rights, freedoms and dignity during the criminal proceeding will be compensated in the way provided by the legislation.

### **Article 11. Inviolability of the person**

(1) Liberty and security of the person are inviolable.

(2) No individual can be apprehended and arrested except in the cases and in the way establised by the present Code.

(3) Deprivation of liberty, arrest, forced internment of a person in a health institution or his/her assignment to a special educational institution are allowed only on the basis of the warrant of arrest or of the motivated court judgment.

(4) Preventive arrest of a person until the arrest warrant is issued, cannot exceed 72 hours.

(5) The apprehended or arrested person will be immediately informed of his/her rights and on the reasons of his/her apprehension or arrest, of the circumstances of the fact, as well as the legal classification of the action the person is suspected or accused to have committed, in a language s/he can understand, in the presence of a defense lawyer, appointed by the defendant or assigned ex officio.

(6) The criminal prosecution body or the court are obliged to release immediately any person illegally apprehended, or in case the apprehension or arrest grounds are declined.

(7) The search, the corporal search, as well as other procedural actions that breach theinviolability of the person can be made without the consent of the person or of his/her legal representative only based on the provisions of the present Code.

(8) Any individual apprehended or arrested will be treated by observing human dignity.

(9) During the criminal proceedings, no individual can be physically or mentally abused and any actions and methods that jeopardize the life and health of people, even with their consent, as well as the environment, will be forbidden. The person preventively apprehended or arrested cannot be subjected to violence, threats or methods that would lead to the alteration of his/her abipty to make decisions or express his/her opinions.

### **Article 12. Inviolability of Domicile**

(1) Inviolability of domicile is guaranteed by law. During the criminal proceeding no one has the right to enter somebody's domicile against the will of the persons living or are settled there, except for the cases and in the way provided by the present Code.

(2) Searches, examinations of the domicile, as well as other criminal prosecution actions in the domicile can be carried out only based on a court decision, except for the cases provided by the present Code. In cases of carrying out procedural actions without a court decision, the body authorized to carry out these actions has the obligation, immediately, within 24 hours since the action was ended, to submit the obtained materials to the court to check the legality of these actions.

### **Article 13. Inviolability of Property**

- (1) A physical or juridical person cannot be deprived from his/her/its property right. No one can be deprived from his property except for public utility reasons and in the conditions provided by the present Code and by the general principles of the international law.
- (2) Placing real estate under sequester can be made only based on a court judgment.
- (3) The sequestered goods during the procedural actions will be described in the minutes of the respective action, and the person from whom the goods were taken will be handed a copy of the minutes of this action.

### **Article 14. The Secrecy of the Correspondence**

- (1) The right to secrecy of letters, telegrams, and other mail, of telephone conversations and of other legal ways of communication is guaranteed by the state. No one can be deprived of or limited in this right during the criminal proceeding.
- (2) The restriction of the right provided in Paragraph (1) will be allowed only based on a court warrant issued under the conditions of the present Code.

### **Article 15. Inviolability of the Private life**

- (1) Any person has the right to the inviolability of his private, to the confidentiality of his personal and family life, to the protection of personal honor and dignity. During the criminal proceeding, no one has the right to involve arbitrarily and illegally in the private life of the person.
- (2) In carrying out the procedural actions, information cannot be collected, if not necessary, on the private life of the person, which s/he considers to be confidential. At the request of the criminal prosecution bodies and the court, participants in procedural actions have the obligation not to disclose such information and for this, a written pledge will be made.
- (3) Persons from whom the criminal prosecution body requires information on private and personal life have the right to be convinced that this information is administrated in a concrete criminal case. A person has no right to refuse to provide information on his or other persons' private and personal life on pretext of inviolability of private life, but he has the right to ask explanations from the criminal prosecution body on the necessity of obtaining such information, including the explanations in the minutes of the respective procedural action.
- (4) Evidences that confirm information regarding the private and personal life of a person, at her/his request, will be examined in closed court hearing.
- (5) Damages caused to a person by harming the inviolability of his/her private and personal life during the criminal proceedings will be compensated in the way provided by the current legislation.

### **Article 16. The Language of Criminal Proceeding and the Right to an Interpreter**

- (1) Criminal proceeding will be carried out in the official language of the state.
- (2) A person who does not speak the state language has the right to get acquainted with all the documents and the materials of the case, to speak before the criminal prosecution body



and the court through an interpreter.

(3) Criminal proceeding can be also carried out in another language acceptable for the majority of the persons participating in the proceeding.

(4) The procedural acts of the criminal prosecution body and of the court will be handed to the suspect, accused, defendant, being translated into the mother tongue or another language s/he knows, in the way provided by the present Code.

#### **Article 17. Ensuring of the Right to Defense**

(1) During the entire criminal proceeding, the parties (the suspect, the accused, the defendant, the damaged party, the civil party, and the civilly accountable party) have the right to be assisted or, according to the case, represented by a defense counsel assigned or appointed ex officio.

(2) The criminal investigation body and the court have the obligation to ensure the full exercise of the procedural rights of the participants in the criminal proceedings under the conditions of the present Code.

(3) The criminal prosecution body and the court have the obligation to ensure the right to qualified legal assistance to the suspect, the accused or the defendant, provided by a defense counsel assigned by them or appointed ex officio, independently from this body.

(4) At the hearing of the damaged party and the witnesses, the criminal prosecution body does not have the right to forbid the presence of the defense counsel invited by the examined person as a representative.

(5) In the case when the suspect, the accused, the defendant do not have financial means to pay a defense lawyer, he will be assisted free of charge by a counsel appointed ex officio.

#### **Article 18. The public Character of Court Hearings.**

(1) In all courts the hearings are public, except for the cases provided by the present article.

(2) Access in the court room can be forbidden for the press or for the public during a whole proceeding or only a part of it in the interest of protecting morality, public order or national security, when the interests of juveniles or the protection of private life of the parties in the proceeding require it, or to the extent the court considers this measure strictly necessary or when, due to special circumstances, publicity would cause damage to the interest of justice.

(3) The trying of the case in closed hearing will be justified and carried out by observing all the rules of the legal procedure.

(4) In all cases, the court judgments are pronounced publicly.

#### **Article 19. Free Access to Justice**

(1) Any person has the right to the examination and settlement of his/her case in a fair way, in a reasonable term, by an independent, impartial court, set by the law, which will act according to the present Code.

(2) A person that carries out a criminal prosecution and a judge cannot participate in the examination of the case, in case they are directly or indirectly interested in the proceeding.

(3) The criminal prosecution body has the obligation to take all measures provided by law for the complete and objective investigation, under all aspects, of the circumstances of the case, to emphasize both the circumstances that prove the guilt of the suspect, accused, defendant and those that exculpate them, the circumstances that alleviate or aggravate their liability.

#### **Article 20. Carrying out of the criminal proceeding in the reasonable term**

(1) The criminal prosecution and the trial of the cases will be carried out in reasonable terms.

(2) The criteria of establishment of the reasonable term for the settlement of the criminal case are:

- 1) complexity of the case;
- 2) the conduct of the parties in the proceeding;
- 3) the conduct of the criminal prosecution body and the court.

(3) The criminal prosecution and the trial of the criminal cases with the participation of the suspects, accused, defendants preventively arrested, as well as juveniles will be made urgent in preferential way.

(4) The observance of the reasonable term during the criminal prosecution is secured by the prosecutor, and at the trial of the case by the respective court.

(5) The observance of the reasonable term during the trial of the certain cases will be verified by the hierarchically superior court in the proceeding of the trial of the respective case by ordinary and extraordinary remedy.

#### **Article 21. Liberty from testifying against oneself**

(1) No one can be forced to testify against oneself or against one's close relatives, husband, wife, fiancé, fiancée, or to admit one's guilt.

(2) A person to whom the criminal prosecution body offers to make incriminating statements against oneself or against one's close relatives, husband, wife, fiancé, fiancée, has the right to refuse to make such statements and cannot be made liable for this.

#### **Article 22. The Right Not to Be Prosecuted, Tried or Convicted several Times**

(1) No one can be prosecuted by the criminal prosecution bodies or sentenced by the court several times for the same crime.

(2) The dropping or cessation the criminal prosecution prevents the recurrent pressing the charge on the same person for the same crime, except for the cases when new or recently discovered facts or a fundamental fault committed in the previous proceeding affected the delivered judgment.

(3) The decision of the criminal prosecution body on the dropping or cessation of the criminal prosecution, as well as the final court judgment prevents the resumption of the criminal prosecution, of the pressing of the charge or a heavier penalty for the same person for the same crime, except for the cases when new or recently discovered facts or a fundamental fault committed in the previous proceeding affected the delivered judgment.

#### **Article 23. The Adversarial Character Principle in the Criminal proceeding**

- (1) The criminal prosecution, the defense and the trial of the case are separate and are carried out by different bodies and persons.
- (2) The court is not a criminal prosecution body, does not act in favor of the prosecution or of the defense and expresses only the interests of the law.
- (3) The parties participating in the trial of the case have equal rights, being invested by the criminal procedural law with equal opportunities to support their positions. The court considers the base of the sentence only that evidence for the examination of which both parties had equal access.
- (4) The parties in the criminal proceeding choose their position, the modality and the means to support their case, independently from the court or from other bodies or persons. The court provides support to any of the parties, upon request, under the conditions of the present Code, in obtaining necessary evidences.

#### **Article 25. Serving Justice – an Exclusive Prerogative of the Courts.**

- (1) In criminal cases, justice is served on behalf of the law only by the courts. Constituting illegitimate courts is forbidden.
- (2) No one can be declared guilty for the committing of a crime, as well as charged criminal penalty except based on a final court judgment, adopted in the conditions of the present Code.
- (3) The competence of the court and the limits of its jurisdiction, the way of development of the criminal proceeding cannot be changed arbitrarily for certain categories of cases and persons, as well as for a certain situation or for a certain period of time.
- (4) No one can be deprived of the right to have his/her case tried by the court and the judge in whose competence it was given by law.
- (5) Only those courts, under the conditions of the present Code, can check sentences and other court judgments in criminal cases.
- (6) Sentences and other court judgments of the illegitimate courts have no legal power and cannot be enforced.

#### **Article 26. Independence of Judges and Their Obedience only to the Law**

- (1) In serving justice in criminal cases, judges are independent and they obey only the law. Judges will try criminal cases in compliance with the law and in conditions that exclude any pressure exerted upon them.
- (2) The judge will deliberate on criminal materials and cases according to his/her own considerations based on the evidence examined in the respective legal procedure.
- (3) The judge may not be predisposed to accepting conclusions drawn by the criminal prosecution body against the defendant or to start a trial with the preconceived idea that the latter committed a crime that constitutes the object of the charges. The prosecutor has the task to present the charges.
- (4) Criminal justice will be applied with no interference. The judge has the obligation to oppose any attempt of exercising pressure on him. Exercising pressure on the judge in trying criminal cases for the purpose of influencing the issuing of the court decision imposes

criminal liability according to the law.

(5) The instruction judge is independent in relationship with the other legal bodies and courts and exercises prerogatives only based on the law and within its limits.

#### **Article 27. Free Appreciation of the Evidence**

(1) The judge and the representative of the criminal prosecution bodies appreciate the evidence according to their own conviction formed after the examination of all administered evidence.

(2) No evidence has a substantiation power established in advance.

#### **Article 28. The official organization of the criminal proceeding**

(1) The prosecutor and the criminal investigation body have the obligation, within the limits of their competence, to start the criminal prosecution in case when they are informed on the committed crime, in the way provided by the present code, and to carry out necessary actions on the establishment of the criminal facts and of the guilty person.

(2) The court carries out the procedural actions ex officio within the limits of its competence, except the case when they are disposed to carry out upon the request of the parties.

### **TITLE II: THE COURTS AND THEIR COMPETENCE**

#### **CHAPTER I**

#### **COURTS**

#### **Article 29. Courts that serve justice in criminal cases**

(1) In criminal cases, justice is served by the Supreme Court of Justice, the Appeal Courts and courts, according to their competence provided by the present Code.

(2) For certain categories of criminal cases, specialized courts, chambers or panels of judges can be constituted.

(3) Within the court, as a judicial body with its own functions in carrying out the criminal proceeding, in the criminal prosecution stage, the instruction judges will be assigned.

#### **Article 30. Court's structure**

(1) The trying of criminal cases will be made by the court, by a panel of three judges or by one judge only.

(2) In all first-degree courts, one judge tries criminal cases, except for the cases provided by the present article.

(3) Criminal cases in exceptionally serious crimes, for which the law provides life penalty, will be tried in the first instance based on a motivated decision of the president of the court, by a panel of three judges.

(4) The extremely complex criminal cases, as well as those of a major social importance will be examined based on a motivated decision of the president of the court, by a panel of

three judges.

(5) A panel of three judges of the respective courts will try appeals and recourses against court judgments in criminal cases for which the appeal remedy is not provided, as well as against the judgments of the appeal courts to decide on the admissibility.

(6) The extended Chamber of the Supreme Court of Justice will try the recourses against the sentence of the Criminal Chamber of the Supreme Court of Justice, against the judgments of the appeal court and recourses in cancellation by a panel of five judges.

(7) The Plenary of the Supreme Court of Justice will try recourses on cancellation in a panel constituted by at least two thirds of the total number of judges of the Supreme Court of Justice.

### **Article 31. Replacement of the panel of judges**

(1) The panel of judges, constituted according to Article 30, needs to be the same all along the trial of the case, except in case provided by paragraph (3). If not possible, the panel can be replaced before the beginning of the examination of the case.

(2) After the court examination has started, any change of the panel will result in the repetition of the examination.

(3) In case of the trial of the case in substance by a panel of three judges and one of them cannot participate in the continuation of the case trial due to the extended illness, death or dismissal in conditions of the law, this judge will be replaced by another judge and the case will be further tried. The judge who interferes in the proceeding will be offered time to get acquainted with the materials of the case, including those examined by the court and to prepare for further participation in the proceeding, and the replacement of the judge in the conditions of the present paragraph does not require the repetition of the case trial. The judge will have the right to request the repetition of some procedural actions previously carried out during the hearing in his absence in case additional matters are necessary to specify.

(4) The authorization of the transferred, abridged, removed, suspended or dismissed judges, during the trial of the criminal cases at their final phase, remain, according to the decision of the Superior Council of Magistrates, till the ending of the trial of the respective case.

### **Article 32. The place where criminal materials and cases are examined**

Examination of criminal materials and cases will be carried out in the court premises. For sound reasons, the court, through a highly argumentative hearing brief, can decide to move the trial in a different place.

### **Article 33. Incompatibility of the judge**

(1) Judges who are married or relatives to each other cannot be a party of the same panel.

(2) A judge cannot participate in trying a case and he can be challenged if:

- 1) S/he personally, the spouse, their ancestors or offspring, their brothers, sisters and their children, their in-laws and persons who, by adoption became relatives according to law, these relatives, as well as other relatives of the judge, are directly or indirectly interested in the proceeding;
- 2) S/he is a damaged party or a representative of the damaged party, a civil party, a

civilly accountable party, a spouse or a relative of one of these persons or with their representative, a spouse or a relative of the accused, defendant in the proceeding or his/her defense party;

3) participated in the trial as a witness, expert, specialist, interpreter, court clerk, person who carried out the criminal investigation, as a prosecutor, instruction judge, defense lawyer, legal representative of the accused, defendant, representative of the damaged party, of the civil party or of the civilly accountable party;

4) carried out an investigation or an administrative control of the circumstances of the case or participated in adopting the decision regarding the case in any other non-governmental or governmental body;

5) if in the given case he made decisions before the trial, thus formulating his opinion as to the guilt of the defendant;

6) if there are other circumstances that cast a reasonable doubt on judge's impartiality.

(3) The judge can not participate in a new trial of the case both in the first instance and in the appeal or recourse court and should be challenged and in the case, if he participated previously as a judge in the examination of the same case in the first instance, in the appeal or recourse court, as well as an instruction judge. This provision does not apply to the members of the Plenary of the Supreme Court of Justice and to the judges from the Supreme Court of Justice in the re-trying of cases based on a decision of the Plenum of the Supreme Court of Justice.

(4) Provisions regarding incompatibility cases provided by paragraph (2) point 5) and paragraph (3) do not apply to instruction judges.

#### **Article 34. Abstention and challenging the judge**

(1) In the case when circumstances provided by article 33 occur, the judge has the obligation to make a statement of abstention from trying the case.

(2) For the same reasons, the judge can be challenged by the parties in the case. Challenging needs to be motivated and submitted before the examination of the case has begun. The application for challenging may be made later only in cases when the one who makes the application has found out about the challenging reason only after the examination in the court had begun.

(3) Anticipated challenging of judges who do not participate in trying the given case, as well as of the judge or the panel of judges who settles the challenging request, will not be allowed, but the arguments of the application for challenging can be pleaded in appeal, or according to the case in recourse challenging the judgment in substance.

(4) In the case when the challenging application is submitted in ill fate and abusively, for the purpose to delay the trial, to get the court confused or with other malicious intentions, the court that tries the case can apply a legal fine on the guilty person, according to the present Code.

#### **Article 35. Procedure of settlement the challenging application and abstention declaration**

(1) Challenging or abstention of a judge will be settled by another judge or, according to the case, by another panel of judges. In settlement of a challenging or abstention of judges included in a panel of three or five judges, judges who were not challenged from this panel may be included in the newly created panel of judges.

(2) Examination of the challenging application or abstention declaration will be carried out immediately, by hearing the parties and the challenged person. In the case when a new panel of judges in the same court cannot be constituted, the hierarchically superior court will settle the challenging. The latter, if challenging is admitted, will assign a court equal to the one where the challenging was made, for the trying of the case.

(3) The court order on the challenging may not be susceptible to be challenged.

## **CHAPTER II**

### **COMPETENCE OF COURTS**

#### **Article 36. Competence of the Courts**

The Courts try in the first instance criminal cases regarding minor offences provided by the Special Part of the Criminal Code, except those provided by law that are of the competence of other courts, as well as requests and complaints against decisions and actions of the criminal investigations bodies, examine the matters related to the execution of the punishment and other matters given by the law to their competence.

#### **Article 37. Competence of the Military Court.**

The Military Court tries in the first instance cases on crimes provided by the Special Part of the Criminal Code committed by:

- 1) soldiers, persons belonging to the sergeants body and the officer body of the National Army, of the gendarme troops (internal affairs troops) of the Ministry of Internal Affairs, of the Department of Exceptional Situations, of the Service of Security and Information, the troops of the border guards and the troops of the Service of Protection and Defense of the State;
- 2) persons certified in the staff of penitentiaries;
- 3) persons in the military service during call-ups;
- 4) other persons on which there are special provisions in the legislation.

#### **Article 38. Competence of the Appeal Court**

The Appeal Court:

- 1) examines in the first instance criminal cases provided by the Criminal code in articles 135-144, 278, 279, 283, 284, 337-343;
- 2) As an appeal court, the Appeal Court will try appeals against judgments delivered in the first instance by courts, including Military Court;
- 3) As a recourse court, will try recourses against court judgments that, according to the law, can not be challenged in appeal;
- 4) Settles competence conflicts occurred between courts;
- 5) Tries cases in revision given to its competence by law.

#### **Article 39. Competence of the Supreme Court of Justice**

The Supreme Court of Justice:

- 1) will try in the first instance criminal cases on offences committed by the President of the Republic of Moldova;
- 2) as a recourse court, the Supreme Court of Justice will try recourses against judgments delivered by the first instance, or, according to the case, by the Appeal

Court, as well as other cases provided by the law;

3) will try, within the limits of its competence, cases under extraordinary remedies, including recourses in cancellation;

4) will notify the Constitutional Court to decide on the constitutionality of legal documents and on exceptional cases of non-constitutionality of legal documents;

5) will adopt expeditious decisions in judicial practice matters on uniform application of criminal and criminal procedure legislation;

6) will settle cases where the course of justice is interrupted, as well as applications for transfer.

#### **Article 40. Territorial competence in criminal matter**

(1) The court under the territorial jurisdiction of which the crime was committed will try a criminal case. If the crime is continuous or prolonged, the court under the territorial jurisdiction of which the crime was consumed or ceased will try the case.

(2) In case if it is impossible to identify the place where the crime was committed, the court under the territorial jurisdiction of which the prosecution was finalized will try the case.

(3) The criminal case on crimes committed outside the borders of the country or on a ship will be tried by the court under the jurisdiction of which the last known residence of the defendant is to be found, or, if the latter is not known, by the court under the jurisdiction of which the prosecution was finalized.

#### **Article 41. Competence of the instruction judge**

(1) The instruction judge ensures the judicial supervision during the criminal prosecution by:

- 1) disposing, substitution, cessation or revoking of preventive arrest and of arrest at the domicile;
- 2) disposing the provisional release of the apprehended or arrested person and revoking it, provisional seizing of the driver's license for the means of transportation;
- 3) authorizing searches and corporal search, levying a constraint upon goods, seizing of objects containing state, trade, banking secret, exhumation of corpse;
- 4) disposing of the provisional suspension of duty, hospitalization of person in health institution;
- 5) authorizing interception of communication, sequester of correspondence, video recording;
- 6) hearing of witnesses under conditions provided by Articles 109 and 110;
- 7) carrying out procedure actions provided by the present code.

#### **Article 42. Competence in case of indivisibility or joining of criminal cases**

(1) In case of indivisibility or joining of criminal cases, the trial in the first instance, in case it take place simultaneously for all the acts and all the perpetrators, will be carried out by the same court.

(2) Indivisibility of criminal cases is the situation when several persons participated in the commission of a crime, when two or several crimes were committed by the same act or in the case of a continuous or prolonged crime.

(3) Joining of criminal cases occurs when:

- 1) two or several crimes are committed by the different acts, by one or several



persons together, at the same time, in the same place;

2) when two or several crimes are committed by the same person at a different time or in a different place;

3) a crime is committed in order to prepare, to facilitate or to conceal the commission of another crime or is committed to facilitate or assure the absolving of the perpetrator of another crime of criminal liability;

4) when between two or several crimes exists a link and the joining of the cases is imposed for the better application of justice.

(4) In case of joining of some cases regarding several persons accused of the commission of crimes in various jurisdictions of equal courts or regarding a sole person, accused for the commission of several crimes, if these cases are in the competence of two or several equal courts, the case will be tried by the court under the territorial jurisdiction of which the prosecution was finalized.

(5) If one person, or a group of persons are accused for the commission of one or several crimes and if the case referring to one of the accused or one of the crimes is of the competence of a hierarchically superior court, the case will be tried entirely by the hierarchically superior court.

(6) In case when a contest between the military court and a court exists, the case will be tried by the court.

(7) Joining of cases will be admitted by the respective court in the case when the incriminated actions do not impose a more serious legal classification, and, at the prosecutor's request and in the other cases for the modification of the charge towards aggravation.

#### **Article 43. The court competent to join criminal cases**

(1) Joining of the cases is decided by the court that has the competence to try, according to Article 42.

(2) In case of indivisibility of criminal cases, as well as in those of joining, cases will be joined by the court, if they are submitted in the first instance court, even after the cassation of the judgments and delivery to the recourse court to be re-tried.

(3) Cases will be joined also by the appeal or the recourse courts of the same level, if they are at the same stage of trial.

#### **Article 44. The declining of competence of the court**

(1) The court, establishing that it is not competent to examine the criminal case, will decline its competence and will deliver the case to a competent court by a court order.

(2) If the declining was determined by the material competence or by the capacity of a person, as well by the territorial competence, the court to which the case was delivered may maintain the measures disposed by the court that declined its competence.

(3) Declining of competence will be not accepted if the case the examination of which started in a hierarchically superior court is sent to a hierarchically inferior court.

(4) The declining court order is final.

#### **Article 45. Conflict of competence**

(1) When two or several courts admit their competence to try the same case (positive conflict of competence) or decline their competence (negative conflict of competence), the conflict will be settled by the common hierarchically superior court.

(2) In case of positive conflict, the common hierarchically superior court will be notified by the last court that declared its competence and, in case of negative conflict, by the last court that declined its competence.

(3) In all cases, the parties of the proceeding can make the notification.

(4) Until the positive conflict of competence is settled, the procedure will be suspended. The last court that declared its competence or the last court that declined its competence will carry out the acts and will take the urgent measures.

(5) The common hierarchically superior court will settle the conflict of competence according to the rules for the first instance with the summoning of the parties, the presence of which is optional.

(6) The court order of the court that settles the conflict of competence will be final, but the arguments of disagreement with it may be invoked in appeal, or, according to the case, in recourse against the judgment in substance.

(7) The court to which the case was sent by a court order of establishing the competence may not decline its competence, except for the case when, following a new situation of fact resulted from the completion of the judicial investigation, it will be established that the deed constitutes a crime provided by law to a competence of another court.

#### **Article 46. The transfer of trial of a criminal case from the competent court to another equal court.**

(1) The Supreme Court of Justice may transfer the trial of a criminal case from a competent court to another equal court in the case when, by this, an objective, prompt and complete settlement can be obtained, and a correct carrying out of the trial is ensured.

(2) The transfer of case may be requested by the president of the court or by one of the parties.

#### **Article 47. The application for transfer and its effects**

(1) The application for transfer will be submitted to the Supreme Court of Justice and needs to be motivated. Documents supporting the application will be attached to it, if they are held by the party requesting the transfer.

(2) In the application will be mentioned if there are arrested persons in the case.

(3) The suspension of the trial may be disposed by the Supreme Court of Justice, after it was notified.

#### **Article 48. Procedure of notifying the parties and of examination of the transfer application**

(1) Parties will be notified on the date of examination of the transfer application, and their presence in hearing will be optional.

(2) The examination of the transfer application will be carried out in a public hearing by a

panel of three judges of the Supreme Court of Justice.

(3) If parties are present, their opinion will be also heard.

#### **Article 49. Settlement of the transfer application**

(1) The Supreme Court of Justice will dispose, indicating the reasons, the admitting or dismissal of the transfer application.

(2) In the case when the application is considered to be well-founded the Supreme Court of Justice will dispose the transfer of the case trial, indicating the concrete court and, at the same time, deciding to what extent the documents carried out by the court from which the case was transferred will remain. This court will be immediately notified of the admitting of the transfer application.

(3) If the court where the case which transfers is requested tried the case in the meantime, the judgment delivered by this court will be cancelled by the effect of the admitting of the transfer application.

#### **Article 50. Recurrence of the transfer application**

The transfer of the case cannot be requested again, except for the case when the new request is based on circumstances that the Supreme Court of Justice did not know during the settlement of the previous application or on circumstances occurred afterwards.

### **TITLE III: THE PARTIES AND OTHER PERSONS PARTICIPATING IN THE CRIMINAL PROCEEDING**

#### **CHAPTER I**

#### **THE PARTY OF PROSECUTION**

#### **Article 51. The prosecutor**

(1) The prosecutor is an official person who, within the limits of his competence, will carry out, on behalf of the state, the criminal prosecution, represents the party of prosecution in the court, carries out other duties provided by the present code. The prosecutor who participates in the trial of the criminal case has a duty of a state prosecutor.

(2) The prosecutor has the right to initiate a civil case against the accused, defendant or against the person who is materially responsible for the deed of the accused, defendant:

- 1) in the interest of the damaged person, that finds him/herself in a state of inability to act or of dependence before the accused, defendant, or for other reasons, cannot exercise his/her right to initiate a civil case;
- 2) In the interest of the state.

(3) In exercising his duties in criminal proceeding, the prosecutor will be independent and he will obey only the law. He will also execute written orders given by a hierarchically superior prosecutor.

(4) During the examination of the case, the prosecutor represents the accusation on behalf of the state and will submit to the hearing of the court all the evidence collected by the criminal prosecution body.

(5) The prosecutor has the right to appeal or to recourse against the judgments of the court

that are considered by him illegal or groundless.

(6) The General Prosecutor and his deputies have the right to challenge the judgments of the court that remained final, considered by them illegal or groundless, under the conditions of the extraordinary remedies.

(7) During the enforcement of the court judgment, the prosecutor carries out the duties provided by the present code.

## **Article 52. responsibilities of the prosecutor in carrying out the criminal prosecution**

(1) In carrying out criminal prosecution, a prosecutor has the following responsibilities:

- 1) initiates the criminal prosecution and orders, in compliance with the present Code, the carrying out of the criminal prosecution, refuses the initiation of the criminal prosecution or ceases the criminal prosecution;
- 2) carries out the criminal prosecution according to the law;
- 3) personally leads the criminal prosecution and supervises the legality of actions carried out by the criminal prosecution body;
- 4) permanently supervises the execution of the procedure of receiving and registering notifications on crimes;
- 5) requests criminal files, documents, procedure acts, materials and other information on the committed crimes and identified persons in criminal cases carried out by him, for control, from hierarchically subordinated prosecutors and from criminal prosecution bodies;
- 6) checks the quality of administrative evidence, makes sure that any crime will be discovered, any perpetrator will be held criminally liable and that no person will be criminally prosecuted unless proper clues indicate that s/he committed the crime;
- 7) sets the reasonable term of criminal prosecution for each case;
- 8) cancels illegal and groundless ordinances of the criminal prosecution body and of subordinate prosecutors;
- 9) withdraws justly and transmits the file, according to their competence, from a criminal prosecution body to another and from a person who carries out the criminal prosecution to another, for the purpose of assuring the objective and complete carrying out of the criminal prosecution;
- 10) orders the carrying out of the criminal prosecution by a group of officers or by several criminal prosecution bodies, assigning the persons who will carry out the criminal prosecution;
- 11) settles the abstention or challenging of the criminal prosecution officers or of the hierarchically subordinated prosecutors;
- 12) decides on the application of the preventive measure, its modification or dismissal, except for preventive arrest, arrest at the domicile, provisional liberation or provisional seizing of the driver's license for the means of transportation;
- 13) carries out control on the legality of apprehension of the person;
- 14) gives indications in writing regarding the criminal prosecution actions and the operational investigation measures carried out with the purpose of finding the persons who committed crimes;
- 15) issues ordinances for the police bodies on the apprehension of a person, its forced bringing in, seizing objects and documents, on other criminal prosecution actions, according to the provisions of the present Code;
- 16) requests the court to authorize the arrest and its prolongation, provisional liberation of the apprehended or arrested person, sequester and seizing of correspondence, interception of communication, provisional suspension of the

accused from his/her duty, physical and electronic surveillance of a person, exhumation of the corpse, video and audio control of the room, installing the video and audio recording equipment in the room, checking information transmissions to the suspect, hospitalization of the person in a health institution to carry out the expertise and other actions for which the authorization of the instruction judge is required;

17) assists in carrying out any criminal prosecution action, or s/he carries it out personally;

18) can request the participation of the instruction judge to carry out certain criminal prosecution actions;

19) gives the criminal files back to the criminal prosecution body with his indications in writing;

20) dismisses the person that carries out the criminal prosecution, if the latter violated the law during the criminal prosecution process;

21) addresses notifications to the respective body on withdrawing the immunity of certain persons and holding them criminally liable;

22) ceases criminal proceeding, disposes the cessation of the criminal prosecution of the person and classifies the criminal case in situations provided by the law;

23) puts under accusation and hears the accused based on the evidence submitted by the criminal prosecution body or based on the evidence collected by him personally;

24) informs the parties on the materials of the case;

24) makes the indictment act in the criminal case, hands over a copy of it to the accused, and sends the case to the competent court.

(2) Upon carrying out the criminal prosecution, the prosecutor has as well of other rights and obligations provided by the present code.

### **Article 53. Responsibilities of the prosecutor in the court**

(1) Upon examination of a criminal case in the court, the prosecutor has the following responsibilities:

- 1) presents the accusation on behalf of the state and brings, in the court hearing, the respective evidence of the case led by him or in case he personally carried out the criminal prosecution;
- 2) participates in the examination of the evidence brought by the party of defense, brings new evidence necessary to confirm the charges, makes requests and presents his opinion on matters that occur during judicial debates;
- 3) requests the case back from the court in order to formulate a more serious accusation for the defendant and to administrate new evidence, in case the result of the judicial investigation proves that the defendant committed other crimes, and the evidence is not sufficient;
- 4) changes the legal classification of the crime committed by the defendant if the judicial investigation confirms that the defendant committed this crime;
- 5) requests the court to interrupt the examination of the criminal case for a term provided by the present Code in order to bring new evidence that confirm the charges brought against the defendant in case of an incomplete carrying out of the criminal prosecution;
- 6) gives indications to the criminal prosecution body in writing on the carrying out of some procedural actions on additional evidence or on new crimes;
- 7) presents his opinion in judicial debates on the crime committed by the defendant, its legal classification according to the criminal law and on the punishment that is to be applied;

8) initiates appeal and, according to the case, recourse regarding the criminal and civil aspect of the case, drops it in the way provided by the present Code;

(2) Upon examination of the criminal case, the prosecutor disposes as well of other rights and obligations provided by the present code.

#### **Article 54. Abstention and Challenging of the prosecutor**

(1) The prosecutor may not participate in carrying out the criminal proceeding if:

- 1) at least one of the circumstances provided by Article 33, applied correspondingly, exist;
- 2) he can not be a prosecutor according to the law or by sentence of the court.

(2) The fact that a prosecutor participated in carrying out the criminal prosecution, led or supervised actions of criminal procedure or supported the charges in the court does not constitute an impediment for his ulterior participation in the trial of the same criminal case.

(3) In the case when circumstances provided by paragraph (1) exist, the prosecutor has the obligation to make a statement of abstention from the participation in the respective case.

(4) For the same reasons, the other participants in the case, invested with such rights by the present Code can challenge the prosecutor.

(5) The abstention and challenging of the prosecutor can be settled in the following ways:

- 1) by the hierarchically superior prosecutor, during the criminal prosecution, and, if it is the case of the General Prosecutor, his abstention and challenging will be settled by a judge of the Supreme Court of Justice;
- 2) During the trial of the case, the respective court will settle it.

(6) The decision on challenging cannot be appealed.

#### **Article 55. The criminal prosecution body and its responsibilities**

(1) Criminal prosecution will be carried out by criminal prosecution officers of the criminal prosecution bodies provided by Article 56.

(2) Criminal prosecution bodies have the responsibility to carry out the operational investigation activities, including the use of audio and video recordings, filming, taking photographs, and other actions of criminal prosecution provided by the present Code for the purpose of discovering evidence of the crime and the persons who committed it, establishing facts, procedurally securing these actions, that can be used as evidence in the criminal case after checking them according to the criminal procedure legislation.

(3) The criminal prosecution body has also the obligation to take all necessary measures to prevent and stop the crime.

(4) If signs of crime exist, the criminal prosecution body, in parallel with the registration of the notification, will initiate the criminal prosecution procedure, guided by the provisions of the present Code, carries out activities of criminal prosecution to discover the crime and identify the evidence that confirm or deny the commission of the crime, takes measures in order to assure the civil action or an eventual seizure of the goods illegally obtained.

(5) The criminal investigation body will immediately announce the prosecutor of the

committed crime and on the initiation of the criminal prosecution actions.

### **Article 56. The head of the criminal prosecution body and his responsibilities**

(1) In criminal cases, the responsibilities of the head of the criminal prosecution body will be executed by the criminal prosecution officer of the Ministry of Internal Affairs, the Service of Information and Security of the Republic of Moldova, the Customs Department, the Centre for Combating Economic Crimes and Corruption, assigned in the established way and who acts within the limits of his/her competence.

(2) The head of the criminal prosecution body exercises the control on the carrying out in time of crime prevention and discovery actions, takes measures for the criminal prosecution to be carried out in an objective and complete way, under all aspects and to assure the registration in the established way of notifications on the commission of crimes.

### **Article 57. The criminal prosecution officer and his responsibilities**

(1) The criminal prosecution officer is the official who, on behalf of the state, within the limits of his/her competence, carries out the criminal prosecution in a criminal case.

(2) The criminal prosecution officer has the following responsibilities:

- 1) assures the registration of the crime in the established order, suggests to the prosecutor the cessation of a criminal case or not to initiate the criminal prosecution lacking the signs of a crime;
- 2) recommends a criminal case for criminal prosecution according to the competence of another criminal prosecution body;
- 3) has the entire responsibility for the carrying out legally and in due time of the criminal prosecution;
- 4) makes recommendations to the prosecutor to submit requests to the court in order to get the authorization to search, to levy sequester upon goods, mail and telegraphic correspondence and to seize them, to intercept the telephone conversations and other kind of communication, to provisionally suspend the accused from his/her duty, to seize objects and documents from third parties, to physically and electronically watch the person, to forcibly take samples of saliva, blood, hair, nails, to exhume the body, to carry out video and audio surveillance of the room, to install audio and video recording equipment in the room, to check the information transmissions to suspect;
- 5) summons and hears the suspect, the damaged party and the witnesses;
- 6) investigates and secures in the established way the place of commission of the crime, carries out searches in case of crimes in progress or urgent case, picks up objects and documents, carries out other actions on the scene, according to the law;
- 7) requests documents and materials that contain data on the crime and on the persons who committed it;
- 8) disposes documents revision, inventory, department expertise and other actions;
- 9) from the moment when the socially dangerous deed was registered, leads operational investigation actions in order to identify the crime, to look for the missing persons, as well as for the goods lost as a consequence of the commission of the crime;
- 10) disposes other criminal prosecution bodies to carry out criminal prosecution actions;
- 11) gives dispositions to the police bodies on apprehension, forced bringing in, arrest and other procedure actions, as well as on providing help in carrying out the criminal prosecution actions;

- 12) identifies persons as a damaged party, civil party and a civilly accountable party;
- 13) takes measures provided by the law in order to ensure the restitution of the material damage caused by a crime;
- 14) through the Bar, assures the assignment of an ex officio defense counsel in a criminal case, in cases provided by the present Code;
- 15) settles the challenging of the interpreter, the translator, the specialist, the expert;
- 16) adopts ordinances regarding applications of the people participating in the criminal case;
- 17) recommends the selection, prolongation, modification, or cancellation of the preventive measures, the release of the suspect until the arrest is authorized by the court;
- 18) executes written orders given by the prosecutor;
- 19) raises objections, in the way provided by the present Code, the orders of the prosecutor regarding the carrying out of some legal acts;
- 20) offers written explanations, at the prosecutor's request;
- 21) presents evidence accumulated in the case, necessary for the pressing the charge, to the prosecutor.

(3) In the criminal proceeding, the criminal prosecution officer has also other prerogatives provided by the present Code.

(4) The criminal prosecution officer will be independent and, in exercising his/her prerogatives s/he will comply with the provisions of the present Code, with written order of the prosecutor and the head of the criminal prosecution body.

(5) The criminal investigation officer has the obligation to ensure the protection of human right and freedoms, according to the criminal procedure law.

(6) Challenging of the criminal prosecution officer will be made in compliance with Article 54, and the prosecutor will settle it.

## **Article 58. The plaintiff**

(1) The plaintiff is any person or legal entity who, by a crime, was caused moral, physical or pecuniary damages.

(2) The plaintiff has the right that his/her/its complaint was immediately registered in the established way, be settled by the criminal prosecution body, and afterwards to be informed on the results.

(3) The plaintiff also benefits from the following rights:

- 1) to receive a certificate from the criminal prosecution bodies on the fact that s/he filed a complaint or a copy of the minutes regarding the verbal complaint;
- 2) to submit objects or documents that confirm his/her complaint;
- 3) to file an additional complaint;
- 4) to request information from the respective body on the settlement of his/her complaint;
- 5) if a person, to ask the criminal prosecution bodies to recognize him/her as a damaged party in a criminal case;
- 6) to submit a request in order to be recognized as a civil party in the criminal case;
- 7) to withdraw the complaint in cases provided by the law;
- 8) to get a certificate on the registration of the complaint and the initiation of the criminal prosecution, a copy of the ordinance on the non-initiation of the criminal



prosecution;

9) to challenge the ordinance on the non-initiation of the criminal prosecution within 10 days from the moment when he received a copy of the respective ordinance and, until the complaint is settled, to be informed on the materials that led to the issuing of the ordinance;

10) To be protected against actions forbidden by law in the way provided for the protection of persons participating in the criminal proceeding;

11) to be assisted by an appointed defense counsel in the procedure actions carried out with his/her participation.

(4) The plaintiff of an extremely serious or exceptionally serious crime against person, indifferently of the fact if s/he is recognized as a damaged party or civil party, has as well the following rights:

- 1) to be advised by a defense counsel during the entire criminal proceeding, as well as the other parties in the proceeding;
- 2) to be assisted by an ex officio counsel in case of no financial means to pay the lawyer;
- 3) to be accompanied by a reliable person, by his/her lawyer, during all the investigations, including close hearings;
- 4) to receive a court judgment regarding material compensation for the damage caused by crime.

(5) In the case that a company, institution or state organization is the plaintiff, they will not be allowed to withdraw their complaint.

(6) The plaintiff has to be warned in writing on criminal liability in case of slanderous denunciation.

(7) The plaintiff has the following obligations:

- 1) to appear before the criminal prosecution bodies or the court when s/he is summoned by the latter and give explanation on this body's request;
- 2) at the criminal prosecution bodies request, to submit objects, documents as well as other means of evidence s/he has in possession, as well as samples for comparative investigation;
- 3) to accept to be subjected to medical tests, at the criminal prosecution bodies request, in case that s/he claims physical damages;
- 4) to observe the legitimate orders of the representative of the body that settles his complaint and of the president of the court hearing;
- 5) to observe the order established in the court hearing and not to leave the hearing room without the permission of the hearing president;

(8) The plaintiff also has other rights and obligations provided by the present Code.

(9) The plaintiff will benefit of his/her rights and exercise the obligations personally or, if the law permits, through the representatives. In case when the plaintiff is juvenile or incompetent person, his/her rights are exercised by his/her legal representatives in the way provided by the present code.

(10) The plaintiff will be heard in the conditions provided for hearing of the witnesses. The plaintiff who makes a slanderous denunciation with a good understanding will be criminally liable according to the provisions of the Article 311 of the Criminal Code.

## **Article 59. The damaged party**

(1) A damaged party is considered to be any person, whom, by a consequence of a crime, moral, physical or material damages was caused, recognized as such according to the law, with his consent.

(2) Recognition as a damaged party will be made by an ordinance issued by the criminal prosecution bodies, immediately after the setting of the grounds for such a procedural classification.

(3) In case that, after the recognition of the person as a damaged party, circumstances that show the lack of damages caused were found, the body that carries out the criminal prosecution will cease the participation of the person as a damaged party in the respective procedure by a motivated ordinance.

## **Article 60. Rights and obligations of the damaged party**

(1) The damaged party has the following rights:

- 1) to be aware of the essence of the accusation;
- 2) to make declarations and give explanations;
- 3) to submit evidence and other means of evidence that can be attached to the criminal case and investigated in the court hearing;
- 4) to challenge the person that carries out the criminal prosecution, of the judge, prosecutor, expert, interpreter, translator, court clerk;
- 5) to formulate objections against the actions of the body that carries out the criminal proceeding and to request for his/her objection to be included in the minutes of the respective action;
- 6) to be informed on the minutes of the procedural actions in which s/he participated, to request their completion or the including of his/her objections in the respective minutes;
- 7) to be informed on the materials of the criminal case since the moment when the criminal prosecution ended, to make notes on any information in the file and make copies of the materials of the case;
- 8) to participate in the court hearings, including in the examination of the materials of the case;
- 9) to plead in the judicial debates regarding the caused damage;
- 10) to be informed by the criminal prosecution body on adopted decisions regarding his/her rights and interests, to get, at his/her request, free copies of these decisions, as well as of the decisions of cessation or classification of the proceeding in the respective case, of non-initiating the criminal prosecution, a copy of the sentence, of the decision or of other final court judgment;
- 11) to submit complaints against actions and decisions of the criminal prosecution body, as well as to challenge the court judgment regarding the caused damage;
- 12) to recall complaints submitted by him/her or by his/her representative, including complaints against actions forbidden by the law that were committed against him/her;
- 13) to reconcile with the suspect, accused, defendant in cases provided by law;
- 14) to contest the complaints of other participants in the proceeding, on which s/he was informed by the criminal prosecution body or about which s/he found out in different circumstances;
- 15) to participate in the trying of the case by ordinary remedy;
- 16) to receive on behalf of the state the compensation of the damage caused as a consequence of a crime;

17) to receive the compensation of the expenses s/he had in the criminal case as well as of the damage caused as a consequence of illegitimate actions of the criminal prosecution bodies;

18) to be restituted all the goods collected by the criminal prosecution bodies or submitted by him/herself as evidence, as well as all goods belonging to him/her that were recovered from the person who committed a deed forbidden by the criminal law, to be restituted all the original documents belonging to him/her;

19) To be represented by an appointed defense counsel or, in case that s/he does not have the means to pay a defense lawyer, to be assisted by an ex officio lawyer.

(2) The damaged party has the following obligations:

- 1) to appear before the criminal prosecution body or of the court when s/he is summoned;
- 2) to make statements at the request of the criminal prosecution body or of the court;
- 3) at the criminal prosecution body's request, to submit objects, documents and other means of evidence s/he has in possession, as well as samples for comparative investigation;
- 4) at the criminal prosecution bodies' request to accept a corporal examination in case a very serious, extremely serious or exceptionally serious crime was committed against him/her;
- 5) at the criminal prosecution bodies' request, to be submitted to an expertise in ambulatory conditions, in order to check if s/he is able to correctly understand the circumstances of great importance for the case and to make valid statements regarding them, in the case when there are justified grounds to doubt such abilities;
- 6) to respect the legitimate dispositions of the representative of the criminal prosecution body and of the president of the court hearing;
- 7) to respect the established order in the court room.

(3) The damaged party has also other rights and other obligations provided by the present code. The damaged party can any time refuse this procedural capacity.

(4) The damaged party benefits from its rights and exercises its obligations personally or, if this is allowed by law, through a representative. In the case when the damaged party is a juvenile or an incompetent person, the legal representatives will exercise his/her rights in the way provided by the present Code.

(5) The damaged party is audited in the conditions provided by the present code for the audience of witnesses. The damaged party who refuses or avoids making statements is criminally liable according to Article 313 of the Criminal Code, or for False Statement committed with intention – in compliance with Article 312 of the Criminal Code.

## **Article 61. The Civil Party**

(1) The civil party is considered to be the physical or legal entity to which, there are enough grounds to confirm that a moral or material damage was caused as a consequence of a crime, who filed an application with the criminal prosecution body or the court of the suspect, the accused, the defendant or the persons patrimonial responsible for their deeds. The court will try the civil action within the criminal proceeding if the volume of damage is indisputable.

(2) Recognition as a civil party will be made through an ordinance of the criminal prosecution body or through the court order.

(3) In case that, after the recognition of the civil party, it was found that the application with the court was filed by an inappropriate person or that, because of other reasons, there are no grounds for the person to be recognized as a civil party, the criminal prosecution body, through a motivated decision, will suspend the participation of that person as a civil party in the case.

## **Article 62. Rights and obligations of the civil party**

(1) In order to support its application, the civil party has the following rights:

- 1) to give explanation on the filed application;
- 2) to submit additional materials as a support of his application;
- 3) to challenge the person who carries out the criminal prosecution, the judge, the prosecutor, the expert, the interpreter, the translator, the court clerk;
- 4) to submit requests, especially for assuring the initiated civil action;
- 5) to formulate objections against actions of the body that carries out the criminal prosecution or of the court, to request the inclusion of his/her objections in the minutes of the respective case;
- 6) to be informed on the minutes of the actions in which s/he participated and to request their completion or his/her objections to be included in the respective minutes;
- 7) to be informed on the materials of the criminal case as the moment the criminal prosecution was closed, to make copies of the materials of the case or to make notes on any data in the file referring to the civil case.
- 8) To participate in the court hearing, including in the examination of the case materials regarding his/her action;
- 9) To plead in the judicial debates regarding his/her civil action;
- 10) To be informed by the criminal prosecution body or the court on the delivered judgment that refers to his/her rights and interests, at his/her request to receive free copies of these judgments, as well as a copy of the sentence, of the decision and of other final court judgment;
- 11) To file complaints against actions and decisions of the criminal prosecution body, as well as to challenge the court judgment regarding the civil action;
- 12) To repeal the complaint submitted by him/her or by his/her representative on appeal;
- 13) To contest the complaints of other participants in the proceeding, to tell his/her opinion in the court hearing regarding the requests filed by other participants in the proceeding;
- 14) To participate in the case trial using ordinary remedy;
- 15) To formulate objections against illegitimate actions of the other party in the case;
- 16) To have a representative and to withdraw his/her power of attorney;
- 17) To formulate objections against the actions of the president of the court hearing;
- 18) To drop the civil action in any stage of the criminal proceeding in cases when the law allows it;
- 19) To receive the compensation of the expenses s/he had in the criminal case and of the damage caused as a consequence of illegitimate actions of the criminal prosecution body and of the court;
- 20) to be restituted all the goods collected by the criminal prosecution bodies or submitted by him/herself as evidence, as well as all goods belonging to him/her that were recovered from the person who committed a deed forbidden by the criminal law, to be restituted all the original documents belonging to him/her;

(2) The civil party has the following obligations:

- 1) to appear before the criminal prosecution body or of the court when s/he is summoned;
- 2) to assure the number of copies of the application for all the civilly liable parties in the proceeding;
- 3) at the request of the criminal prosecution body and the court, to submit objects, documents and other means of evidence s/he has in possession, as well as samples for comparative investigation;
- 4) to follow the legitimate dispositions of the representative of the criminal prosecution body and of the president of the court hearing;
- 5) to respect the established order in the court room;

(3) The civil party has also other rights and obligations provided by the present Code.

(4) The civil party can be summoned as a witness.

(5) The civil party exercises his/her rights either personally or, according to case, by a representative. The rights of juvenile will be exercised by his/her legal representatives in the way provided by the present Code.

## **CHAPTER II: THE DEFENSE PARTY**

### **Article 63. The Suspect**

(1) The suspect is the person towards whom certain evidence on the commission of the crime exists, before pressing charge. The person may be recognized as being suspect according to one of the following acts of procedure, depending on the case:

- 1) minutes of the apprehension;
- 2) ordinance or court order on the application of the preventive measures not depriving of liberty;
- 3) ordinance of recognition of the person as being suspect.

(2) The criminal prosecution body does not have the right to maintain as a suspect:

- 1) a person apprehended for more than 72 hours;
- 2) A person on which a preventive measure not depriving of liberty was applied – for more than 10 days from the moment when s/he was informed on the ordinance on the application of the preventive measure;
- 3) A person on which the ordinance on recognition in this capacity was given – more than 3 months;

(3) At the moment of expiry, according to the case, of a term mentioned in paragraph 2, the criminal prosecution body has the obligation to release the apprehended suspect and revoke, in the way provided by law, the preventive measure applied on him, disposing the cessation of the prosecution or pressing the charge.

(4) The criminal prosecution body or the court, finding that the suspicion is not enough justified, will have the obligation to release the apprehended suspect and revoke the preventive measure applied until the terms mentioned in paragraph 2 of the present article expire, disposing the cessation of the prosecution.

(5) The capacity of suspect ceases from the moment of the suspect's release, the cancellation of the preventive measure applied, or, according to the case, the cancellation

of recognition ordinance as being suspect and the cessation of the prosecution, or from the moment is issued by the criminal prosecution body.

(6) The interrogation of a person in the capacity of a witness, regarding whom certain evidence on the commission of the crime exists, is prohibited.

#### **Article 64. Rights and obligations of the suspect**

(1) The suspect has the right to defense. The criminal prosecution body will give the suspect the possibility to exercise his right to defense by all means and methods that are not forbidden by law.

(2) According to the provisions of the present Code, the suspect has the following rights:

- 1) to know of what s/he is suspected of and, related to this, immediately after s/he is apprehended or after s/he was informed on the decision on the application of a preventive measure or recognition as being a suspect, to be informed in the presence of his/her defense lawyer, in a language s/he can understand, on the content of the suspicion and on the legal classification of the crimes s/he is suspected of;
- 2) immediately after s/he was apprehended or recognition as being a suspect, to receive information in writing from the person that apprehended him/her regarding his/her rights according to the present article, including the right to keep silence and not to confess against her/himself, as well as to receive an explanation from the criminal prosecution body, on all his rights;
- 3) immediately after s/he was apprehended or after s/he was informed on the decision regarding the application of a preventive measure or recognition as being a suspect, to get a copy of the respective decision or a copy of the minutes regarding his/her apprehension from the criminal prosecution body;
- 4) if apprehended, to be provided legal assistance under conditions of confidentiality by his/her defense counsel before the beginning of the first cross-examination as a suspect;
- 5) since the moment when s/he was informed on the act of procedure of his/her recognition as being a suspect, s/he will be assisted by her/his defense counsel and, if s/he has no means to pay a defense lawyer, s/he will be assisted for free by an ex officio lawyer, as well as will have the right to waive the defense counsel and to defend by her/himself;
- 6) to have meetings with his/her defense counsel under conditions of confidentiality without the limitation of their number or duration;
- 7) if accepts to be examined, to be heard in the presence of her/his defense lawyer, at his/her request;
- 8) to admit the commission of the deed s/he is suspected of and to conclude a plead bargaining agreement;
- 9) to accept an abbreviated procedure for the criminal prosecution and the trial in case of pleading guilty under the conditions provided the present Code;
- 10) to make statements or to refuse to make them;
- 11) to participate in carrying out the procedural actions either by her/himself or being assisted by her/his defense lawyer, on request, or to refuse to participate;
- 12) to announce immediately, but not later than 6 hours, through the criminal prosecution body, his relatives or another person, on his/her request, of the place where s/he is apprehended;
- 13) to submit materials and other means of evidence in order to be attached to the criminal case;
- 14) to challenge the person who carries out the criminal prosecution, the instruction

judge, the interpreter, the translator;

15) to file an application;

16) to be informed on minutes of the procedural actions carried out with his/her participation and to formulate objections on the uprightness of the minutes, as well as to ask for their completion with circumstances that, in his/her opinion are to be mentioned;

17) to be informed by the criminal prosecution body on the adopted decisions that affect his/her rights and interests, as well as, on request, to get copies on these decisions;

18) to formulate objections against actions of the criminal prosecution body and to request the including of his/her objections in the minutes of the respective procedural actions;

19) to challenge in the way provided by law the actions and decisions of the criminal prosecution body;

20) to withdraw any of his/her complaints, either submitted by him/her or by his/her defense lawyer;

21) to reconcile with the damaged party ;

22) to ask and get compensations for the damage caused as a consequence of illegal actions of the criminal prosecution body or of the court;

23) In case the suspicion was not confirmed, the suspect has the right to rehabilitation;

(3) The exercise by the suspect of the rights s/he has or his/her waiving these rights may not be interpreted to his/her disadvantage and may not have unfavorable consequences for him/her. The suspect is not liable for his/her statements, except for the cases when s/he deliberately falsely declares that the crime was committed by a person who had no contribution to its commission.

(4) The suspect has the following obligations:

- 1) to appear before the criminal prosecution body, when summoned;
- 2) to accept, in case of apprehension, to be submitted to a corporal examination, as well as to a corporal search, on the request of the criminal prosecution bodies;
- 3) to accept, at the request of the criminal prosecution body, to be submitted to a medical exam, fingerprint identification, photography, to allow the taking of blood and other body secretion samples;
- 4) at the request of the criminal prosecution body, to be submitted to a judicial expertise;
- 5) to follow the legal dispositions of the official person who carries out the criminal prosecution;

(6) The suspect has also other rights and obligations provided by the present Code.

(7) According to the provisions of the present Code, the rights of the juvenile suspect will be exercised by his/her legal representative.

## **Article 65. The Accused, Defendant**

(1) The accused is considered to be the person on whom an indictment ordinance was issued, according to the provisions of the present Code.

(2) The accused whose case was sent to the court will be called a defendant.

(3) The person who was given a final sentence will be called:

- 1) convicted, if his sentence partially or totally convicts him/her;  
2) acquitted, if the sentence totally discharges him.

(4) A person does not have the qualification of accused in the moment when the criminal proceeding on him/her was ceased or the criminal prosecution dropped.

## **Article 66. Rights and obligations of the accused, defendant**

(1) The accused or, according to the case, the defendant has the right to defense. The criminal prosecution body, or, according to the case, the court will ensure the accused, defendant the possibility to exercise his/her right to defense by all means and methods that are not forbidden by law.

(2) According to the provisions of the present Code, the accused, defendant has the following rights:

- 1) to be told of what deed s/he is accused of and, related to this, on his indictment and immediately after his arrest or after he was informed of the ordinance on the application of a preventive measure, to get a copy of the indictment ordinance from the criminal prosecution body;  
2) immediately after the apprehension or indictment, to get information in writing from the criminal prosecution body on the rights s/he has according to the present article, including the right to keep silence and not to confess against her/himself, as well as explanation on all his/her rights;  
3) in case s/he is apprehended, to be provided legal assistance by a defense counsel by the beginning of the first hearing as accused;  
4) in case s/he is apprehended, to be brought immediately, no later than 72 hours, before a judge and to be tried in a reasonable term or to be released during the proceeding;  
5) since the moment of his/her indictment, to be assisted by a defense counsel appointed by him/her, and if s/he cannot pay a lawyer, to be assisted for free by an ex officio lawyer, as well as to waive the defense counsel and to defend by her/himself;  
6) to have meetings with her/his counsel under conditions of confidentiality without limitation of their number or duration;  
7) at his/her request, to be heard in the presence of his/her lawyer;  
8) to make statements, or to refuse to make them;  
9) to give explanations on the accusation against him/her, or to refuse to give them;  
10) to admit the accusation and to conclude a plead bargaining agreement;  
11) to accept an abbreviated procedure for the criminal prosecution and for the trial in case of pleading guilty under the conditions provided by the present Code;  
12) to participate in carrying out procedural actions either by her/himself or, on her/his request, being assisted by her/his lawyer, or to refuse to participate;  
13) to announce, through the criminal prosecution body, his close relatives or another person, at his/her proposal, about the place where he is kept under arrest;  
14) to prepare materials for the criminal case;  
15) to submit documents and other means of evidence in order to be attached to the criminal case for the purpose of investigation in the court hearing;  
16) to challenge the person who carries out the criminal prosecution, the judge, the prosecutor, the expert, the interpreter, the translator, the court clerk;  
17) to request the hearing of the prosecution witnesses and to obtain the summon and the hearing of the defense witnesses under the same conditions as the prosecution witnesses;



- 18) to file an application;
- 19) to formulate objections against the criminal prosecution body and to request the including of his/her objections in the minutes of the procedural actions;
- 20) to be informed on the minutes of the procedural actions carried out with her/his participation and to formulate objections on the uprightness of the minutes, as well as to ask for their completion with circumstances that, in her/his opinion, need to be mentioned;
- 21) to be informed on materials sent to the court for the confirmation of his arrest;
- 22) after the criminal prosecution is over, s/he has the right to be informed on all the materials of the case and transcript all the necessary data, to make copies of them, to submit requests of completion of the criminal prosecution;
- 23) to participate in the trial in the first instance and in appeal;
- 24) to speak in judicial debates when not assisted by the defense lawyer;
- 25) to have the final word;
- 26) to be informed by the criminal prosecution body on the adopted decisions that affect his/her rights and interests, as well as to get, on request, copies of these decisions, copies of ordinances on the application of preventive measures, as well as on other procedural measures of constraint, of the indictment or of other documents of completion of the criminal prosecution, of the civil action, of the sentence, of the decision through which the sentence became final, of the final judgment of the court that tried the case in extraordinary remedy;
- 27) to appeal in the way established by law, the actions and decisions of the criminal prosecution body or of the court, including the sentence or the judgment of the court that tried the case in extraordinary remedy;
- 28) to revoke any of his/her complaints, either submitted by him/her or by his/her counsel in his/her interest;
- 29) to reconcile with the damaged party under the conditions provided by the present law;
- 30) to contest the complaints of other participants in the criminal proceeding on which he was informed by the criminal prosecution body or found out through other ways;
- 31) to express his opinion in the court hearing regarding the applications and suggestions of other parties in the proceeding, as well as on matters settled by the court;
- 32) to formulate objections against illegitimate actions of other participants in the proceeding;
- 33) to formulate objections against actions of the president of the court hearing;
- 34) To ask and get compensations for the damage caused as a consequence of illegal actions of the criminal prosecution body and the court.

(3) In case that the accusation was not confirmed, the accused or, according to the case, the defendant has the right to rehabilitation.

(4) The exercise by the accused, defendant of the rights s/he has or her/his waiving these rights cannot be interpreted to his/her disadvantage and cannot have unfavorable consequences for her/him. The accused, defendant will be not made liable for her/his statements, except for the case when s/he deliberately falsely declared that the crime was committed by a person who, in fact had no connection to its commission, as well as when s/he made statements under oath.

(5) The accused or, according to the case, the defendant has the following obligations:

- 1) to appear before the criminal prosecution body, when summoned;
- 2) being apprehended, at the request of the criminal prosecution body, to accept to

be submitted to a corporal check and search;

3) at the request of the criminal prosecution body, to unconditionally accept the medical check, fingerprint identification, taking of pictures, to allow for blood and other body secretion samples to be taken;

4) at the request of the criminal prosecution body, to be submitted to a judicial expertise;

5) to respect and follow all the legal depositions of the representative of the criminal prosecution body and of the president of the court hearing;

6) to respect order in the court room and not to leave the court room without the permission of the president of the court hearing;

(6) The accused, defendant has also other rights and obligations resulting from the provisions of the present Code.

(7) According to the provisions of the present Code, the rights of the under-age accused, defendant will be exercised by his legal representative.

### **Article 67. The defense lawyer**

(1) The defense counsel is the person, who, all along the development of the criminal proceeding, represents the interests of the suspect, accused, defendant, and provides legal assistance through all means and methods that are not forbidden by law. The defense counsel may not be assimilated by the state bodies and official persons with the person whose interests are defended by him and with the character of the criminal case investigated with his participation.

(2) In the criminal proceeding, the following can participate as defense lawyer:

- 1) lawyer;
- 2) other persons enabled by the law with the responsibilities of the defense lawyer;
- 3) a foreign counsel in case he was assisted by a person mentioned in points 1).

(3) Persons mentioned in paragraph (2) of the present article are invested as defense counsel in the moment when they committed to defend the interests of the person they defend, with the latter consent, and lawyers – in the moment of their ex officio assignment by the criminal prosecution body or the court, or on the request of these bodies in the moment when they are assigned by the legal assistance bars. After assuming their defense commitment, the defense lawyers will have to notify on this the criminal prosecution body or the court.

(4) The counsel that provides legal assistance to the suspect or accused when apprehended or arrested will be considered their defender for this period of time and may continue the participation in the respective case until the end of proceedings with their consent, before the inclusion in the proceeding of another person from those mentioned in paragraph (2).

(5) The defender has no right to undertake this responsibility and may not be appointed in this capacity by the criminal prosecution body and by the court in case if:

- 1) s/he does not meet the conditions indicated in paragraph (2);
- 2) s/he cannot be a defender according to the restrictions provided by the law or the court sentence;
- 3) s/he provides or provided legal assistance to a person whose interests are in contradiction with the interests of the person s/he defends;
- 4) is the relative or has the subordination relationship to a person whose interests are in contradiction with the interests of the person s/he defends;

5) participated earlier in this case as a judge, prosecutor, a person who carried out the criminal prosecution, expert, specialist, interpreter, translator, witness.

(6) The defender will discontinue participation in the case in this capacity if:

- 1) the person who is defended by him/her refused him or canceled the contract, or suspended his authorization;
- 2) has no authorization to further participate in this case;
- 3) the criminal prosecution body or the court removed him/her from the participation in this case due to the establishment of some circumstances that exclude his participation in this capacity or, upon his/her request, due to other justified reasons;
- 4) the criminal prosecution body or the court admitted the application of the suspect, accused, defendant to refuse the defendant;
- 5) a foreign counsel declined his/her authorization;
- 6) the criminal prosecution body or the court admitted the refusal to the counsel declared by a person who is defended by an ex officio lawyer.

(7) In case when the criminal prosecution body or the court have not admitted the refusal to the defender of the suspect, accused, defendant, the counsel appointed ex officio may not end his/her participation in this case.

## **Article 68. Rights and obligations of the defender**

The defender, according to the procedural capacity of the person whose interests s/he defends has the right to:

- 1) know the essence of suspicion or indictment;
- 2) to participate, at the suggestion of the respective body at the carrying out by the criminal prosecution body of the procedural actions and all the procedural actions carried out upon his request;
- 3) to explain the rights to the person s/he defends and to notify the person who carries out the procedural action on the violations of the law committed by him;
- 4) to prepare materials in the respective case;
- 5) to submit materials and other means of evidence in order to be attached to the criminal case and examined in the court hearing;
- 6) to request the challenging of the person who carries out the criminal prosecution, of the judge, prosecutor, expert, interpreter, translator, court clerk;
- 7) to file applications;
- 8) to formulate objections against the criminal prosecution body and to request the including of his/her objections in the minutes of the procedural actions;
- 9) to be informed on the minutes of the procedural actions carried out with her/his participation and to ask for their completion or inclusion of her/his objections in the respective minutes;
- 10) to be informed on all the materials of the case and transcript all the necessary data, to make copies of them;
- 11) to participate in the court hearing in first instance, appeal, recourse, as well as at the trial of the case by extraordinary remedy;
- 12) to plead in the judicial debates;
- 13) to receive, upon his/her request, free of charge, the copies of the decisions regarding to the rights and interests of the person s/he defends;
- 14) to file complaints against the actions and decisions of the criminal prosecution body, as well as to challenge the sentence or any other final court judgment in respective case;

- 15) to participate at the reconciliation with the opponent party in case the person s/he defends participate at the reconciliation;
- 16) to formulate objections regarding the complaints of other participants at the proceeding, on which was informed by the criminal prosecution body or found out about them from other sources, as well as to express his/her opinion in the court hearing regarding the applications and suggestions of the other participants in the proceeding and regarding the issues settled by the court;
- 17) to formulate objections regarding the illegitimate actions of the other participants in the proceeding;
- 18) to formulate objections against actions of the president of the court hearing;
- 19) to get compensation for the expenses in the criminal case from the person whose interests s/he defends or from the state budget, in cases provided by law;
- 20) to get compensations for the damage caused as a consequence of illegal actions of the criminal prosecution body and the court.

(2) The defender of the suspect, accused, defendant exclude the criminal liability of a defended person in order to clarify the circumstances, or attenuate the punishment or the procedural means of constraint, as well as in order to provide necessary legal assistance, besides the rights provided by the paragraph (1), as well has of the following rights:

- 1) to have meetings with the suspect, accused, defendant with no limitation of their number and duration;
- 2) to participate in any procedural action carried out with the participation of the person whom s/he defends in case this is requested by the person he defends or by the defender him/herself;
- 3) to be informed on the materials submitted to the court by the criminal prosecution body for the confirmation of the apprehension and necessity for arrest.

(3) The defender has no right to take any actions against the interests of the person s/he defends and to impede to exercise his/her rights. The defender may not contrarily to the position of the person s/he defends to recognize his/her participation in the crime or guilt for the crime commission. The defender has no right to divulgate the information that was communicated to him/her for the exercising of the defense in case this information can be used to prejudice of the person s/he defends.

(4) The counsel has no right to refuse unjustifiably to the defense. The defender has no right to discontinue on his/her own initiative the authorization of the defender, to impede the invitation of the other defender or his/her participation in this case. The defender has no right to transfer to another person his/her authorizations to participate in this respective case.

(5) The defender has no right to carry out the following actions, without consent of the person whom s/he defends:

- 1) to declare guilty of commission of the crime;
- 2) to declare the reconciliation of the person s/he defends with the opponent party;
- 3) to recognize the civil action;
- 4) to withdraw the complaints of the person whom s/he defends;
- 5) to withdraw the appeal or recourse against the conviction sentence.

(6) The defender has the obligation to:

- 1) to present him/herself when summoned by the criminal prosecution body or the court;

- 2) to follow the legitimate depositions of the representative or the criminal prosecution body and of the president of the court hearing;
- 3) not to leave the court hearing room before the announcement of the break, without permission of the president of the court hearing;
- 4) to observe the ruling of the court hearing.

(7) The defender has other rights and obligations provided by the present code.

## **Article 69. The compulsory participation of the defender**

(1) The participation of the defender in criminal proceeding is compulsory, in cases when:

- 1) it is requested by the suspect, accused, defendant;
- 2) the suspect, accused, defendant have difficulties in defending him/herself, being dumb, deaf or has any other essential problems of speech, hearing, seeing as well as physical or mental problems that impede him/her to exercise the rights;
- 3) the suspect, accused, defendant does not speak the language well enough or does not speak the language the criminal proceeding is carried out;
- 4) the suspect, accused, defendant is juvenile;
- 5) the suspect, accused, defendant is in compulsory military service;
- 6) the suspect, accused, defendant is being accused or suspected of serious, extremely serious or exceptionally serious crime;
- 7) the suspect, accused, defendant is under arrest as a preventive measure or is sent to the judicial expert examination in stationary conditions;
- 8) the interests of the suspects, accused, defendants in the case are contradictory and at least one of them is assisted by a defender;
- 9) in this case the damaged party or the civil party is assisted by a defender;
- 10) the interests of justice require the participation of the defendant in the court hearing in first instance, appeal, recourse, as well as in case examination by extraordinary remedy;
- 11) the criminal proceeding is carried out regarding an incompetent person, who is accused of committing dangerous actions or got mentally ill after committing such actions;
- 12) the criminal proceeding is carried out regarding the rehabilitation of the person who is dead at the moment of examination of the case;

(2) The participation of a defender in the criminal proceeding is compulsory from the moment when:

1) the suspect, accused, defendant requested the participation of the defender – in cases provided by point 1 of the first paragraph;

2) the suspect, accused, defendant have been informed on the decision of the criminal prosecution body about the following:

- a) apprehension, applying of preventive measures or indictment– in cases provided by points 2) –6) paragraph (1);
- b) sending to judicial psychiatric expert evaluation in stationary conditions – in the case shown at point 7) paragraph (1);
- c) applying preventive measures in the form of arrest – in the case provided by point 7) paragraph (1);

3) the suspect, accused, defendant died and the application on the rehabilitation was filed by the relatives or other persons – in the case provided by point 12) paragraph (1);

(3) The compulsory participation of the defender in the criminal proceeding is ensured by the criminal prosecution body or by the court.

**Article 70. Admitting, appointing ex officio and replacing the defender, confirming the capacity and the authority of the lawyer**

(1) Persons mentioned in paragraph (2) of the article 67 participate in the criminal proceeding as defenders (defense lawyers):

- 1) at the invitation of the suspect, accused, defendant, their legal representatives, as well as at the request of other persons with the consent of those whose interests s/he is to defend;
- 2) at the appointment by the criminal prosecution body or the court or at the appointment by the bar association office in case the counsel is appointed ex officio;

(2) the criminal prosecution body or the court does not have a right to recommend someone to invite a certain lawyer;

(3) the criminal prosecution body appoints a counsel or requests appointment by the bar association office:

- 1) at the request of the suspect, accused, defendant;
- 2) in case the participation of the defender in the criminal proceeding is compulsory, and the suspect, accused, defendant does not have a selected defender;

(4) The criminal prosecution body or the court requests the bar association office the replacement of the selected defender or an appointed defender in the following difficult situation of the criminal proceeding:

- 1) in case the selected counsel cannot show up in case of apprehension or indictment and hearing of the suspect, accused;
- 2) in case the selected defender cannot participate in the criminal proceeding for 5 days from the moment of its announcement;
- 3) in case the criminal prosecution body or the court decides that the ex officio defender is not able to ensure an efficient legal assistance to the suspect, accused, defendant;

(5) in cases provided by paragraph (3) point 2) and paragraph (4) points 2) and 3) the criminal prosecution body may suggest to the suspect, accused, defendant to invite another defender.

(6) The suspect, accused, defendant may have several defenders. The procedural actions that need the participation of a defender cannot be considered as carried out in case criminal procedure rules are violated and not all the lawyers of the party in case have participated.

(7) The defender confirms his capacity and authority by presenting to the criminal prosecution body the following:

- 1) a document indicating his capacity of a lawyer;
- 2) a document confirming that he has a permission to participate as a defender according to the legislation of the Republic of Moldova;
- 3) a mandate from the bar office or other document confirming his/her authority.

(8) The person who is willing to participate in the criminal proceeding as a defender and

does not present the document confirming his capacity and authority in the position of a defender is not admitted to participate in the criminal proceeding as a defender, a fact that needs to be confirmed by a motivated decision.

#### **Article 71.     Waiving the defender**

(1) Waiving the defender means the wish of the suspect, accused, defendant to exercise his/her own defense, without using legal assistance of a defender. The application for refusal of a defender is attached to the materials of the case.

(2) Refusal for a defender can be accepted by the criminal prosecution body or the court only in case the application is filed by the suspect, accused, defendant voluntarily on his/her own initiative in the presence of a defender appointed ex officio. The refusal is not accepted when it is motivated by the impossibility to pay legal assistance or the refusal is dictated by other circumstances. The criminal prosecution body or the court has a right not to accept the waiving of the counsel by the suspect, accused, defendant in cases provided by the article 69 paragraph (1) points 2) – 12), as well as in other cases when it is required by the interests of justice. The criminal investigation body or the court has the authority to make the decision, whether the interests of justice require a mandatory presence of a defender and depends on:

- 1)       difficulty of the case;
- 2)       capacity of the suspect, accused, defendant to defend himself/herself;
- 3)       seriousness of the act of which the person is suspected, accused and the punishment provided by law for its commission;

(3) The criminal prosecution body or the court has to decide on the issue of refusal of a defender through a motivated decision.

(4) From the moment when the request of refusal is accepted it is considered that the suspect, accused, defendant is exercising his/her own defense;

(5) The suspect, accused, defendant who refused a defender, has the right to change his mind over the matter at any moment of the criminal proceeding and to invite a defender or request for one to be appointed ex officio, who will be admitted from the moment he has been invited or appointed.

#### **Article 72.     Removal from the criminal proceeding of the defender**

(1) The defender does not have a right to participate in the criminal proceeding, when the following circumstances are present:

- 1)       if he is a relative or in any other personal dependence relations with the person who participates in the criminal prosecution or the trying of the case;
- 2)       if he participated in this case in the capacity of:
  - a)       person who carried out the criminal prosecution
  - b)       prosecutor who participated in the criminal proceeding;
  - c)       judge who tried the case;
  - d)       court clerk, interpreter, translator, specialist, expert or witness;
- 3)       If s/he cannot be a defender according to the law or a court sentence.

(2) The appointed counsel can be removed from the criminal proceeding if the person s/he

defends has reasonable motives to doubt the competence and good faith of the counsel and files an application for the removal of this counsel from the proceeding.

(3) The defender cannot participate in the criminal proceeding on the defense side if he offers or offered legal assistance to the person with contradictory interests to the interest of the person which s/he defends as well as if the defender is a relative or in other personal dependence relation.

(4) The application for removal of the defender is settled by the criminal prosecution body or the court, and the respective decision cannot be challenged.

### **Article 73. The civilly accountable party**

(1) The civilly accountable party is the person or the legal entity that according to the law or the civil action in the criminal proceeding can be held materially responsible for the material damages caused by the acts of the accused, defendant.

(2) A civilly accountable party is declared by a decision of the criminal prosecution body and the court;

(3) In case it was determined that after the civilly accountable party is determined, the respective person is not materially responsible for the material damage caused by the accused, defendant, or there is no sufficient evidence for the person to be civilly accountable party, the criminal prosecution body or a court suspends the role of the person as a civilly accountable party, by a motivated decision.

### **Article 74. Rights and obligations of the civilly accountable party**

(1) The civilly accountable party, in order to protect his/her interests in the civil action started against him, has the following rights, under the conditions of the present code:

- 1) to give explanations regarding the civil action filed against him/her;
- 2) to present materials and other means of evidence to be attached to the criminal case and be examined in the court hearing;
- 3) to file applications for challenging the person carrying out the criminal prosecution, judge, prosecutor, expert, interpreter, translator, court clerk;
- 4) to file applications;
- 5) to voluntarily deposit the amount of money on the account of the court in order to ensure the civil action;
- 6) to formulate objections against the criminal prosecution body and to request the including of his/her objections in the minutes of the respective actions;
- 7) to be informed on the minutes of the carried out actions where s/he participated and to request for the minutes to be completed or for his objection to be included;
- 8) to be informed on the materials of the criminal case from the moment the criminal prosecution is completed and to take notes regarding any information that relates to the civil action started against him/her;
- 9) to participate in the court hearing, including in the examination of the evidence regarding the civil action started against him/her;
- 10) to plead during the judicial debates in absence of his/her representative;
- 11) to be informed by the criminal prosecution body, as well as the court, in case when s/he is absent at the court hearing on all the adopted decisions that affect his/her rights and interests, to get, upon request, copies of these decisions free of charge, as well as copies of the sentence, decisions or other final court judgments;
- 12) to file complaints against actions and decisions of the criminal prosecution



- body, as well as to challenge the court judgment regarding the filed civil action;
- 13) to withdraw the application filed in appeal by him/her or his/her representative;
  - 14) to formulate objections on the complaints of the other participants at the proceeding, to express his/her opinion in the court hearing regarding the applications and suggestions of the other participants in the proceeding, in case they affect the civil action started against him/her;
  - 15) to participate, within the court hearing, at the trial of the case regarding the civil action against him/her through the ordinary remedy;
  - 16) to formulate objections against illegitimate actions of the other parties of the civil action in the proceeding;
  - 17) to formulate objections against illegitimate actions of the president of the court hearing;
  - 18) to have a representative and to end his/her authority.

(2) The civilly accountable party has, as well, the right to:

- 1) to recognize the civil action in any phase of the carrying out of the criminal proceeding;
- 2) to ask for the compensation of the expenses s/he had in the criminal case as well as of the damage caused as a consequence of illegitimate actions of the criminal prosecution bodies;
- 3) to be restituted all the goods collected by the criminal prosecution body or the court as means of evidence, or submitted by him/herself, as well as all the original documents belonging to him/her;

(3) The civilly accountable party has the obligation to:

- 1) to present him/herself when summoned by the criminal prosecution body or the court;
- 2) to follow the legitimate depositions of the representative or the criminal prosecution body or the court;
- 3) to observe the ruling of the court hearing.

(4) The civilly accountable party may be summoned and heard as a witness.

(5) The civilly accountable party has other rights and obligations provided by the present code.

(6) The civilly accountable party will exercise his/her rights and obligations personally or, according to the case, by a representative.

### **CHAPTER III**

#### **REPRESENTATIVES AND SUCCESSORS**

##### **IN CRIMINAL PROCEEDING**

#### **Article 75. Capacity to exercise during criminal proceeding**

(1) All the persons who have reached the full age participating in a proceeding, with the exception of persons declared incompetent, in the way established by law, are competent to exercise the rights provided by the present Code.

(2) The following persons are considered incompetent:

- 1) Persons assessed incompetent according to the civil or criminal procedure;
- 2) The damaged party, the civil party under the age of 14;

(3) Should a damaged party, a civil party, the suspect, the accused, the defendant, the civilly accountable party be not able to exercise his/her rights and obligations by him/herself as a result of a temporary mental disease or mental deficiency, then they may be assessed by the court as incompetent persons in the criminal proceeding order.

(4) The damaged party, the civil party, the suspect, the accused, the defendant under the age of 18 years shall have a limited competence. The possibility for these people to exercise their rights by themselves is limited in cases provided by the present Code.

(5) The competence of a damaged party, a civil party, the suspect, the accused, the defendant, and the civilly accountable party is established during the carrying out of the criminal proceeding.

(6) The body conducting the criminal prosecution or the court shall recognize the competence of a person who has reached the full age, or, according to the case, a person who has reached the age of 14 years. The court restores the competence in a criminal proceeding for the damaged party, a civil party, a suspect, an accused, a defendant that regained the capacity to exercise the rights and duties by themselves.

#### **Article 76. Consequences deriving from the incompetence and the limited competence**

(1) An incompetent person participating in the proceeding is not able to exercise by his/herself the rights provided in this Code, these rights being exercised by his/her legal representative.

(2) In case that the incompetent civil party has no legal representative, its participation in the criminal proceeding is suspended. The civil action is left without examination, if the prosecutor does not lay claims in the party's interest against the accused, the defendant or against the person bearing material responsibility for the deeds of the accused, the defendant. Should the civilly accountable party be incompetent, its participation in the proceeding is suspended, and the claims brought against it are left without further examination.

(3) The participants in the proceeding with a limited competence shall not be entitled to carry out the following actions without the consent of his/her legal representative:

- 1) To withdraw the complaint regarding a socially dangerous action committed against him/her;
- 2) To reconcile with the damaged party, suspect, accused, defendant;
- 3) To recognize the civil case filed against him/her;
- 4) To drop the civil case filed by him/herself;
- 5) To withdraw the complaint filed in his/her interest

#### **Article 77. The legal representatives of the damaged party, civil party, the suspect, accused, defendant**

(1) Legal representatives of the damaged party, civil party, suspect, accused, defendant are their parents, adopters, tutors or guardians who during the criminal proceeding represent

the interests of the juveniles or incompetent participants in the proceeding.

(2) Should the damaged party, the suspect, accused, defendant have no legal representatives of persons indicated in the paragraph (1), the criminal prosecution body or the court shall appoint ex officio the trusteeship and custody body as legal representative.

(3) The criminal prosecution body or, according to the case, the court through a motivated decision accepts as legal representative of the damaged party, the civil party, suspect, accused, defendant one of parents, adopters, tutors or guardians. Priority will have that candidature of the parents, adopters, tutors or guardians, which is supported by all the other legal representatives. Otherwise the question of allowing the legal representative is decided by the criminal prosecution body or the court.

(4) The following will not be allowed as legal representatives in the criminal proceeding:

- 1) For the plaintiff, the damaged party and civil party – a person under incidence of limitation for having caused a moral, physical or material damage through crime, to the damaged party, or material damage to the civil party;
- 2) For the suspect, accused, defendant – a person who suffered material damage, physical injury or moral damage as a result of the crime imputed to the suspect, the accused or the defendant;

(5) In case when after admitting a person in the capacity of legal representative of the damaged party, civil party, suspect, accused, defendant it is stated that there are no grounds to maintain him/her in the same capacity, the criminal prosecution body or the court, through a motivated decision, suspends his/her participation in the proceeding as legal representative. The capacity of legal representative ceases at the moment when the damaged party, the civil party, the suspect, the accused, the defendant reach the full age and gain the full competence.

#### **Article 78. Rights and obligations of the legal representative of the damaged party, civil party, suspect, accused, defendant**

(1) The legal representative of the plaintiff, the damaged party, civil party, suspect, accused, defendant allowed in this capacity in the criminal proceeding, has, according to the case the following rights:

- 1) To know the essence of the suspicion, accusation;
- 2) To be informed about the summoning of the person whose interests s/he represents in the criminal prosecution body or the court and to accompany him/her there;
- 3) To communicate without restriction with the person whose interests s/he represents, under confidentiality conditions and without any limitation of the number and duration of discussions;
- 4) To attend the procedural actions at the proposition of the criminal prosecution body; to attend all procedural actions carried out at his/her request and all procedural actions carried out with the participation of the person whose interests s/he represents.
- 5) To give explanations;
- 6) To submit materials and other means of evidence to be annexed to the criminal file or examined in court hearing;
- 7) To submit applications to challenge the person carrying out criminal prosecution, judge, prosecutor, expert, interpreter, translator, court clerk;
- 8) To file applications;

- 9) To object against actions undertaken by the criminal prosecution body and to request that his/her objections be included in the minutes of the respective criminal proceeding;
- 10) To be informed on the minutes of the procedural actions attended by him/her or the person whose interests s/he is defending; to make objections regarding the accurateness and completeness of the respective minutes, as well as to request that they be supplemented with data that according to his/her opinion need to be mentioned;
- 11) To be informed on the materials submitted to the court by the criminal prosecution body to confirm the legality and grounds of the arrest of the person whose interests s/he represents;
- 12) After the completion of the criminal prosecution, as well as when the criminal proceeding dropped or was dismissed, to be informed on all case materials and to transcribe necessary data, to make copies;
- 13) To attend the case trial in the first instance court and in appeal;
- 14) To plead in the judicial debates in case when the civil party or the defendant whose interests s/he represents has no representative or, according to the case, defense lawyer;
- 15) To be informed by the criminal prosecution body or the court about decisions relevant to his/her rights and interests or those of the person s/he represents and to receive copies of these decisions at his/her request;
- 16) To submit complaints in the way provided by the law, against the actions and decisions of the criminal prosecution body, to challenge the sentence or decision of the court that tried the case by the ordinary remedy;
- 17) To withdraw any complaint that s/he filed;
- 18) To formulate objections against the person s/he represents, when s/he is announced by the criminal prosecution body or s/he found out about them from other sources;
- 19) To express his/her opinion in court hearing regarding requests and suggestions of other participants in the proceeding, as well as regarding issues settled by the court;
- 20) To formulate objections against illegal actions of the other participants in the proceeding;
- 21) To formulate objections against actions of the president of the court hearing;
- 22) To invite a defense counsel for the person s/he represents or, depending on the case, a representative and to suspend their powers.

(2) The legal representative of the plaintiff, the damaged party, civil party, suspect, accused, defendant will also have under the present Code the right:

- 1) To request repair of the damage caused as a result of illegal actions of the criminal prosecution body or the court and with the exception of the legal representative of the convicted, to receive the compensation of expenses occasioned by the trial;
- 2) To be returned the goods seized by the criminal prosecution body as means of evidence, to receive back the original documents belonging to him/her.

(3) The legal representative of the incompetent plaintiff, damaged party, civil party and suspect, exercise their rights during the criminal proceeding with the exception of rights indissoluble from their person.

(4) The legal representative of the plaintiff, damaged party, civil party, suspect, accused, defendant with limited competence has the right to carry out the following:

1) With the consent of the person whose interest s/he is representing s/he has the right:

- a) To request the replacement of the defense lawyer;  
b) To withdraw the complaint filed by the legal representative of the damaged party;

2) to know the intentions of the person whose interests s/he represents:

- a) of withdrawing the complaint regarding the crime committed against him/her;  
b) of reconciling with the opponent party;  
c) of renouncing to the civil action started by him/her or of acquiescing to the civil action started against him/her;  
d) of withdrawing the complaint filed for defending his/her interests;

3) to accept or reject intentions of the person s/he represents as listed under point 2), of the present paragraph.

(5) The legal representative of the injured party, civil party, suspect, accused, defendant has no right to undertake actions against interests of the person s/he represents, nor to refuse a defence counsel for the accused, defendant.

(6) The legal representative of the plaintiff, damaged party, civil party, suspect, accused, defendant has the obligation:

- 1) To submit documents confirming his/her powers as legal representative to the criminal prosecution body or the court;  
2) To come at the summon of the criminal prosecution body or the court;  
3) To present at the request of the criminal prosecution body or the court objects and documents;  
4) To follow the legitimate dispositions of the representative of the criminal prosecution body and of the president of the court hearing;  
5) To observe the order established in court hearing.

(7) The legal representative may be summoned and interrogated as a witness under the conditions of the present code.

(8) The legal representative has also other rights and obligations provided by the present Code.

(9) The legal representative exercises his/her rights and obligations personally.

#### **Article 79. Representatives of the plaintiff, damaged party, civil party, civilly accountable party**

(1) Representatives of the plaintiff, damaged party, the civil party, civilly accountable party are persons empowered by the above to represent their interests during the carrying out of the proceeding in criminal case.

(2) Lawyers and other persons empowered with such prerogatives by the respective participant in the trial through a Power of Attorney, in their capacity of representatives of the plaintiff, damaged party, the civil party, civilly accountable party may participate in the criminal proceeding. Managers of respective entities are admitted to participate in the proceeding, by presentation of their identity card, in the capacity of representative of that legal entity set up as civil party or civilly accountable party.

(3) In case that after having been recognised as a representative of the plaintiff, damaged

party, the civil party, civilly accountable party, there are no grounds to maintain a person in the capacity of representative, the criminal prosecution body or the court suspends the participation of this person in the capacity of representative. Participation of a representative is suspended also in cases when the persons who initially delegated to him/her these powers suspended them, or when the representative, other than the lawyer, refused to further participate in the procedure in this capacity.

(4) The plaintiff, the damaged party, the civil party, the civilly accountable party may have several representatives. However the criminal prosecution body or the court has the right to limit down to one representative the number of representatives participating in procedural actions or in court hearings.

### **Article 80. Rights and obligations of the representative of the plaintiff, the damaged party, the civil party, the civilly accountable party**

(1) During the development of the criminal proceeding the representative of the plaintiff, the damaged party, the civil party, the civilly accountable party exercise their rights with the exception of indissoluble rights of their person. In order to protect the interests of the assignee, under the conditions of the present Code, the representative has the right:

- 1) To know the essence of the accusation;
- 2) To participate in the carrying out of the procedural actions at the proposal of the criminal prosecution body, if s/he comes at the beginning of the procedural action carried out with the participation of his/her assignee;
- 3) To request the challenging of the person carrying out the criminal investigation, the judge, prosecutor, expert, interpreter, translator and the court clerk;
- 4) To submit material and other means of evidence in order to be attached to the criminal file and examined in court hearing;
- 5) To make explanations, to file applications;
- 6) To formulate objections against actions carried out by the criminal prosecution body and to request that his/her objections be included in the minutes of the respective action;
- 7) To take notice of the minutes of the procedural actions attended by himself or the person s/he represents; to request that additional material or his/her objections be included into the respective minutes.
- 8) To take notice of the materials of the criminal case at the moment that the criminal prosecution is completed, including the definitely dismissed criminal proceeding; to make copies of the materials from the file and to make notes regarding filed data relevant to the interests of the represented person;
- 9) To attend the court hearings under the same conditions as his/her assignee;
- 10) To plead judicial debates on behalf of the civil party or the civilly accountable party whose interests s/he represents;
- 11) To make complaints against actions and decisions of the criminal prosecution body and to challenge the court decision within the limits of his/her powers;
- 12) To withdraw with the consent of the assignee any application filed by him/her;
- 13) To formulate objection against the complaints of other participants in the proceeding that have been brought to his/her notice by the criminal prosecution body or the ones s/he learnt from other sources, whenever these complaints concern the interests of his/her assignee;
- 14) To express his/her opinion in court hearing regarding the applications and suggestions submitted by other participants in the process as well as issues settled by the court to the extent that they concern the interests of his/her assignee;
- 15) To formulate objections against illegal actions of other participants in the trial

to the extent that they concern the interests of his/her assignee;

16) To formulate objection against actions undertaken by the president of the court hearing whenever they concern the interests of his/her assignee;

17) With the consent of the assignee to invite another representative of the latter and delegate the powers to him/her;

(2) When this is specifically mentioned in the Power of Attorney, the representative of the plaintiff, the damaged party, the civil party, the civilly accountable party, as well as the representative of the legal entity, who exercises this right ex officio, has the right on behalf of his/her assignee and in the way provided by the present Code to undertake the following:

- 1) To withdraw his/her application regarding an offence against his/her assignee;
- 2) To sign reconciliation agreements with the suspect, accused, defendant;
- 3) To renounce to the action started by his/her assignee;
- 4) To admit to the action filed against his/her assignee;
- 5) To receive the goods and money that belong to his/her assignee based on a judgment of the court.

(3) The representative of the plaintiff, the damaged party, the civil party, the civilly accountable party has the following rights:

- 1) To receive the compensation for the damage caused by illegal actions of the criminal prosecution body or the court;
- 2) To be informed, at his/her request, by the criminal prosecution body about adopted decisions regarding his/her assignee, and to receive copies of these decisions free of charge, upon request;

(4) A representative of the plaintiff, the damaged party, the civil party, the civilly accountable party has no right to undertake actions contravening to the interests of his/her assignee.

(5) The representative of the plaintiff, the damaged party, the civil party, the civilly accountable party is obliged to carry out the following:

- 1) To fulfil the instructions of his/her assignee;
- 2) To submit documents confirming his/her powers to the criminal prosecution body or the court;
- 3) To come at the invitation of the criminal prosecution body or the court in order to protect the interests of his/her assignee;
- 4) To submit at the request of the criminal prosecution body or the court objects and documents in his/her possession;
- 5) To obey legitimate dispositions of the criminal prosecution body and of the president of the court hearing;
- 6) To observe the order set during the court hearing;

(6) The representative of plaintiff, the damaged party, the civil party, the civilly accountable party has also other rights and obligations provided by the present Code.

(7) Removal of the representative of the plaintiff, the damaged party, the civil party, the civilly accountable party and of the witness from the criminal proceeding is done in a way and under the same conditions as the removal of the defence lawyer, stipulated in Article 72 and, applied in the respective way.

## **Article 81. The successor of the damaged party or of the civil party**

(1) In the criminal proceeding as successor of the damaged party or of the civil party is recognised one of its close relatives, who expressed his/her wish to exercise the rights and obligations of the deceased damaged party or that damaged party who, due to the committed crime, lost the capacity to consciously express his/her wish. A close relative who is under the incidence of limitation rules for causing the material, physical or moral damage to the damaged party or of the civil party may not be allowed as successor of the damaged party.

(2) The decision about recognising the close relative as successor of the damaged party or of the civil party is made by the prosecutor carrying out the criminal prosecution, or, depending on the case, by the court, if the close relative requests this. Should more than one close relative request this capacity, the decision to select the successor is made by the prosecutor or the court. Should there be not enough grounds to recognise a person as the successor of the damaged party or of the civil party at the moment of submission of the request, than this decision is taken immediately after establishing such grounds.

(3) The criminal prosecution body or the court suspends through a motivated decision the participation of a person as successor of the damaged party or of the civil party in case that, after his/her recognition in this capacity, a lack of grounds is found not allowing this person to be recognised as successor of the damaged party or of the civil party. The close relative of the damaged party or of the civil party recognised as its successor has the right to renounce to his/her powers at any moment during the criminal proceeding.

(4) The successor of the damaged party or of the civil party participates in the criminal proceeding replacing the damaged party or the civil party.

(5) The successor of the damaged party or of the civil party may be summoned and heard as a witness.

(6) The successor of the damaged party or of the civil party has also other rights and obligations provided by the present Code.

## **CHAPTER IV**

### **OTHER PERSONS PARTICIPATING TO THE CRIMINAL PROCEEDING**

#### **Article 82. The assisting witness**

(1) Any person who is not interested in the case and is not party of the criminal prosecution body may act as an assisting witness and may participate at the presentation of the recognition of the person.

(2) An assisting witness may be invited to participate in the reconstitution of the fact or may carry out the experiment when his/her presence is necessary.

(3) An assisting witness is obliged to carry out the following:

- 1. To come to the body carrying out the procedural action whenever s/he receives a summons;
- 2. To inform, if requested, the criminal prosecution body or the court about his/her relations with persons participating to the development of the respective action;
- 3. To obey the indications issued by the body carrying out the criminal proceeding;
- 4. To abstain from leaving the place where the procedural action takes place until s/he is allowed to leave;



5. To sign the minutes of the procedural action s/he attended, to make objections to things mentioned in the minutes, to refuse to sign the minutes of the criminal proceeding action, when his/her objections are not included into the minutes;
6. He is not allowed to disclose circumstances and data that s/he learnt during the development of the procedural action. Neither is s/he supposed to disclose circumstances referring to inviolability of private life, family and data considered state secret, confidential data related to a business, trade secret or any other secret protected by law.
7. Failure of a witness to fulfil the duties imposes responsibility under the law.
8. An assisting witness has the right:

- - 1) To attend the development of the criminal proceeding action from beginning to end;
  - 2) To take notice of the minutes of the criminal proceeding action that s/he attended;
  - 3) To make objections during the development of the criminal proceeding action and also when s/he is familiarising him/herself with the minutes. His objections in relation to things that happened during the action and things mentioned in the minutes are to be included in the minutes of the respective criminal action procedure;
  - 4) To sign only that part of the minutes of the criminal proceeding action that reflects the circumstances witnessed by him/her;
  - 5) To accept reimbursement of expenses in connection with his/her participation in the criminal proceeding and repair of damage caused due to illegal actions of the criminal prosecution body.

(6) An assisting witness has also other rights and duties stipulated by the present Code.

### **Article 83. The court clerk**

(1) A court clerk attending the trial is an employee of the court, who has no personal interest in the case and writes the minutes of a court hearing, and transcribes declarations made by the parts.

(2) A court clerk is obliged to do the following:

- - 1) To attend the court hearing room during the entire period necessary for the minutes' formulation. He is not allowed to quit the hearing without a permit from the chairman;
  - 2) To make clear and accurate statements regarding actions and decisions made by the court while drafting the minutes. Same is true in respect to applications, motions, approaches, objections, declarations, depositions and explanations made by all participants attending the hearing, as well as other circumstances that need to be included in the minutes, or, as the case might be, annexed to the minutes;
  - 3) He is obliged to write the minutes of the court hearing within the term set by the present Code.
  - 4) At the request of the court or of a party in trial, s/he is obliged to inform about his/her relation with persons participating in the criminal proceeding of that particular case.
  - 5) To exactly obey the indications of the hearing president;
  - 6) He is not allowed to make public data regarding a closed-doors court hearing.

(3) The court clerk bears personal responsibility for ensuring comprehensive and accurate minutes of the court hearing. During its formulation s/he is independent from anybody's

indication as far as content of notes written into the minutes is concerned.

(4) Failure of a court clerk to fulfil his/her duties brings liability under the law.

(5) A court clerk has also other rights and obligations provided by the present Code.

#### **Article 84. Challenging of the court clerk**

(1) A court clerk will not have the right to participate in the procedure in a criminal case in the following situations:

- 1) Whenever there are circumstances as stipulated in article 33, which are to be applied in the respective way;
- 2) Whenever s/he has no right to act in such capacity according to the law or to a court sentence;
- 3) Whenever s/he is a relative of or has other relations of personal or business dependence on the parties;
- 4) Whenever s/he shows lack of professional competence.

(2) A previous participation of the person in the court hearing in the capacity of court clerk is not an obstacle able to exclude his/her further participation in the procedure in this capacity.

(3) Challenging the court clerk is settled by the court carrying out the trial and the decision may not be appealed.

#### **Article 85. The interpreter, translator**

(1) Interpreter, translator is considered the person who knows the languages necessary for translation or who knows the sign language, and who is familiar with legal terms and has no interest in the criminal case. He is assigned to this position by the criminal prosecution body or by the court in cases stipulated by the present Code. An interpreter, translator may be appointed out of persons proposed by participants in the criminal proceeding.

(2) The judge, prosecutor, person carrying out criminal prosecution, defence lawyer, legal representative, court clerk, expert, witness are not entitled to assume an interpreter, translator function despite the fact that they may possess the language and are able to communicate with signs for translation.

(3) Before starting any criminal proceeding actions, the criminal prosecution body or the court will verify the identity and skills of the interpreter, translator, his/her address as well as his/her relation with persons participating in that procedure. S/He will be told about his/her rights and duties and be warned about the criminal responsibility for deliberately mistaken translation or for avoidance to fulfil his/her duties. This circumstance is mentioned in the minutes and is signed by the interpreter, translator.

(4) An interpreter is obliged to carry out the following:

- 1) To come when summoned by the criminal prosecution body or by the court;
- 2) To submit a document certifying his/her competence as an interpreter, translator and to prove in an objective way his/her skills to do complete and accurate translation;
- 3) To inform, if requested, the institution carrying out the criminal proceeding or the parties about his/her professional experience and the relations with the persons participating in criminal proceeding of that particular case;

4) To be present at the scene of the procedural action or in the courtroom as long as his/her presence is necessary to ensure interpretation, translation. S/He will not be allowed to leave the scene of the procedural action place without permission from the criminal prosecution body or to leave the courtroom, if such were the case, without permission from the president of the court hearing.

5) To do a complete and accurate interpretation, translation and at the right moment;

6) To fulfil legal requirements of the criminal investigation body;

7) To observe the court hearing order, as provided by the present Code;

8) To certify with his/her signature that the interpreted, translated statements included in the minutes of the criminal proceeding action s/he attended are complete and accurate. S/He also confirms the accuracy of translated documents handed over to persons participating in the criminal proceeding;

9) S/He will not be allowed to disclose to the public data and circumstances that s/he learnt during a criminal proceeding action. Neither will s/he be allowed to disclose circumstances related to inviolability of private life, family, as well as those considered state secret, business secret, trade secret or any other secret protected by the law.

(5) Failure of an interpreter, translator to fulfil his/her duties will result in application of sanctions in conformity with the law: in case of deliberately mistaken translation an interpreter, translator bears responsibility in conformity with provisions of article 312 of the Criminal Code.

(6) The interpreter, translator has the following rights:

- 1) To ask questions to persons present to verify the translation;
- 2) To take notice of the minutes of the criminal proceeding action that s/he attended and also of the declarations made by persons during the court hearings that s/he attended. He can make objections or declarations regarding the complete and accurate character of the written translation, which are to be included into the minutes.
- 3) To request compensation of expenses made in connection with his/her participation in the criminal proceeding of that particular case and repair of damage caused due to illegal actions undertaken by the body carrying out the criminal proceeding;
- 4) To be remunerated for delivered services.

(7) An interpreter has also other rights and obligations as stipulated in the present Code.

## **Article 86. Challenging of the interpreter**

(1) An interpreter, translator will not be allowed to participate in the procedure in a criminal case in the following situations:

- 1) Whenever circumstances stipulated in article 33 were present, that are to be applied in the respective way;
- 2) In cases when s/he is not entitled to act in this capacity based on the law or on a court decision;
- 3) Whenever s/he is a relative or in relation of personal dependence on the person carrying out the criminal prosecution or the judge.
- 4) Whenever s/he depends, in terms of business, on one of the parties, the expert or the specialist;

- 5) Whenever s/he is found professionally incompetent.
- (2) Previous participation in the capacity of interpreter, translator is not an obstacle able to exclude his/her further participation in the same capacity in the given case.
- (3) Challenging the interpreter, translator is settled by the criminal prosecution body or by the court and the solution given in connection with this issue is not susceptible to be appealed.

### **Article 87. The specialist**

- (1) A specialist is a person summoned to participate in the development of the procedural action in cases stipulated by the present Code and should be a person who is not interested in the outcome of the criminal proceeding. A request in connection with the citing of a certain specialist when forwarded by the criminal prosecution body or the court shall be considered obligatory for a manager of an enterprise, institution or organisation where this specialist works.
- (2) The specialist must possess enough special knowledge and skills in order to offer necessary assistance to the criminal prosecution body or the court. An opinion advanced by a specialist does not replace a conclusion drawn by an expert.
- (3) A person called in as a specialist may not be appointed or be involved in any other way in the criminal proceeding in the capacity of specialist in legal issues.
- (4) Before starting carrying out criminal proceeding actions with the involvement of a specialist, the criminal prosecution body or the court verifies his/her identity, address, and the relations s/he has with persons participating to the respective procedure. It will also explain to the specialist his/her rights and obligations and will warn him/her about the responsibility arising in case of a refuse or avoidance to fulfil his/her obligations. This thing will be mentioned in the minutes of the respective action and will be certified by the specialist's signature.
- (5) A specialist has the following obligations:
  - 1) To come when summoned by the criminal prosecution body;
  - 2) To submit to the criminal prosecution body a document certifying his/her qualification as respective specialist and to prove in an objective way his/her ability to offer the necessary assistance as specialist;
  - 3) To inform, if requested, the criminal prosecution body, the court or the parties about his/her professional experience in this area and the relation with the persons participating in the criminal proceeding in that particular case;
  - 4) To be present at the scene of the procedural action or in the courtroom as long as his/her presence is necessary to ensure assistance in the capacity of specialist. S/ He will not be allowed to leave the scene of the procedural action place without permission from the criminal prosecution body or the court or to leave the courtroom, if such were the case, without permission from the president of the court hearing.
  - 5) To use all his/her special knowledge and skills with the purpose of offering assistance to the criminal prosecution body or the court action in the following issues: finding out evidence, securing or excluding evidence, application of equipment and computer software, formulation of questions for the experts; giving explanations regarding issues linked to their professional expertise;
  - 6) To present conclusions of technical-scientific or medical-forensic report;
  - 7) To obey legal orders of representative of the criminal prosecution body;

- 8) To observe the order in court hearing;
- 9) To certify with his/her signature the development, content and outcome of the criminal proceeding action s/he attended. S/He also confirms the accuracy and completeness of entries in the minutes of the criminal proceeding action s/he attended;
- 10) S/He will not be allowed to disclose to the public data and circumstances that s/he learnt during a criminal proceeding action. Neither will s/he be allowed to disclose circumstances related to inviolability of private life, family, as well as those considered state secret, business secret, trade secret or any other secret protected by the law.

(6) The specialist will be liable for the presentation of the false statements made on purpose, according to article 312 of the Criminal Code.

(7) A specialist has the following rights:

- 1) To take notice, after s/he had received the permission of the body carrying out the criminal proceeding, of materials of the case and to ask questions to the participants of the respective action, in order that adequate conclusions be formulated. S/He can also request that the materials and data submitted to him/her be completed before s/he makes a conclusion;
- 2) To draw attention to all present to circumstances connected with the discovery, seizing and storage of the respective objects and documents. To speak about application of technical means and software and to give explanation regarding issues linked with his/her professional competence;
- 3) To make objections that are to be included in the minutes of the respective criminal proceeding action, regarding discovery, seizing and storage of objects. Other explanations made by him/her based on his/her professional skill will also be included in the minutes;
- 4) To take notice of the minutes of the criminal proceeding action that s/he attended and to request that they be completed. S/He can make objections, which are to be included into the minutes.
- 5) To request compensation of expenses made in connection with his/her participation in the criminal proceeding of that particular case and repair of damage caused by illegal actions undertaken by the body carrying out the criminal proceeding;
- 6) To be remunerated for delivered services.

(8) A specialist has also other rights and obligations as provided by the present Code.

(9) Challenging of a specialist is made in a way and in conditions stipulated for challenging of the interpreter, in conformity with the provisions of article 33, which are applied in the respective way.

## **Article 88. The expert**

(1) An expert is the person assigned to do investigations in cases stipulated by the present Code. This person should have no interest in the outcome of the case. S/He is supposed to apply his/her special knowledge in such areas like sciences, engineering, arts and other special areas and offer conclusions based on them.

(2) This person may not be assigned or in other way involved in the capacity of an expert in legal issues during the criminal proceeding.

(3) An expert will be obliged:

- 1) To submit in his/her report objective and explained conclusions regarding questions s/he was asked; to distinguish those conclusions made based on computer software or special reference material, which were not verified by him/her;
- 2) To refuse to submit any conclusions, if the question s/he is asked were beyond his/her professional knowledge or if the materials that s/he was given are not enough for offering any conclusions. S/He will make a written statement regarding this situation and will submit it to the institution or the court, which requested the expertise and indicate the respective causes;
- 3) To come when summoned by the criminal prosecution body or the court in order that s/he be introduced to the participants in the criminal proceeding, or to give explanations in connection with the written conclusions s/he offered;
- 4) To submit to the criminal prosecution body or the court a document certifying his/her special qualification and to prove in an objective way his/her skills and ability to make and submit the respective conclusions;
- 5) To inform, if requested, the criminal prosecution body, the court or the parties during court hearings about his/her professional experience and the relation with the persons participating in this particular case;
- 6) Whenever attending a criminal proceeding action s/he will not be allowed to leave the scene of the criminal proceeding action without permit from the body carrying out the action or the courtroom, if such be the case, without permission from the president of the court hearing.
- 7) To obey legal orders of the criminal prosecution body or the court;
- 8) To observe the order in a court hearing, as set by the present Code;
- 9) S/He will not be allowed to disclose to the public data and circumstances that s/he learnt during a criminal proceeding action or data learnt in closed doors court hearing. Neither will s/he be allowed to disclose circumstances related to inviolability of private life, family, as well as those considered state secret, business secret, trade secret or any other secret protected by the law.

(4) Article 312 of the Criminal Code is applied whenever an expert makes false conclusions on purpose.

(5) An expert has the following rights:

- 1) To take notice of the materials of the case relevant to the subject of the examination/evaluation;
- 2) To request that s/he be given additional materials necessary for him/her to present conclusions;
- 3) To attend, with the consent of the criminal prosecution body or the court, hearings and other criminal proceeding actions related to the subject of the examination and to ask questions to people heard in his/her presence;
- 4) To present conclusions not only in connection with the addressed questions but also regarding other circumstances relevant to his/her competence which were established during investigations;
- 5) To take notice of the minutes of the criminal proceeding action that s/he attended and to request that his/her objections be included into the minutes.
- 6) To request compensation of expenses made in connection with his/her participation in the criminal proceeding of that particular case and repair of damage caused due to illegal actions undertaken by the criminal prosecution body or the court;
- 7) To be remunerated for delivered services.

(6) An expert has also other rights and obligations provided by the present Code.

### **Article 89. Challenging of an expert.**

(1) A person will not have the right to participate in the proceeding in the capacity of specialist in the following cases:

- 1) Whenever there are circumstances stipulated in article 33, which are to be applied in the established way;
- 2) Whenever s/he is a relative or has other relations of personal dependence with the person carrying out the criminal prosecution, the judge or one of the parties in the case, or as the case might be, with their representatives;
- 3) Whenever s/he is deprived of the right to act in such a capacity in conformity to the law or a court sentence;
- 4) Whenever s/he made an inspection or other control actions related to this respective case, the outcome of which serve as grounds to start a trial;
- 5) Whenever s/he participated in the capacity of specialist in this criminal proceeding with the exception of cases when the expert is an MD specialist in forensics and was involved in the external examination of the corpse and the cases when participate experts in the area of investigation of the explosions, cases of disassembling of the explosives devices;
- 6) Whenever s/he shows lack of professional competence.

(2) A previous participation of a person to the trial in the capacity of expert is not an obstacle able to exclude his/her subsequent participation in the procedure in this capacity. Exceptions are the cases when the examination is repeated due to existence of doubts regarding accuracy of the conclusion.

(3) Challenging of an expert is settled by the criminal prosecution body or the court and the decision on it is not a subject susceptible to appeal.

### **Article 90. The witness**

(1) A witness is a person summoned in this capacity by the criminal prosecution body or the court and is the person that gives statements in a way set by the present code. Persons possessing information regarding a certain circumstance, that needs to be established, may be summoned as witnesses.

(2) No person can be forced to make depositions against himself or a close relative

(3) The following persons may not be summoned and heard as witnesses:

- 1) People who, due to their physical or psychological impairments or minor age, are not able to properly understand those circumstances that present interest to that case and to give accurate and just statements referring to them;
- 2) The defence counsels, members of bar associations will not be summoned as witnesses with regard to data they learnt as a result of a request to offer legal assistance or while offering such services;
- 3) People that are aware of certain information related to that particular case regarding their acting as representatives of the parties;
- 4) The judge, the prosecutor, the representative of the criminal prosecution body, the court clerk regarding circumstances they learnt during exercising their own functions in the lawsuit with the exception of those cases when the evidences are gathered by their help, errors or abuses committed during the procedure's development in that case are investigated or during an re-examination of that case

in revision or in recovering of the lost file;

5) A journalist, regarding the person who handed information to him/her, so that s/he doesn't disclose the latter's name with the exception of the case when that person volunteers by him/herself to make statements;

6) Religious officials regarding circumstances that become known to them during performing of their functions;

7) The family doctor – regarding the private life of his patients.

(4) Persons that are aware of certain circumstances related to that particular case due to their participation in the criminal proceeding in the capacity of defence counsel, representative of the damaged person, civil party or civilly accountable party have the right, in exceptional situations, with the consent of the person the interests they represent, to give evidence in their favour. Should this be the case their further participation in the procedure is not admitted.

(5) In case when it is necessary to verify whether a certain person is capable to properly understand important circumstances of the case and to make just statements, the criminal prosecution body or the court may invite an expert.

(6) The witness has the following obligations:

- 1) To come when summoned by the criminal prosecution body or the court in order to give statements and to participate in procedural actions;
- 2) To give authentic statements, to disclose everything s/he knows in connection with that particular case and to answer the questions s/he is asked. S/He will confirm with his/her signature the accuracy of his/her statement included in the minutes of the criminal proceeding or annexed to the latter;
- 3) To submit at the request of the criminal prosecution body or the court objects, documents, evidence for comparison;
- 4) To accept at the request of the criminal prosecution body or the court a corporal examination;
- 5) In cases when there is sound reason to doubt the capacity to properly understand and to offer fair statements a witness should accept, at the request of the criminal prosecution body, to be subjected to an ambulatory examination to verify this capacity;
- 6) To obey legal orders issued by the representative of the criminal prosecution body or the court or by the president of a court hearing;
- 7) To be within the jurisdiction area of the body carrying out the criminal proceeding, or to inform this body about changing residence;
- 8) A witness is not supposed to leave the court hearing room without the permit of the hearing president;
- 9) To observe the order in a court hearing.

(7) Failure of a witness to fulfil his/her duties brings about application of sanctions within the law.

(8) Should a witness not come when summoned to a criminal proceeding action without sound reason, the criminal prosecution body or the court has the right to order his/her forced bringing.

(9) A witness that refuses, or avoids testifying is liable under article 356 of the Criminal Code, whereas a witness, who gives false statements on purpose, bears responsibility under article 355 of the Criminal Code.



(10) Close relatives pke the parents, children, adopters, adopted children, sisters, brothers, grandfather, grandmother, grandchildren as well as the husband of the suspect, indicted, defendant and convicted are not obliged to testify. The criminal prosecution body or the court is obliged to bring this circumstance to the attention of these people and they should confirm with their signature.

(11) A witness has the following rights:

- 1) To know regarding what case s/he was summoned;
- 2) To request the challenging of the interpreter, translator who participate in his/her examination;
- 3) To file applications;
- 4) To refuse to testify, to submit objects, documents, comparative models or information, whenever they may be used as evidence against him/herself or against his/her close relatives;
- 5) To make declarations in his/her mother tongue or in the language s/he speaks and to take notice of his/her declarations after their recording; to request that corrections or amendments are made to complete his/her declarations;
- 6) While making declarations an witness has the right to use documents containing complex estimates, geographical names and other data which is difficult to remember by heart, notes regarding details difficult to memorise, to illustrate his/her declarations with sketches, drawings, graphs;
- 7) A witness has the right to be assisted during his/her participation in criminal proceeding by a defence counsellor selected by himself as his/her representative;
- 8) To write his/her declarations by himself in the minute of the hearing during the criminal prosecution;
- 9) To request compensation of expenses supported by him/her during the criminal proceeding and repair of damage caused by illegal actions undertaken by the criminal prosecution body or the court;
- 10) To receive back his/her goods seized from him/her as evidence by the criminal prosecution body or submitted by himself; to receive the original copies of documents belonging to him/her;

(12) A witness has also other rights and obligations stipulated by the present Code.

### **Article 91. The legal representative of a witness**

(1) A legal representative of a juvenile witness, has the right to be informed about the summon sent by the criminal prosecution body or the court to the person whose interests s/he represents and to accompany him/her and attend the criminal proceeding involving his/her participation.

(2) The legal representative of the juvenile witness while attending the criminal proceeding has the following rights:

- 1) To address questions, make comments and give instructions to the person whose interests s/he represents, with the permit of the criminal prosecution body or the court;
- 2) To file applications;
- 3) To object against actions undertaken by the criminal prosecution body or the court and to request that his/her objections be included in the respective minutes;
- 4) To object against actions undertaken by the president of the court hearing;
- 5) To take notice of the minutes of the actions that s/he attended, together with the person whose interests s/he represents, in that particular case. To request that

amendments be made to them or that his/her objections be included in the respective minutes;

6) To invite a counsel in the capacity of representative for the person whose interests s/he represents.

(3) A legal representative of the juvenile witness is obliged to carry out the following while attending the criminal proceeding:

- 1) To obey the legal instructions of the representative of the criminal prosecution body;
- 2) To observe the order as set in the court hearing room.

## **Article 92. The counsel of the witness**

(1) A witness whenever summoned in this capacity has the right to invite a counsel who would represent his/her interests with the criminal prosecution body and would accompany him/her in the criminal proceeding action made with his/her participation.

(2) A counsel invited by the witness in the capacity of his/her representative with the criminal prosecution body, after having been introduced at the beginning of the criminal proceeding carried out with the participation of the witness and having had confirmed his/her capacity and powers acquires the following rights:

- 1) To be informed about the case that the person s/he represents has been summoned in;
- 2) To be present during the entire criminal proceeding carried out with the participation of the person s/he represents;
- 3) To request within conditions of the law the challenging of the interpreter, translator participating to the examination of the respective witness;
- 4) To file applications;
- 5) To explain to the witness his/her rights and to draw the attention of the person conducting the criminal proceeding to the violation of the law committed by the latter;
- 6) With the permit of the criminal prosecution body to ask the person whose interests s/he represents questions, to offer comments and instructions to him/her;
- 7) To object against actions committed by the criminal prosecution body and to request that his/her objections be included in the respective minutes;
- 8) To take notice of the minutes of the criminal proceeding s/he attended together with the person whose interests s/he represents and to request that amendments be made to include his/her objections in the respective minutes.

(3) A counsel of the witness while attending the criminal proceeding is obliged to follow the legal instructions of the representatives of the criminal prosecution body.

## **TITLE IV: THE EVIDENCE AND THE MEANS OF EVIDENCE**

### **CHAPTER I**

#### **GENERAL DISPOSITIONS**

## **Article 93. Evidence**

(1) Evidence is considered any element de facto, collected in the way set by law: namely without an infringement of the constitutional rights and properties of a person or with a restraint permitted by the court, serving to establish circumstances certifying the existence

or the absence of a crime, identifying the person who committed the crime and to establishing its guilt, leading to knowledge of other circumstances necessary for a just solution in the criminal case.

(2) The following are admitted as evidence during a criminal proceeding:

- 1) Statements made by the suspect, accused, defendant, the damaged party, civil party, civilly accountable party, the witness;
- 2) Expertise report;
- 3) Material evidence;
- 4) Minutes regarding criminal prosecution actions and the judicial investigation;
- 5) Documents (including official documents);
- 6) Audio and video tapes, photographs;
- 7) Technical-scientific and medical-forensic reports;

(3) Data, documents and other objects may be used during the criminal proceeding as evidence if the criminal prosecution body or any other party participating in the criminal proceeding gathered them by observing the provisions of the present Code.

(4) Material evidence obtained during investigation actions may be accepted as evidence exclusively in those cases when they have been obtained and verified, according to paragraph (2) and in conformity with provisions of the criminal proceeding law, with the observance of rights and freedoms of the person. Evidence may be also obtained in cases when certain rights and freedoms are limited if this is done with the permit of the court.

#### **Article 94. Materials not admitted as evidence**

(1) Materials obtained in circumstances or ways as listed below will not be admitted as evidence during the criminal proceeding and subsequently will not be taken as basis for a court sentence or other court decisions:

- 1) Materials obtained through violence, threats or other constraining ways, through violation of a person's rights and properties;
- 2) Materials obtained through violation of the right to defence of the suspect, indicted or defendant, of the injured party and the witness;
- 3) Materials obtained through violation of the right to an interpreter for the participants in the criminal proceeding;
- 4) Materials gathered by a person with no right to carry out criminal proceeding actions in that particular case;
- 5) Materials submitted by a person who obviously is to be challenged under the law;
- 6) Materials obtained from a source impossible to verify during the court hearing;
- 7) Materials obtained by the use of methods contravening to scientific provisions;
- 8) Materials obtained with essential violations of the provisions of this Code committed by the criminal prosecution body;
- 9) Materials that were not verified in the set way during the court hearing;
- 10) Materials submitted by a person that can not recognise the respective document or object, can not confirm its authenticity and can not inform about their origin and the circumstances of their procurement;

(2) The following shall be considered essential violation of the provisions of the present Code during gathering of evidence: violation of a person's constitutional rights and freedoms or of the criminal proceeding law's provisions through deprivation or infringement of guaranteed rights of participants in the criminal proceeding, fact that influenced or could

influence the authenticity of obtained data, of the document or of any other object.

(3) Materials obtained through violations listed in paragraph (1) of this article may constitute evidence that certify the existence of the respective violations and guilt of the persons that allowed them.

(4) Complaints filed during the procedure and adopted decisions do not constitute evidence of any circumstance important for that particular case. They simply constitute evidence of the fact that a complaint has been filed and a decision was made.

#### **Article 95. Admissibility of evidence.**

(1) The pertinent evidences will be considered admissible, conclusive and utile if they are managed according to the provisions of the present code.

(2) The criminal prosecution body considers the admissibility of information, documents and objects as evidence ex officio or at the request of parties.

(3) If management of evidence is done by the provisions of the present Code, then arguments in favour of non-admissibility of the evidence material are stated by the party requesting this rejection. Otherwise, the obligation to argue their admissibility lies with the party which acquired them.

#### **Article 96. Circumstances that need to be proven during a criminal proceeding.**

(1) The following needs to be proven during criminal prosecution and trial of the criminal case:

- 1) Signs of crime elements as well as circumstances excluding the deed as an offence
- 2) Circumstances stipulated by law that mitigate or aggravate the criminal liability;
- 3) Data regarding the personality of the plaintiff and defendant;
- 4) The character and size of the damage caused by the offence;
- 5) Existence of goods intended to be used or used for committing the offence or goods obtained as result of the offence, irrespective on the fact that they might have been transmitted to somebody;
- 6) All the circumstances relevant to the establishment of the penalty.

(2) Simultaneously to the circumstances that will have to be proved during the criminal proceeding, the cases and conditions that contributed at the commission of the crime need to be discovered.

#### **Article 97. Circumstances that are established with the use of certain means of evidence**

(1) Certain evidence confirms during criminal prosecution the following circumstances:

- 1) Cause of death. Through conclusions of the medical-forensic exam;
- 2) Character and degree of physical injuries during cases concerning serious, extremely serious and exceptionally serious crimes -- established by a medical-forensic examination;
- 3) Incapacity of a person to be conscious at the moment when s/he committed a socially dangerous deed of his/her actions or lack of action and incapacity to keep them under control, due to a mental disease or temporary insanity, or due to other

health deterioration or debility - stated by a psychiatric examination/evaluation;

4) Incapacity of a witness to perceive and convey the circumstances which need to be established in the case due to a mental disease that s/he suffered from or to temporary mental disorder, or to other health deterioration or to debility - stated by a psychiatric examination/evaluation;

5) Evidence is also required to establish whether an injured party, a suspect, accused have reached a certain age, should this constitute an important issue in that trial. This evidence can be the identity document showing the age. Should the incapacity derive from old age the evidence is a medical-forensic or psychiatric conclusion.

6) Existence of criminal antecedents in case of a suspect or accused - through copies of the definitive court sentences.

### **Article 98. Facts and circumstances that do not need to be proved.**

The following are considered facts and circumstances that don't need to be proved:

- 1) Notorious facts;
- 2) Truthfulness of modern investigation methods unanimously accepted in the areas of sciences, engineering, arts and modern crafts.

## **CHAPTER II**

### **PROBATION**

#### **Article 99. Probation**

(1) In the criminal proceeding, the probation constitutes the invocation of the evidence and proposition of the evidence, the admission and management of evidence with the purpose to establish the circumstances that are important for the case.

(2) The evidences that have been managed will be verified and appreciated by the criminal prosecution body and the court.

#### **Article 100. Evidence management**

(1) The evidence management is done by the using of the means of evidence in the criminal proceeding, that provides the collection and verification of the evidence in favour of against the accused or defendant, by the criminal prosecution body ex officio, at the request of participants in the criminal proceeding, as well as by the court at the request of the parties through the probation procedures, provided by the present code.

(2) In order to manage evidence the defence counsel admitted to attend the criminal proceeding in the way as established by the present Code shall have the following rights:

- 1) To request and to submit objects, documents, data and information necessary for legal assistance, including talks with persons if the latter agree to go through hearing in the way set by the law;
- 2) To request certificates, characteristics and other documents from different bodies and institutions that may issue them in the established way;
- 3) To request in the interest of legal assistance, with the consent of the person they defend, an opinion from a specialist meant to explain issues that need special knowledge.

(3) The suspect, accused, defendant, the defence counsel, the prosecution, the damaged

party, the civil party, the civilly accountable party and their representatives, as well as other persons or legal entities have the right to submit verbal or written information, objects and documents that can be used as evidence.

(4) All evidence managed in a criminal case are to be thoroughly verified in all possible aspects and in an objective way. Verification of evidence is done within the law and consists of an analysis of submitted evidence, comparison with other evidence, collection of new evidence and verification of the source of evidence.

#### **Article 101. Assessment of evidence**

(1) Each piece of evidence is to be assessed from the point of view of relevance, admissibility and authenticity. All set of evidence is to be assessed from the point of view of their sufficiency for the settlement of the case.

(2) The representative of the criminal prosecution body and the judge assess the evidence in conformity to their own conviction acquired through the examination of evidence as a whole, within the law and based on their conscience, in all aspects and in an objective way.

(3) No evidence will have the value established in advance for the criminal prosecution body or for the court.

(4) The court will use as a base for the judgement only those evidences at the examination of which all the parties had equal access.

### **CHAPTER III**

#### **MEANS OF EVIDENCE AND THE PROBATION PROCEDURES**

##### **SECTION I: STATEMENTS**

#### **Article 102. Statements**

(1) Statements are considered data submitted in a written form or verbally during the criminal proceeding by a person and that are important for a fair settlement of the case.

(2) The following are statements:

- 1) Information about the offence directly perceived by the heard person;
- 2) Conclusions made by the person possessing sufficient special knowledge to be entitled to do so and who has directly perceived the offence. The conclusions should refer to causes, character, mechanism and development of the offence.

(3) Statements made by a person, who cannot indicate the source of information, shall not be taken as evidence.

#### **Article 103. Statements of the suspect, accused and defendant**

(1) A statement made by the suspect, accused or defendant is considered written or oral information given by them during a hearing within the provisions of the present Code in connection with circumstances that served as grounds to recognise them in such capacity, as well as other circumstances known to them with reference to the case.

(2) Acknowledgement of guilt by the suspect, accused or defendant, who admit perpetration of the offence, may be taken as basis of accusation only to the extent to which it is

confirmed by facts and circumstances resulting from all the available evidence in the case.

(3) The suspect, accused or defendant may not be forced to testify against him/herself or against close relatives or to admit being guilty and may not be held accountable for it.

(4) Data disclosed by the suspect, accused or defendant may not serve as evidence should they be based on an information coming from an unknown source. Whenever statements made by the suspect, accused or defendant are based on other person's sayings, it is necessary that these persons also be heard.

#### **Article 104. Hearing of the suspect, accused or defendant**

(1) Hearing of a the suspect, accused or defendant is done only in the presence of a defence counsel selected or appointed ex officio, immediately after the suspect's apprehension, or, as the case might be, after his/her being put under accusation. Hearing of the suspect, accused or defendant is not allowed in case of his/her tiredness, during night hours, except for cases when it can not be delayed. Such cases need to be explained and motivated in the record of the hearing.

(2) Before starting the hearing of the suspect, accused, defendant, the agent carrying the criminal prosecution is supposed to record the following data: the surname, name, date, month and year of birth, place of birth, citizenship, education, military service, family status and dependants, occupation, address, criminal history and other information necessary for the establishment of his/her identity in relation to the lawsuit. Next s/he is supposed to ask whether the suspect agrees to make statements in connection with the charge brought against him/her. Should a suspect, accused or defendant refuse to make statements, the matter need to be entered into the record of the hearing along with the reasons brought for such a refusal. When a the suspect, accused or defendant agree to make statements, the agent conducting the hearing is supposed to ask him/her whether s/he acknowledges the suspicion or accusation and to propose him/her to give written explanation in this respect. Should the suspect, accused, defendant be not able or refuses to write by him/herself a statement, the agent conducting the hearing will enter this matter into the record.

(3) A hearing of the suspect, accused or defendant should not start with reading or reminding the statements previously made by him/her. A suspect, accused or defendant may not submit a statement made by him/her earper. S/he may, however, use his/her/ notes in connection with difficult details to be remembered by heart.

(4) Each suspect, accused or defendant is heard separately. Whenever several suspects, accused or defendants are summoned for hearing in the same case, the agent conducting the hearing need to ensure that they don't communicate with each other.

(5) Statements made by the suspect, accused or defendant, are entered into the minutes of the hearing formulated in conformity to provisions of articles 260 and 261.

(6) Should a the suspect, accused, defendant take back certain statements made earper or should s/he want to make amendments, corrections or to update them, such facts are recorded and are signed in conformity with the articles mentioned in the paragraph 5.

(7) Whenever the suspect, accused, defendant finds it impossible to appear for a hearing, the criminal prosecution body conducts the hearing at the place of his/her location.

#### **Article 105. Statements of the witness and the conditions of his/her hearing**

(1) A statement by a witness is written or oral information made by him/her during hearing

under the present Code regarding any circumstances to be established in the case, including data concerning suspect, accused, defendant, damaged party and his/her relationship with them.

(2) Witnesses summoned to one and the same case are heard separately, avoiding the presence of other witnesses. The agent conducting the criminal prosecution needs to ensure that witnesses summoned in the same case can not communicate with each other.

(3) Before starting hearing of a witness the agent carrying out this criminal proceeding action establishes the identity of the witness (surname, name, age, address, occupation, religious belief). Should there exist doubts concerning the identity of a witness, this should be assessed with the other means of evidence.

(4) Deaf and dumb witnesses are heard with the assistance of an interpreter who knows sign language and can communicate with them. Participation of this interpreter is mentioned in the minutes.

(5) Whenever the witness suffers from a mental disease or another severe disease his/her hearing is done with the consent of his/her doctor and in the latter's presence.

(6) The agent carrying out the criminal proceeding action explains to the witness his/her rights and obligations according to article 90 and this event is recorded in the minutes of the hearing.

(7) Each witness is obligatorily questioned whether s/he is close relative or is a spouse to one of the parties or in what relations s/he is with them. Should s/he be close relative or a spouse of the suspect, accused, defendant s/he is questioned whether s/he accepts to make statements.

(8) During the hearing of the witness the questions that in the obvious way will be meant to insult and humiliate the person are prohibited.

### **Article 106. The place of the hearing of witness**

The witness will be heard in the place of the carrying out of the criminal prosecution or judicial examination. In case of necessity, the witness can be heard in the place of his location.

### **Article 107. The time and duration of the hearing of witness**

(1) The hearing of witness will be made, usually, during the day time. In the exceptional cases the hearing may be carried out during the night time, indicating the motives in the respective minutes.

(2) The duration of the hearing with no break may not exceed 4 hours, and general duration during the same day may not exceed 8 hours.

### **Article 108. The witness' oath**

(1) Before being heard the witness makes the following oath: "I swear to tell the truth and not withhold anything of what I know".

(2) After making the oath, a witness is warned about criminal responsibility for false declarations.

(3) A record is made in the minutes of the hearing stating the oath making and the criminal



responsibility warning of the witness, which the latter signs.

### **Article 109. The way of hearing the witness**

(1) The witness is informed about the case and is proposed to make statements concerning facts and circumstances s/he knows in this respect.

(2) After having made his/her statements, the witness may be asked questions concerning facts and circumstances, which need to be established in the case, as well as, about the way s/he came to know the facts s/he revealed in his/her statement.

(3) Should the presence of the witness to the trying of the case be impossible due to his/her departure abroad or due to other justified reasons, then the prosecutor may request the hearing to be made by the investigation judge. In this case the possibility need to be ensured for the suspect, indicted, defendant, his/her defence counsel, the injured party and the prosecutor to ask questions to the heard witness.

(4) Recording of the witness's statements is done according to articles 260 and 261.

### **Article 110. Special ways of hearing a witness and his/her protection**

(1) Should sound evidence exist that life, physical integrity or liberty of a witness, or of a close relative to him/her, are in danger in connection with the statements that s/he makes, then the instruction judge, or as the case may be, the court may permit to hold the hearing of this witness without his/her physical presence in the place where the criminal proceeding is carried out or in the courtroom. Instead the hearing is done with the assistance of technical means as stipulated in this article, provided that there exist adequate technical ways for hearing.

(2) Hearing of the witness in such conditions as mentioned in paragraph (1) is made based on the motivated court order of the instruction judge, or, as the case may be, of the court ex officio or at the explained and motivated request of the prosecutor, lawyer, respective witness or any other interested person.

(3) A witness heard in conditions according to the provisions of this article is allowed to disclose other data about his/her identity, than the real one. The instruction judge records data about real identity of the witness in a separate minute which is stored in the respective court in a sealed envelope in conditions of maximum security..

(4) A witness making statements in conditions as specified in this article will be assisted in his/her special location during the trial by the respective instruction judge.

(5) A witness may be heard through a television network, his/her image and voice being distorted in such a way that s/he may not be recognised.

(6) The suspect, accused, defendant and his/her defence counsel, the damaged party are ensured the possibility to ask questions to heard witness under the conditions of paragraph 5.

(7) Statements made by a witness heard in conditions of the present article are recorded on videotape and integrally entered in the minutes formulated in conformity to provisions of articles 260 and 261. The original videotapes with the witness's registered statements are sealed with the seal of the court and stored within its premises along with the copy of the minutes of the statement.

(8) Statements made by heard witnesses according to provisions of this article may be used as evidence only to the extent that they may be verified by other evidence.

(9) Undercover investigators may also be heard under the conditions in this article.

#### **Article 111. Statements and Hearing of the damaged party.**

(1) The damaged party will be heard regarding the criminal case and other circumstances that are important in the case.

(2) Statements and hearing of the damaged party is done according to the provisions for witness hearing which are applied in the respective way.

(3) In certain cases, when a private life of a damaged party can be caused damages, it will be prohibited to the defendant accused by committing a sexual crime and the defence counsel to present evidence on the pretended character or personal history of the damaged person, except the case when the court provides this permission. The defendant can file an application to the president of the court hearing regarding the submission of the evidence on the pretended character or the personal history of the damaged person. This application will be settled in the close hearing, where the defendant and prosecution will have the possibility to express themselves. As a result of the closed hearing, the court will provide the permission for submission evidence on the pretended character or the personal history of the damaged person, only in case if they are convinced of the relevance of some of these evidences and their lapse may affect the prosecution of the defendant in case the management of the evidence is prohibited. In such cases, the president of the hearing will establish the limits of the managements of the evidence and will address questions.

#### **Article 112. Statements and Hearing of the civil party and civilly accountable party**

(1) Statements and hearing of the civil party and civilly accountable party is done in conformity to provisions referring to the hearing of the accused, applied in the receptive way. The civil party and civilly accountable party will give explanations regarding the civil action.

(2) The civil party may be heard as a witness regarding the circumstances that are important for the settlement of the criminal case, in conformity with the dispositions regarding the hearing of the witness.

#### **Article 113. Confrontation.**

(1) Should divergences exist between statements made by heard persons in the same case, then confrontation of these persons is done whenever it is necessary to learn the truth and exclude divergences.

(2) Confrontation is done ex officio by the criminal prosecution body or at the request of participants in the trial.

(3) Hearing of confronted persons is done with the fulfilment of provisions regarding the hearing of the witness or the accused, depending on the standing of confronted persons, which are applied in the respective way.

(4) Confronted persons are heard regarding their relationship, facts and circumstances in connection with which there is a contradiction between previously made statements. After hearing the statements, it is possible that the confronted persons ask questions to each

other and answer the questions of the agent carrying out the criminal proceeding action.

(5) Statements made by confronted persons are entered into a minutes formulated in conformity to provisions of articles 260 and 261.

#### **Article 114. Verification of the statements at the place of crime**

(1) In order to verify and specify the statement made by the witness, damaged party, suspect, accused, defendant on the events of the crime committed in a certain place, the representative of the criminal prosecution body has the right to come to the place of the crime together with the heard person and, according to the case, with the defender, interpreter, specialist, legal representative and to suggest to the heard person to describe the circumstances and the objects regarding which he made or can make statements.

(2) The heard person will show the way to the place of the commission of the crime, will describe the circumstances and objects regarding which he already made the statements and will answer the questions of the representative of the criminal prosecution body.

(3) In case, if during the verification of the statements in the place of crime, the objects or documents that can serve as evidence in the criminal case are discovered, they will be taken and this fact will be registered in the minutes.

(4) The verification of statements in the place of crime will be allowed with the condition not to harm the dignity and honour of the persons who participate at this procedural action and not to jeopardize their health.

(5) The minutes on the verification of the statements on the place of crime will be carried out, observing the provisions of the articles 260 and 261, which will additionally comprise the statements of the person made on the scene of crime. During the carrying out of the verification of the statements on the scene of crime technical means can be applied, sketches made, the fact that will be consigned in the minutes. Phonograms, audio and video tapes, photographic films, schemes, documents and objects taken will be annexed to the minutes.

#### **Article 115. Use of tape recording and videotapes during hearing of the persons**

(1) At the request of the suspect, accused, defendant, damaged party, witnesses or ex officio tape records or videotapes may be used by the criminal prosecution body during their hearing. The person who is supposed to be subject of a tape recording or video recording is informed about the action before starting hearing.

(2) Tape recording or video recording should contain data about heard person, law-enforcing agent, data that are supposed to be entered in the hearing minutes in conformity to requirements stated in articles 260 and 261, as well as the entire development of the hearing action. Tape recording or video recording of a part of a hearing or special repetition for the sake of recording or video recording of statements are not allowed.

(3) After completion of hearing the tape recording or video recording is played back entirely in the presence of the heard person. Any additions to the statements made on tape recording or video recording by the heard person are also recorded on tape or videocassettes. Tape recording or video recording ends with a declaration of the heard person who confirms the truthfulness of statements.

(4) Statements obtained during a hearing with the use of tape recording or video recording

are stated in the minutes of the hearing.

(5) Whenever a tape recording or video recording is played during the development of any other criminal proceeding action, the criminal prosecution body or the court is obliged to mention this thing in the respective minutes.

## **SECTION II: Presentation for identification**

### **Article 116. Presentation of a person for identification.**

(1) Whenever it is necessary that a person be admitted for identification by the witness, damaged party or the suspect, accused, defendant, the criminal prosecution body will hear them concerning circumstances in which they saw a person and the signs or distinctive peculiarities that might enable them to recognise it. A minutes is made in connection to this.

(2) Should the person summoned to do identification be a witness or an damaged party, s/he will be warned about criminal responsibility according to provisions of article 313 of the Criminal Code for refusal or withholding testimony. S/he will also be warned about responsibilities for making false declarations according to article 312 of the Criminal Code and also about the right to refuse to make statements against him/herself or his/her close relatives.

(3) The person that needs to be identified is presented to the one meant to identify it in conditions ensuring, to the extent of possibilities, that the first actor does not see the latter. The person to be identified would be presented together with at least four other persons of the same sex, with resembling appearance to the extent of possibilities. At the presentation for the identification the photographs are applied. The photograph of the present person to be identified and of the assistance witness will be annexed in compulsory way to the minutes.

(4) Before the presentation the criminal prosecution body will propose the person to be identified to choose a place among the other persons and this fact would be mentioned in the minutes of the criminal proceeding action.

(5) Identification will not take place, or the identification already performed would not be considered justified, if the person meant to do the identification indicated uncertain peculiarities for the identification of the presented person. Presentation for a repeated identification by one and the same person, based on same peculiarities, can not be made.

(6) In cases when presentation of a person for identification is impossible, identification may be done based on its photograph, exhibited together with at least other four photographs, which do not differ substantially. All the photographs will be annexed to the minutes.

(7) Due to the presentation of a person for identification the minutes will be carried out according to the provisions of the article 260 and 261, except the fact that the identified person will not take notice on the minutes at this stage and will not sign it.

### **Article 117. Presentation of objects for identification.**

(1) Persons summoned to recognise an object are heard first in connection to the circumstances under which they have seen the object subjected to identification and in connection with the signs and peculiarities that might make possible its identification. The

minutes is made.

(2) Should the person called to make the identification be a witness or the damaged party, s/he will be warned about criminal responsibility according to provisions of article 313 of the Criminal Code in connection with the refusal to give testimony. S/he will be also warned about criminal responsibility according to article 312 in connection with consciously making false declarations and about the right to withhold to from testifying against close relatives.

(3) The object to be identified is presented for the identification together with at least two other similar objects. The person making the identification of the object is obliged to explain the signs or pecuparities that helped him/her to do the identification.

(4) Identification of a corpse presented for identification or of some parts of this corpse as well as identification of antiques, when it is impossible to select analogues is done based of the unique object.

(5) In case that identification of a corpse is proposed to a person who used to know him/her apve, it is permitted that the respective cosmetic adjustment of the deceased be done. When an object is subject to identification, it is permitted that the object be cleaned from dirt, rust or other deposits if this does not destroy it as the means of evidence.

(6) Presentation of an object for identification is set in the minutes according to the provisions of the article 260 and 261.

(7) A minutes is drawn under provisions of articles 258 through 259 in connection with presentation of a person or object for identification.

### **SECTION III: Crime scene investigation, corporal examination, exhumation of corps, reconstruction of the offence and experiment**

#### **Article 118. Crime scene investigation.**

(1) In the purpose of finding evidence of an offence or other material evidence, which might constitute evidence aiding to establish the circumstances of an offence or other circumstances, which are important for the case, the criminal prosecution body carries out an investigation at the scene of the crime. Subject of the crime scene investigation will be the lands, buildings, objects, documents, animals, human corpses or animal corpses.

(2) Investigation at the scene of the crime at the domicile is done with the permission of the person whose rights are pmited according to the provisions of the article 12 and is carried out based on the motivated ordinance of the criminal prosecution body and the authorization of the instruction judge.

(3) The criminal prosecution body investigates the visible objects. Should the necessity arise, access to these objects is allowed to the extent that the human rights are not infringed. In certain cases the agent carrying out the criminal prosecution is allowed to do certain measurements, take photographs, make films, drawings, sketches, casts and moulds of the evidence. S/he may do it independently or with the assistance of an expert in the respective area. Law enforcement agents may surround the investigation scene.

(4) Objects found during the crime scene investigation are examined crime scene where the criminal proceeding action is done and the investigation results are entered into a minutes of the respective action. Should a longer period of time be necessary for the examination of objects and documents, and also in some other cases, the agent performing the criminal prosecution can do the examination at the headquarters of the criminal prosecution body.

Selected objects and documents will be packed for this purpose and sealed and this thing is mentioned in the record.

### **Article 119. Corporal examination**

(1) The criminal prosecution body has the right to do corporal examination of the suspect, accused, defendant, witness or damaged party with their consent or based on an authorization from the instruction judge or an explained and motivated ordinance. The examination has the purpose of establishing whether on the body of this person there are any evidence of an offence or pecupar signs, provided that this does not require a medical-forensic examination.

(2) In case of flagrante depcto the corporal examination may take place without an authorisation of the investigation judge. However, within 24 hours period of time, the latter needs to be informed about committed offence and respective materials pnked to this offence will be presented.

(3) Corporal examination is done in the presence and with the participation of a medical doctor whenever it is necessary.

(4) The agent carrying out the criminal prosecution is not present during corporal examination of a person of opposite sex, when it is necessary to undress for examination. In this case a medical doctor does the corporal examination.

(5) During corporal examination actions that humipate a person's dignity or jeopardise his/her health are not allowed.

### **Article 120. Examination of a corpse**

The criminal prosecution body in the presence of assistant witnesses and a forensic medicine doctor does the external examination of a corpse at the place where it was found. Whenever a forensic medicine doctor is not available examination is done in the presence of any other doctor. Also other specialists may be involved in the corpse examination should this be the necessity. The corps, after the examination is sent to the medico-forensic examination institution, where the measures to prevent the loosing, deterioration, alteration of the body or its parts will be taken.

### **Article 121. Exhumation of a corpse**

(1) Exhumation of a corpse is done based on a motivated ordinance of the criminal prosecution body authorised by the instruction judge and notification of the relatives.

(2) Exhumation of a corpse is done in the presence of the prosecutor and the specialist in forensic medicine, with the advance notification of the sanitary and epidemiological local service.

(3) After exhumation, the corpse may be taken to the respective medical institution for completion of other investigations.

### **Article 122. Reconstruction of the offence**

(1) A reconstruction of offence may be done, should the criminal prosecution body consider necessary for verification and updating of certain data. For this purpose ex officio or at the request of participants to the proceeding as well as the court at the request of parties, a reconstruction of the offence at the scene is done, either integrally or partially by

reproducing the actions of that situation or other circumstances in which the offence took place. With this occasion, if necessary, measurements, films, photographs, drawings and sketches may be done.

(2) Actions humiliating the dignity and honour of persons participating to the reconstruction and those around them, or actions causing danger to their health are forbidden during reconstruction of the offence.

#### **Article 123. The experiment in criminal prosecution procedure**

(1) For the purpose of verification and specification of the data important in the criminal case and that can be reproduced in condition of the performance of the experiment and other investigation activities, the criminal prosecution body is entitled to carry out an experiment in the criminal prosecution procedure.

(2) In the case of necessity, the criminal prosecution body is entitled to train the suspect, accused, defendant, with their consent and the specialist and other persons for the purpose of carrying out of the experiment, and to use different technical means.

(3) The experiment is allowed only in the condition not to jeopardize life and health of the participants at the experiment, not to harm their honour and dignity and not to cause material damage to the participants.

#### **Article 124. Minutes of a crime scene investigation, corporal examination, exhumation of the corpse, reconstruction of the offence and carrying out the experiment**

The minutes are drawn in conformity to provisions of articles 260 and 261 about completion of a crime scene investigation, corporal examination, exhumation of the corpse, of the reconstruction of the offence and carrying out the experiment, with the detailed exposition of the circumstances, development and the result of the respective criminal action is given, as well as the detailed on use of the technical means.

### **SECTION IV: The search, collection of objects and documents**

#### **Article 125. Grounds for conducting a search**

(1) The criminal prosecution body has the right to make a search if the collected evidence or evidence collected in the on going investigation justly presuppose that in a certain room, or in some other place or with a certain person there may be instruments that were used during the crime, objects and valuables resulting from the crime as well as other objects and documents which might present interest for the criminal case.

(2) A search may also be performed for the purpose to find a wanted person, or human or animal corpses.

(3) A search is carried out based on the motivated ordinance issued by the criminal prosecution body and exclusively with the authorisation of the instruction judge.

(4) In cases of the flagrante depcto, a search may be done based on the motivated ordinance without having an authorisation of the instruction judge, and to submit to the latter immediately, but not later than 24 hours from the moment of termination of the search the materials obtained in the result of the search, with the motives of search indicated. The instruction judge will verify the legality of the procedural action.

(5) In case of establishment of the fact that the search was legally conducted, the instruction judge will confirm its result by a resolution. Contrarily, the search will be considered illegal by a motivated court order.

#### **Article 126. Grounds for seizing objects or documents**

(1) Criminal prosecution body has the right to seize objects and documents that are important for the criminal case, should the accumulated evidence or information from the on going investigation show the exact location and the person who possess these things.

(2) Seizing of objects carrying information that constitutes a state secret, trade or banking secret, as well as seizing the information regarding the telephone conversations is done only with the authorisation of the instruction judge.

(3) Seizing of objects and documents is done based on an explained and motivated ordinance issued by the criminal prosecution body.

#### **Article 127. Persons present during search and seizing of objects**

(1) During a search and seizing of the objects and documents, if necessary, the interpreter and the specialist may be present.

(2) Presence of the person who is the subject of search and seizing, or of some adult members of her family, or presence of the persons representing the interests of the respective person. Should the presence of these persons be impossible, then representatives of the executive authority of the local public administration are invited.

(3) Seizing and search in institution premises, enterprises, organisations and military units is done in the presence of the respective representative.

(4) Persons subject of search or seizing, as well as specialists, interpreters, representatives and defence counsels have the right to attend all actions of the criminal investigation body and to make objections and statements in this respect that will be entered into the minutes.

#### **Article 128. The procedure of performing the search or the seizing of objects and documents**

(1) With the exception of flagrante depcto cases, it is forbidden to seize objects or documents or to make searches during night time.

(2) Based on search or seizing of the objects or documents ordinance with the authorization of the instruction judge the person carrying out the criminal prosecution has the right to get access into domicile or in other premises.

(3) Before starting to do a search or seizing of the objects or documents the criminal prosecution body is obliged to hand over a copy of the respective ordinance to the person who is subject to a search or a seizing. The person will sign to confirm his/her being acquainted with the ordinance.

(4) During the seizing of objects and documents, after submitting the ordinance, the representative of the criminal prosecution body will requests the handing over of objects or documents that need to be sequestered. Should this request be refused, the criminal prosecution agent proceeds to forced seizing. Should the objects or documents that need to be sequestered be absent in the place indicated in the ordinance, the criminal prosecution agent has the right to do the search, justifying the necessity of carrying this action.



(5) During the search, the representative of the criminal prosecution body, after s/he had submitted the search ordinance, requests the objects and documents mentioned in the ordinance to be handed over to him/her. Should these things be handed over voluntarily, the criminal prosecution agent may be satisfied with the seizing of objects or documents handed over, without proceeding to other investigations.

(6) All seized objects and documents are showed to all persons present during the search or seizing. Objects and documents, discovered during the search and seizing, the circulation of which is forbidden by law, need to be sequestrated irrespective on the fact whether they are connected or not to the criminal case.

(7) During search or seizing of objects and documents, the criminal prosecution representative has the right to open locked rooms and storehouses in case the owner refuses to open them voluntarily. S/he will nevertheless avoid breaking unjustifiably the goods.

(8) During the search technical means may be used, a fact that needs to be mentioned in the respective minutes.

(9) The criminal prosecution body is obliged to take measures to ensure that circumstances noticed during the search or seizing, which are connected to the private life of the person are not disclosed to the public.

(10) The person who carries out the criminal prosecution has the right to forbid to persons found in that particular room or place where search is carried out, as well as to the persons that entered the room or came to this place, to leave the place or to communicate with each other or with other persons until the search is over. In case of necessity, the room, or the place where the search is done may be put under guard.

#### **Article 129. The search and seizing procedure carried out in premises of the diplomatic representatives**

(1) Within the premises of diplomatic representatives, as well as in places where members of diplomatic missions and their families live, search or seizing may be done only at the request or with the consent of the chief of the respective diplomatic mission. The consent from the chief of the diplomatic mission for the permit to do a search or a seizing is requested through the Ministry of Foreign Affairs of the Republic of Moldova.

(2) During search and seizing in the premises mentioned in paragraph (1) the presence of the prosecutor is obligatory and of a representative of the Ministry of Foreign Affairs of the Republic of Moldova.

(3) The search and seizing of objects and documents in the premises of the diplomatic missions will be carried out in conformity to provisions of the present code.

#### **Article 130. Corporal search and seizing**

(1) In cases when there are grounds to do search and seizing inside premises, the representative of the criminal prosecution body may seize objects and documents that are important for the criminal case, which are located in clothes, things or on the body of the person subject to the criminal prosecution actions.

(2) The corporal search may be carried out without the issuance of the ordinance and without authorisation from the instruction judge in the following cases:

- 1) When a suspect, accused, defendant is apprehended;
- 2) When the preventive arrest measures are applied to the suspect, accused and defendant;
- 3) When there already exist sufficient grounds to presume that the person present inside the premises, where the search or seizing is being done, may wear in his/her cloths documents and objects which might be important as evidence in the criminal case;

(3) Corporal search and seizing of objects may be carried out by the representative of the criminal prosecution body with the participation, according to the case, of the specialist of the same sex to the searched person.

### **Article 131. Minutes of the search and seizing**

(1) The representative of the criminal prosecution body, who carries out the search and seizing of objects and documents, draws out the minutes in conformity to provisions of articles 260 and 261. Should also a special list of sequestered objects and documents be drawn, the list will be annexed to the minutes. The minutes of the search and seizing need to contain a statement specifying that the people present were explained their rights and obligations stipulated in the present Code. It should also include the statements made by these persons.

(2) Regarding documents and objects that need to be sequestered it is necessary to mention whether they have been handed over voluntarily or were seized with force. The place and circumstances where these objects were discovered will be also specified. All seized objects and documents need to be enumerated in the minutes or in the annexed list, indicating the exact number, the size, quantity, characteristic elements and, to the possible extent, their value.

(3) Should actions violating the order be committed by persons subject to search or seizing or by other persons, or should attempts to destroy or hide the objects, and documents be made, then the representative of the criminal prosecution body is supposed to mention these facts in the minutes along with measures taken by him/her in response.

(4) The minutes drawn in connection with the search and seizing is brought to the cognisance of all participants and persons present during this procedural action, fact that is confirmed by signature of each of them.

(5) Seized objects and documents need to the possible extent to be packed and sealed immediately on the place where they are seized or searched, fact that is stated in the minutes. The sealed packs will be signed by the person who carried out the search or seizing.

### **Article 132. obligatory submission of copies of the minutes drawn in connection with the search and seizing**

(1) A copy of the minutes of the search and seizing is handed over to persons, subject to such actions of criminal proceeding, or to an adult member of their family. Should these persons be absent, then the copies will be handed over to the representative of the executive authority of the local public administration body, and his rights and challenging of these procedural actions will be explained. The signatures of relevant persons will confirm the handing over of the copies.

(2) Whenever the search or the seizing is done within the premises of an enterprise, institution, organisation or military unit, then the copy of the minutes is handed over to the

representatives of the respective bodies.

## **SECTION V: Sequestration of correspondence and interception of communications**

### **Article 133. Sequestration of correspondence.**

(1) Whenever there are sufficient grounds to presuppose that the correspondence sent or received by the suspect, accused, defendant may contain data, which may be important evidence in the criminal case, in one or more extremely serious or exceptionally serious crimes, or in case the evidences cannot be collected by other probation procedures, the criminal prosecution body has the right to sequester the correspondence of mentioned persons.

(2) The following things fall into the category of correspondence that may be sequestered: letters of all kinds, telegrams, radiograms, parcels, mail containers, money orders, faxes and e-mail communications.

(3) The criminal prosecution body draws out an ordinance regarding correspondence sequestration, which is submitted to the instruction judge, or, depending on the case, to the court for authorisation. The following need to be indicated in the ordinance: the motives for the sequestration of the correspondence, the name of the post office which would be pkely to detain the correspondence; name and surname of the person or persons, whose correspondence need to be detained; exact address of these persons; type of correspondence to be sequestered and terms of sequestration. The duration of the sequestration of correspondence will be prolonged under the conditions of the present article.

(4) The ordinance regarding sequestration of correspondence with the respective authorisation is submitted to the manager of the respective post office and the latter is obliged to execute this ordinance.

(5) The manager of the post office will immediately inform the ordinance issuing body about detaining the correspondence as requested by said ordinance.

(6) The criminal prosecution body issuing the respective ordinance, the hierarchically superior prosecutor, the instruction judge, or, depending on the case, the court are entitled to cancel sequestration of correspondence once the establised sequestration term is over. Cancellation of sequestration in no case should last longer than the criminal prosecution.

### **Article 134. Correspondence examination and sequestration**

(1) The representative of the criminal prosecution body hands over to the manager of the post office the ordinance requesting the correspondence sequestration and the manager signs it for confirmation. The representative of the criminal prosecution body opens and examines the correspondence.

(2) Whenever objects and documents are discovered which have evidence importance for the criminal case, the representative of the criminal prosecution body seizes them, or makes respective copies. Should no such objects or documents be found, the representative of the criminal prosecution body gives instruction to send the correspondence to the destination.

(3) The minutes are drawn in case of each examination or withdrawal of the correspondence according to provisions of article 260 and 261. In the minutes the type of the correspondence is stated and who, where and when examined it, seized the sequestered

correspondence, delivered it to destination; the type of correspondence, as well as the correspondence from which copies were made, the type of technical means used and what facts were discovered. All participants and persons present during this procedural action will be warned about the necessity to observe the correspondence confidentiality and non-disclosure of information linked to the criminal investigation as well as about criminal responsibility provided by articles 178 and 315 of the Criminal Code. This fact is entered into the minutes.

### **Article 135. Interception of communication**

(1) Interception of communication (the telephone conversations, via the radio or using other technical means) is done by the criminal prosecution body based on the authorization of the instruction judge, based on motivated ordinance of the prosecutor, in cases regarding the extremely serious and exceptionally serious crimes.

(2) In case of urgency, when a delay as stipulated in the paragraph (1) could cause severe harm to the evidence collection procedure, the prosecutor may issue a motivated ordinance allowing interception and recording of communications. S/he is obligated to inform the instruction judge about this immediately, but no later than 24 hours. The latter, in no less than 24 hours period of time is supposed to take an attitude regarding the ordinance issued by the prosecutor. When s/he confirms it s/he further authorises the interception in case of necessity. When s/he doesn't confirm it s/he requests its immediate suspension and destruction of already made records.

(3) Interception of communication may be made at the request of the damaged party, the witness and members of his/her family in case of threats of violence, extortion or commission of other crimes regarding these people, based on a motivated ordinance of the prosecutor.

(4) Interception of communication during criminal investigation is authorised for maximum 30 days duration. Interception may be prolonged in the same conditions based on justifiable reasons. Each prolongation however will not exceed 30 days. The total term will not exceed 6 months. In any case it may not last longer than the criminal prosecution.

(5) Interception of communications may be stopped before the end of the period for which it had been authorised, immediately after disappearance of grounds that justified it.

(6) During the criminal prosecution the instruction judge, after the end of an authorised interception, requests opinion of the prosecutor who supervises and carries out the criminal prosecution, in reasonable terms, but not later than the termination of the criminal prosecution, announces in written form the persons whose conversations were intercepted and recorded.

### **Article 136. Interception and recording and their authorisation**

(1) Interception of communications are carried out by the criminal prosecution body. Persons whose responsibility is to technically facilitate interception and recording of communications are obliged to preserve the secret of the procedural action and confidentiality of correspondence. They are liable in case of violation of their obligation according to provisions of articles 178 and 315 of the Criminal Code. An entry regarding explaining these obligations is made in the minute of the interception.

(2) A minute regarding interceptions and recording performed by the criminal prosecution body is drawn up in conformity to provisions of articles 260 and 261. The authority given by the instruction judge is additionally mentioned here along with the indication of telephone

number, or numbers, the addresses of the telephone posts, radio or other technical means used to carry out the conversations. The record will also indicate the name of persons, whenever they are known, date and time of each separate conversation and number assigned to the tape used for recording.

(3) Recorded communications are integrally transcribed and annexed to the minutes along with the authorisation from the criminal prosecution body, after its verification and signing by the prosecutor carrying out or supervising the criminal prosecution. Correspondence in other languages than the one in which the criminal prosecution is carried out is translated with the assistance of an interpreter. The tape containing the original recorded communication is also annexed to the minutes after having been sealed and the stamp of criminal investigation body has been applied.

(4) The tape with the recorded communication, its written version on paper and the minutes of the interception and recording of communications are handed over to the prosecutor within 24 hours period of time. The prosecutor assesses which one of the collected information is important for the respective case and draws a minutes in this respect.

(5) Original copies of the tapes along with the integral written version on paper and copies of minutes are handed over to the instruction judge who authorised interception of the communication for further storage in special place, in the sealed envelope.

(6) The court makes a decision or passes a sentence regarding destruction of records which are not important for the criminal case. All the other records will be kept up to the moment when the file is submitted to the archive.

### **Article 137. Video recording**

Video recording is carried out in conditions and in conformity with the modapties established for interception of communications provided by articles 135 and 136, provisions being applied in the respective way.

### **Article 138. Verification of interception recording**

Evidence collected under provisions in articles 135 and 137 may be verified through technical expertise ordered by the court at the request of parties or ex officio.

## **SECTION VI: Technical-scientific and medical-forensic investigation**

### **Article 139. Conditions for performing the technical- scientific and medical forensic investigation**

(1 ) In cases when danger exists that certain evidence may disappear, or that certain factual situations may change and it is necessary to urgently explain a number of actions or circumstances in relation with the case, then the criminal investigation body or the court may use the knowledge of a specialist upon the request of parties, and the criminal investigation body both ex of f icio, ordering a technical scientific or medical-forensic investigation.

(2 ) The technical scientific investigation is done as a rule by specialists who work in criminal investigation body . It may also be performed by specialists from other institutions , as well as by other specialists.

### **Article 140. Order of performance of technical scientific or medical-forensic**

## **investigation**

- (1) The criminal investigation body or the court ordering the performance of the technical scientific analysis shall establish the object of this analysis, formulate the questions that need to be answered and term for the performance of this investigation.
- (2) The technical scientific investigation shall be performed relying on the materials and data, submitted or indicated by the court or criminal investigation body. The person entitled to do such an analysis may not be vested and shall not undertake prerogatives of a criminal investigation body or of control body.
- (3) Whenever the specialist entitled to perform the investigation finds the submitted materials or indicated information to be insufficient, he shall communicate the court or criminal investigation body with the request that they be completed.
- (4) In the event it is necessary to perform a body examination upon the indicted or upon the injured party in order to ascertain on their body traces of the offense, the criminal investigation body shall order the performance of a medical-forensic investigation and shall request the medical forensic authority competent under the law to perform such an investigation.

### **Article 141. Technical scientific and medical forensic report**

- (1) The conclusions drawn following a technical-scientific or medical forensic investigation shall be laid down in a written report.
- (2) The criminal investigation body ex officio or upon the request of parties, as well as the court upon the request of any of the parties, if ascertains that the technical scientific or medical forensic report is incomplete, or that its conclusions are not accurate, shall order the performance of an expert examination.
- (3) In the event the specialist has participated at the performance of evidence collecting actions undertaken by the criminal investigation body, the results of the technical scientific or medical forensic investigation shall be included in the verbatim record of the respective action.

## **SECTION VII: PERFORMANCE OF AN EXPERT EXAMINATION**

### **Article 142. Grounds taken as basis in ordering and performing an expert examination**

- (1) Expert examination shall be ordered in those cases when special knowledge of science, technology, art and craftsmanship is necessary in order to ascertain circumstances that may have importance as evidence for a criminal case. The availability of such special knowledge by the person performing the penal pursuit or by the judge shall not exclude the need to order the performance of the expert examination. The order to perform an expert examination shall be issued by the criminal investigation body, ex officio or upon the request of parties, or by the court, upon the request of parties.
- (2) The parties at their own initiative and on their own expense, are entitled to request an expert examination to establish circumstances, which according to them, may be used for the protection of their interests. The report of the expert who had performed the expert examination at the requests of parties shall be submitted to the criminal investigation body, shall be attached to criminal file and shall be subject to consideration along with other

evidence.

(3 ) As expert may be appointed any person who possesses the necessary knowledge to submit findings on the circumstances arisen in connection with the criminal case and that may have a probat i ve value. Each part y is entitled to recommend an expert to take part at the performance of the examination.

#### **Article 143. Cases of mandatory expert examination**

An expert examination shall be ordered and performed mandatory in order to ascertain:

- 1) the cause of death;
- 2) degree and nature of damages inflicted on physical integrity;
- 3) mental and physical condition of the suspect, indicted, defendant , when their responsibility and capacity to defend their right and legitimate interests in criminal proceedings are susceptible of doubts;
- 4) age of the suspect, indicted, defendant or the injured party when this circumstance is relevant for criminal proceedings and documents confirming the ir age are not available or are doubtful;
- 5) mental and physical status of the injured party, of the witness when doubts arise concerning their capacity to perceive correctly circumstances relevant for the criminal proceedings or to make statements on them, if on such statements may further rely exclusively or essentially the delivered ruling ;
- 6) other cases when other evidence is not susceptible to establish the truth about the particular case.

#### **Article 144. The procedure of ordering an expert examination**

(1) When deemed necessary to perform an expert examination, the criminal investigation body by an ordinance and the court by a court order shall order the performance of an expert examination. The ordinance or the court order shall state: who has initiated the ordering of the examination; the grounds on which repes the order to perform an examination; the objects, documents and other materials submitted to the exper t s with the information on when and under which circumstances these have been discovered and seized ; the questions addressed to the expert; name of the expert institution; first and last name of the person vested to perform the expert examination.

(2) The ordinance or the court order concerning the expert examination shall be binding for the institution or the person vested to perform it.

(3) When an expert examination is performed at the initiative of and on the expense of parties, the expert shall be given the list of questions, the objects and materials submitted by parties or upon the request of the latter by the criminal investigation body. A verbatim record shall be drawn in this respect.

#### **Article 145. Actions prepminary to the expert examination**

(1) The criminal investigation body or the court, having ordered an expert examination, shall set a term for calpng the parties and the expert, if the latter has been appointed by the criminal investigation body or the court.

(2 ) The parties are informed at the set term about the object of the examination and questions that the expert needs to answer , are explained about their right to make observations on these questions and to request their modifications or amendment. At the same time , the parties are explained their right to request the appoint ment of an expert

recommended by each of them in order to take part at the examination.

(3) After examination of objections and requests lodged by the parties and by the expert, the criminal investigation body or the court shall set a term for performing the examination , shall inform the expert whether the parties are expected to attend the examination .

#### **Article 146. Expert examination performed by a commission**

(1) Complex and counter-examinations shall be performed by a commission of experts of the same profession. Upon the request of parties, the experts selected by them may also join the group of experts. The experts shall consult each other and, reaching a common opinion, shall draw up a single report, to be signed by all of them. Should there exist divergence between them, then each of them submits a separate report on all issues or only on the issues concerning which no consensus has been reached.

(2 ) The request of the court or of criminal investigation body for the expert examination to be performed by a commission of experts shall be binding for the head of the examination institution. Should the examination be the task of an institution, then its head shall be entitled to organize a team to do the examination.

#### **Article 1 47. Complex expert examination**

(1 ) A complex expert examination shall be ordered, whenever establishing circumstances that may have probati ve value in the criminal case is possible only by performing certain investigations in different areas.

(2) Based on all data establised during the complex examination, the experts within the limits of their competence, shall draw up conclusions on the circumstances for the finding of which the examination has been ordered..

(3) The expert shall not be entitled to sign that part of the complex examination report, which is not related to his/her competence.

#### **Article 148. Additional expert examination and counter-examination**

(1) An additional examination is ordered to the same or another expert if the criminal investigation body, which has ordered the examination, or the court, finds the expert report insufficiently clear or incomplete.

(2) Should the expert conclusions be ill-founded, should there be any doubts concerning them or should there be a breach of the procedural order of expertise performance, there may be ordered a counter-examination b another expert or experts. The authenticity of previously used methods may also be verified during this examination. The ordinance or the court order ordering a counter-examination should specify the reasons for ordering such an examination. The first expert may also participate at the additional examination or the counter-examination with the purpose to offer explanations, but s/he shall not participate at the investigations and in drawing up the expert report.

#### **Article 149. The examination carried out by an expert institution**

(1) The criminal investigation body or the court sends to the head of the expert institution the act ordering the examination, the objects and respective materials, and i f necessary, the documents of the criminal file. The examination is performed by the institution expert as indicated in the court order or in the ordinance. Should no specific expert be indicated, then the head of the ex pert institution shall appoint the expert and shall inform the authority



having ordered the examination.

(2) When the examination is made at the initiative and on the parties' expense, they shall submit to the head of the expert institution the list of questions, the objects and materials necessary for the investigation.

(3) The head of the expert institution shall explain the expert his rights and duties as prescribed under Article 88 of the present Code and shall inform him about his accountability according to Article 312 of the Criminal Code, for submitting deliberately false report statements; shall organize the performance of the expert examination, shall secure the maintenance of objects submitted for investigation; shall establish the term for performing the examination. The head of the expert institution shall not be entitled to give instructions that may determine the course and content of the investigation.

#### **Article 150. Performing an expert examination outside the expert institution**

(1) When it is decided that the examination is to be carried out outside an expert institution, the criminal investigation body or the court, after having issued the ordinance or the order requesting such an examination, invite the person entitled to perform the examination and request him/her to ascertain his/her knowledge, his/her relations with the suspect, the indicted, the defendant, the injured party and with other parties; and to secure that there are no grounds for challenging the expert.

(2) The body that has ordered the examination shall hand over to the expert the court order or the ordinance requesting the examination, shall explain the rights and duties prescribed under Article 88 of the present code, shall inform him about his accountability according to Article 312 of the Criminal Code for submitting deliberately false statements. These acts shall be stated in the ordinance or the court order requesting the examination and shall be confirmed by the expert's signature. The expert's declarations and requests are dealt with in the same way. The body that has ordered the examination shall draw up an ordinance or a reasoned court order in the event the expert's request is rejected..

(3) The criminal investigation body shall be bound to secure the introduction of the expert to the suspect, indicted, defendant, injured party, witness, whenever the necessity arises to perform a body examination or an examination of their mental state, or when their presence during examination is considered necessary.

(4) A contract will be signed between the respective party and an expert whenever the examination is carried out at the initiative and on the expense of one of the parties. The interested party shall submit to the expert the list of questions and the objects to be investigated.

#### **Article 151. Drawing up and submitting the expert report**

(1) After having made the necessary investigations the expert shall draw up a written report, confirmed by his signature and shall apply the expert institution seal.

(2) In the conclusion made by the expert it is necessary to indicate when, where and who has performed the examination (surname, name, education, specialty, professional experience); whether the expert is informed about criminal accountability for submitting deliberately false reports; his scientific title and degree, the position held by the person that has performed the examination and on what grounds who has assisted at the examination, what materials have been used, what investigations have been performed and what questions have been addressed to the expert. Should the expert find circumstances that present interest for the criminal case, other than the ones s/he was asked to

investigate, s/he shall be entitled to mention them in his/her report.

### **Article 152. Placement in a medical institution for the purpose of performing an expert examination**

(1) Should, for the purpose of a medical-forensic or psychiatric examination, the necessity for a prolonged medical supervision arise, the suspect, indicted, defendant may be placed in a medical institution. This fact is stated in the ordinance or the court session requesting the performance of the expert examination.

(2) The placement in a medical institution of the suspect, indicted, in order to perform the expert examination as indicated under paragraph 1 of the present article shall be possible with the authorization of the instruction judge, following the request of the prosecutor.

(3) Should the necessity of placement in a medical institution for the purpose of examination arise during the trial of the case, then the order regarding this matter shall be issued by the court, following the requests lodged by the parties, by the expert or ex officio.

### **Article 153. Hearing of the expert**

(1) In cases when the expert report is not clear or has certain deficiencies, the removal of which does not require additional investigation or in cases when there is a need to specify the methods or some notions used by the expert, the criminal investigation body shall be entitled to hear the expert, the provisions of article 105-109 being observed.

(2) The hearing of the expert shall not be allowed before the submission of the expert report and its examination.

## **SECTION VIII: TAKING OF SAMPLES FOR COMPARISON**

### **Article 154. Grounds for taking comparison samples**

(1) The criminal investigation body shall be entitled to collect samples, which reflect peculiarities of a living human being, of a corpse, an animal, substance, or object, when their investigation is important for the criminal case.

(2) The criminal investigation body shall be entitled to collect samples from the suspect and from the indicted.

(3) The criminal investigation body may also request the collection of samples from witnesses or injured party, but only in cases when it is necessary to verify whether these persons have left any traces on the place where the event had taken place or on real evidence.

(4) If necessary, the collection of samples for a comparative investigation is made with the participation of an expert.

(5) The criminal investigation body shall issue a reasoned ordinance regarding the collection of samples necessary for a comparative examination, where the following is indicated: the person entitled to collect the samples, the person from whom the samples are taken; the type and amount (number) of samples that need to be collected; when, where and to whom the person from whom the samples are collected is supposed to come and when and to whom the samples are to be submitted after their collection.

(6) A verbatim record is drawn regarding the collection of samples necessary for the

comparative examination under the terms of Article 260 and 261.

(7) The collection of samples under the terms of the present article may be also ordered by the court upon the request of parties.

### **Article 155. Types of samples**

(1) The following may be collected as samples:

- 1) Blood, semen, hair, pieces of nails, micro-particles from the body;
- 2) Sapva, sweat and other secretions of the body;
- 3) Fingerprints, teeth and finger moulds;
- 4) Notes, objects, clothing and parts of it and other materials, reflecting habits of the respective person;
- 5) Voice recording, photographs and video recordings;
- 6) Sord material, substances, raw material, products;
- 7) Weapons of different types, cartridge, cartridge tube, bullets, tools that are used for making these;
- 8) Disabled explosive devices, their component parts, spare parts, mechanisms and tools used to make these ;
- 9) Other substances and objects.

(2) The collection of samples in a way that endangers the life and health of a person or that harms the honor and dignity of a person shall be forbidden.

### **Article 156. Way of sample collection based on an ordinance issued by the criminal investigation body**

(1) The criminal investigation body shall summon the person, or shall arrive at the place where the person is located and shall bring to the latter's knowledge the sample collection ordinance, which is confirmed through signature by the respective person ; the person and the expert shall be explained their rights and obligations.

(2) The representative of the criminal investigation body, with the participation of the specialist, whenever the latter is invited, shall perform the necessary actions and shall collect the respective samples. The samples, save for documents shall be packed and sealed , and the sealed packages shall be signed by the person who performs the respective action. In necessary cases the collection of samples is done by a search or seizure, or both, as well as by other penal pursuit actions.

(3) A verbatim record shall be drawn up regarding the collection of samples under the terms of Article 260 and 261, describing all actions carried out for the collection of samples in the order of their performance, the used technical methods and means, as well as the samples themselves. The collected samples shall be attached to the verbatim record.

## **SECTION IX: MATERIAL EVIDENCE**

### **Article 157. Documents**

(1) The documents issued by official legal entities and natural persons, whenever they contain or ascertain proof of circumstances important for the case, shall constitute material evidence.

(2) Based on an ordinance issued by the criminal investigation body or a court order, these documents are attached to the materials of the file and are preserved during the entire

period of storage of the respective file. In cases when the original documents are necessary for inventory or for reporting, or other legal purposes, they may be returned to their owners if it is possible without affecting the proceedings, their copies being preserved in the file.

(3) The documents shall be submitted by natural persons and legal entities upon the request of the criminal investigation body, performed ex officio or at the intervention of other trial participants or upon the request of the court, performed at the intervention of parties as well as by parties during the penal pursuit or trial proceedings.

(4) In cases when the documents contain at least one element indicated under Article 158 they shall be acknowledged as real evidence.

### **Article 158. Real evidence**

(1) Real evidence shall be considered the objects in those cases when reasons exist to presume that they have served for committing the criminal offence, bear the traces of these actions on them or have constituted the objects of these actions, as well as money or other valuables, objects and documents that may serve as means to discover a criminal offence, to ascertain circumstances, to identify guilty persons or on the contrary, to reject an accusation or to render the criminal liability more lenient.

(2) An object shall be acknowledged as real evidence (exhibit) based on an ordinance issued by the criminal investigation body or based on a court order and shall be attached to the file.

(3) An object shall be acknowledged as real evidence provided that:

- 1) by its detailed description, by seapng, as well as by other actions undertaken immediately after finding it, there was no possibility to replace or to essentially modify the particularities and the signs or the traces left on it;  
2) it was acquired by one of the following probative procedures: search on the crime scene, search, collection of objects, as well as if submitted by the trial participants, with their preliminary hearing.

### **Article 159. Storage of real evidence and of other objects**

(1) Real evidence shall be attached and stored in a file or shall be stored in another way prescribed by the law. The objects which, due to their dimensions or due to other reasons, cannot be stored together with the file shall be photographed and their pictures shall be attached to the respective verbatim record. Large objects, after having been photographed, may be sealed and sent for storage to natural persons or legal entities. Should this be the case, this needs be mentioned in the file.

(2) Explosive substances and objects which are dangerous for human life and health and due to this reason cannot be stored as real evidence, circumstance confirmed by the specialists in the area, based on an ordinance of the criminal investigation body duly authorized by the instruction judge, shall be destroyed following the respective methods.

(3) Immediately after having been examined or seized, the precious metals, stones and pearls, national and foreign currency, cards, check books, securities, bonds, which may be considered as real evidence, shall be sent for storage to the National Bank institutions.

(4) Whenever they contain individual traces resulted from the crime, the foreign currency, national cash amounts, bonds, seized during a penal pursuit action shall be stored within

the file.

(5 ) The real evidence and other seized objects shall be stored, until their fate is solved through a final decision issued by the criminal investigation body or by the court. In cases provided under the present Code, issues related to real evidence body of evidence may be solved before the end of the penal proceeding s.

(6 ) In cases of conflict regarding ownership of an object considered body of evidence, the conflict is solved within civil proceeding s and this object is preserved until the judgment delivered in civil proceedings becomes final.

### **Article 160. Securing the storage of real evidence and of other objects during the criminal proceeding**

(1) Storing real evidence and other objects, submitting them to an examination or to a technical scientific or legal medical investigation , or when transferr ing them to another criminal investigation body or court, measures need to be taken to avoid their loss, deterioration, alteration , contact between them, mixture of real evidence or of other objects.

(2) When a case is being transferred to another institution, the accompanying letter, the annexes to this letter and the information annexed to the indictment will contain indication of all real evidence and other objects that have been annexed to the file and accompany it , as well as their storage place, should they not be annexed to the file.

(3 ) During the transfer of a case containing real evidence, the body receiving the case file shall visually verify the presence of objects attached to the file according to the information mentioned in the accompanying document. The results of this verification shall be mentioned in the accompanying document.

(3) The real evidence, graphical evidence, other materials, left over after the investigations as well as photographs, sketches and graphs that confirm the expert conclusions shall be attached to the report drawn by him/her.

(4) The expert shall include in his report the reasons for not being able to answer to all or to certain addressed questions , whether the submitted materials were insufficient or the addressed questions were not related to his competence; or whether science developments and expert practice do not enhance answering to addressed questions.

(5) The expert report or the expert's statements on his impossibility to submit conclusions, as well as the verbatim record drawn up during the expert's hearing, shall be sent immediately, and not later than 3 days after their receipt by the penal pursuit bodies, to the trial parties, who are entitled to offer explanations, to make objections, as well as to request addressing the expert additional questions, to perform an additional or counter-examination.. The perform ance of these actions is reflected in a verbatim record.

### **Article 161. Decisions regarding real evidence adopted before the settlement of the criminal case**

(1) Before the settlement of the criminal file, the prosecutor, during the penal pursuit or, if the case, the court may order the restitution to the owner or to the legal possessor of the following assets:

- 1) Products easily alterable;
- 2) Objects necessary for every day life;

- 3) Domestic animals, poultry and other animals that need permanent care;
- 4) The car or other vehicle provided it was not sequestered to insure the civil action during the criminal proceeding or the possible special confiscation of assets.

(2) Large real evidence, requiring special storage conditions and which do not bear traces of the criminal offence, as well as other real evidence, save for that having served during the commission of the criminal offence or that bearing traces of the criminal offence, shall be sent to State Tax Institutions to be used, stored, maintained and traded with.

(3) When the owner or legal possessor of the real evidence mentioned under para.(2) is not known, or should their restitution be impossible due to other reasons, it shall be sent to the respective tax institutions to decide upon their use, storage, maintenance, or trade, by transferring the acquired money on the deposit account of the prosecutor's office or of the court.

#### **Article 162. Decision on real evidence adopted during the examination of the criminal case**

(1) During the examination of the merits of the case, there shall be decided upon the real evidence. In this event:

- 1) the tools that were used to commit the offence are confiscated and given to the respective institutions or are destroyed;
- 2) the objects, the circulation of which is forbidden, are submitted to the respective institution or are destroyed;
- 3) the things of no value and that can not be used are to be destroyed, or can be returned to interested persons or institutions, upon their request;
- 4) the money and other valuables acquired by criminal actions, or which were the object of the criminal offence, relying on the court ruling, shall be transferred as state revenues. All other objects are returned to their legal owners, and should the latter not be identified, the objects become state property. In case of a conflict related to the ownership of these objects, the conflict shall be solved in civil proceedings;
- 5) the documents that constitute real evidence are kept in the file during its entire storage duration, or, if requested are delivered to interested persons;
- 6) the objects seized by the criminal investigation body that were not qualified as real evidence are returned to persons from whom they were seized.

(2) The cost of objects altered, deteriorated or lost as a result of performing an expert examination and other legal actions, shall be covered by trial expenses. If these objects have belonged to the suspect, indicted, defendant or the person civilly accountable, their cost shall not be compensated. If these objects have belonged to other persons, their cost shall be compensated by the court sentences, from the state budget and may be cashed from the convicted person or from the person civilly accountable.

(3) In case of a person's acquittal, or in case that a case is definitely filed and disposed of, based on rehabilitation grounds, the cost of objects lost or deteriorated during examination process or during other legal actions shall be compensated to the owner or the legal possessor from the state budget, irrespective of his/her standing in the criminal proceedings.

(4) When real evidence has been sent in conformity to their destination under the terms of paragraph 3 of Article 161, the owner or, if applicable, the legal possessor is restituted objects of the same kind and quality or is paid their value, assessed according to free

market prices valid at the moment of compensation.

### **Article 163. Verbatim records of procedural actions**

Verbatim records of procedural actions drawn up according to provisions of the present Code shall constitute evidence in cases when they confirm circumstances stated during the following actions: crime scene investigation; corporal search; search at domicile; seizure of objects, documents or correspondence; sample collection for the examination; verbal statements regarding a certain offence; presenting for recognition; corpse exhumation; verification of statements at the crime scene; reconstruction of the deed; interception of phone conversations and other conversations as well as other probative procedures.

### **Article 164. Audio and video recordings, photographs and other information carrying means**

Audio and video recordings, technical, electronic, magnetic, optic and other technical electronic data carriers, obtained under the terms of the present Code, constitute evidence if they contain data or sound grounds regarding preparation or commission of a criminal offence and if their content contributes to reveal the truth in the respective criminal case.

## **TITLE V**

### **PROCEDURAL COERCIVE MEASURES**

#### **CHAPTER I**

#### **APPREHENSION**

### **Article 165. Definition of apprehension**

(1) Apprehension shall constitute the deprivation of a person of liberty for a short period of time not exceeding 72 hours in places and under the terms established by law.

(2) The following persons may be subject to apprehension:

- a) persons suspected of committing a criminal offence for the commission of which the law prescribes a sanction of deprivation of liberty over 1 year;
- b) the indicted and the defendant who does not comply with the restrictions imposed by non-custodial preventive measures, imposed on them, if the indicted criminal offence is punishable with deprivation of liberty;
- c) the convicted persons regarding which decisions were adopted for quashing the conviction with conditional suspension of the punishment enforcement or annulling the conditional release from punishment before term.

(3) The apprehension of a person may be performed relying on:

- a) verbatim record, in the event sound reasons arise to suspect that the person has committed the criminal offence;
- b) ordinance of the criminal investigation body;
- c) decision of the court regarding the apprehension of the convicted person until the settlement of the issue on the annulment of the conviction with suspension of the punishment enforcement or annulling the conditioned release of punishment is decided upon, or, if the case, on the apprehension of the person for the criminal offence committed in court hearings.

### **Article 166. Grounds for apprehending a person suspected for having committed**

## **a criminal offence**

(1) The criminal investigation body shall be entitled to apprehend a person suspected of committing a crime for which the law prescribes a punishment of deprivation of liberty over a year, only in the following cases:

- 1) when s/he has been caught in the act;
- 2) if the eye witness, including the injured party, will directly indicate that this person committed the crime;
- 3) if on his body or clothes, in his home or transportation vehicles obvious traces of the crime are discovered;

(2) Under other circumstances that serve as grounds for suspecting a person of committing a crime, the person can be apprehended only if s/he tried to hide, does not have a permanent residence or identity could not be established.

(3) The apprehension of a person on the grounds mentioned under paragraph (1) shall be performed before the registration of the criminal offence according to the procedure established under the law. The registration of the crime shall be performed immediately, and not later than 3 hours from the moment of bringing the person before the criminal investigation body, and in case the crime for which the person was held is not registered properly, the person is released immediately.

(4) The apprehension of a person under the terms of the present article shall not exceed 72 hours from the moment of his deprivation of liberty.

(5) The person apprehended under the terms of the present article, before the expiry of 72 hours from the moment of his deprivation of liberty, needs to be either arrested or, if appropriate, released.

## **Article 167. The procedure for apprehending a person**

(1) The criminal investigation body shall draw up a verbatim record on every case of apprehension of a person suspected of committing a crime in a term of three hours from the moment the person has been brought in custody, the verbatim record shall indicate the grounds, reasons, place, year, month, day and time of apprehension, the deed committed by the respective person, results of body search of the apprehended person, as well as date and time of drawing up the verbatim record. The verbatim record shall be brought to the attention of the apprehended person, at the same time s/he is given a copy of the rights provided in article 64, including the right to keep silent, the right not to testify against oneself, to give explanations to be included in the verbatim record, to have a defender and to make declarations in his presence, circumstance stated in the verbatim record. The apprehension verbatim record shall be signed by the person who has drawn it up and by the apprehended person. During 6 hours from the moment when the verbatim record has been drawn up, the person who has performed this action shall submit to the prosecutor a written communication on the performed apprehension.

(2) The reasons for apprehension shall be immediately communicated to the apprehended person only in presence of a chosen or publicly appointed defense attorney.

(3) In case of apprehension of a minor the person performing the penal pursuit is obliged to immediately communicate the fact to the parents of the minor or to persons replacing them.

(4) The apprehended person follows to be heard in accordance with the provisions of



articles 103, 104, if she agrees to.

(5) The person who performs the apprehension shall be entitled to subject the apprehended person to a body search in accordance to the conditions provided in article 130.

#### **Article 168. The right of citizens to apprehend the person suspected of committing a crime**

(1) Anyone has a right to catch and bring to the police station or any other state authority a person caught while committing a crime or who tried to hide or run immediately after having committing the crime.

(2) A person caught under conditions provided in paragraph (1) of the present article may be tied in case s/he resists. If there are grounds to presume that the apprehended person has a gun or any other dangerous objects or objects presenting interest for the criminal case, the person who caught him/her can search the clothes and take the respective objects to give them to the criminal investigation body.

(3) A person caught under the conditions of the present article and brought to the criminal investigation body is apprehended according to the provisions of the article 166 or is released, depending on the case.

#### **Article 169. Apprehension of a person based on the ordinance of the criminal investigation body in order to be indicted**

(1) The criminal investigation body adopts an ordinance to apprehend a person in the case the evidence administered in the criminal case offer grounds to suspect that the person has committed a crime and the person is not in the respective locality, or his/her place of residence is not known. This ordinance is binding to be executed by any officer of the criminal investigation body or of the police that will locate the suspect.

(2) The institution which issued the ordinance is immediately informed whether the ordinance has been executed.

(3) Apprehending a person on the grounds shown under paragraph (1) of the present article is performed according to the procedure and terms presented under Article 166,167.

#### **Article 170. Apprehending the indicted based on the decision of the criminal investigation body until the arrest**

(1) In case the indicted breaches the conditions imposed by the preventive measures applied to him/her or the written obligation given by the indicted to come when invited by the criminal investigation body or by the court and to notify about his new residence, the prosecutor has a right to issue an ordinance regarding his apprehension, addressing at the same time to the instruction judge to issue an arrest warrant.

(2) The apprehension performed under the conditions of the paragraph (1) cannot exceed the term of 72 hours and will be performed only in cases in which according to the law the person can be subject to pretrial arrest.

#### **Article 171. Apprehending a person based on a court in case of a court hearing criminal offence**

If during court hearings a deed containing criminal offence elements, prescribed under the criminal law, is committed , the chairman of the court session shall order the identification

of a person who has committed the criminal offence and his apprehension, circumstances mentioned in the court hearing verbatim record. The court shall issue a court order deciding to send all materials to the prosecutor and to apprehend the person, the copy of the court order and the apprehended person shall be sent immediately to the prosecutor under the police escort. After receiving the materials and after the presentation of the apprehended person, the prosecutor shall proceed according to the law.

**Article 172. Apprehending the convicted person until the solving of the issue regarding the annulling of the conviction with suspension of punishment or annulling the conditioned release from the punishment**

(1) The apprehension of a convicted person until the solving of the issue regarding the annulling of the conviction with suspension of punishment or annulling the conditioned release from the punishment can be done with the authorization of the instruction judge relying on the request of the punishment enforcement body; the request should include materials that confirm the attempt of the person to hide from the court, to avoid coming to court or if the person has committed serious violations of the conditions of the execution of the obligations imposed on him/her.

(2) The instruction judge may authorize an apprehension for a term of up to 10 days from the moment of deprivation of liberty of the person.

(3) The court order authorizing of the apprehension of the convicted person is handed for execution to the punishment enforcement body or the police authority in the territorial jurisdiction of which the convict has his residence. In case the convict hides, the court order has to be executed by any criminal investigation body's or police authority officers who found the missing person, and the respective court is informed about the execution of its order.

**Article 173. Notification regarding the about a person's holding apprehension**

(1) The person who has drawn up the verbatim record on apprehension immediately and not later than 6 hours, shall be bound to offer to the apprehended person the possibility to announce to one of his close relatives or to another person, at their own choice, about the place where he is held or shall be bound to announce these persons himself.

(2) If the apprehended person is a citizen of another state, the embassy or the consulate of the respective state is announced, within the term mentioned in paragraph (1) of the present article about the performed apprehension.

(3) If the apprehended person is a military, the military unit in which the military is serving or the unit in which the military person is registered, within the term mentioned in paragraph (1) about the apprehension, as well as the persons mentioned under paragraph (1).

(4) In exceptional cases, when the special circumstances of the case require it, for the purpose to secure the confidentiality of the following phase of the penal pursuit, with the consent of the instruction judge, announcing about the apprehension can be done within a term not exceeding 72 hours from the apprehension, save for cases when a minor has been apprehended.

(5) In the event when, following the apprehension of a person, minors and other persons and assets under the care of the apprehended person, are left without any supervision, the criminal investigation body shall be bound to take the measures provided under Article 189.

## **Article 174. Releasing the apprehended person**

(1) The apprehended person shall be released in the following cases:

- 1) the suspicion for committing the crime by the apprehended person did not confirm;
- 2) there are no grounds for continuing to deprive the person of his liberty;
- 3) the criminal investigation body established an essential violation of the law in apprehending the person;
- 4) the apprehension term has expired;
- 5) the apprehension term has expired and the court did not authorize the persons' arrest.

(2) The person released after the apprehension shall not be apprehended repeatedly on the same grounds .

(3) When the person is released s/he is handed a certificate that includes the person who has apprehended him, the grounds, the place and the time of the apprehension, the grounds and the time for his release.

## **CHAPTER II**

### **PREVENTIVE MEASURES**

## **Article 175. Definition and categories of preventive measures**

(1) The coercive measures by which the suspect, the indicted or the defendant is prevented from performing certain actions with a negative impact on the development of the procedure or on the execution of the punishment, constitute preventive measures.

(2) Preventive measures have the purpose to ensure the proper development of penal procedure or to prevent the suspect or , indicted or the defendant from hiding from the penal pursuit or from the trial inasmuch as not to hinder the establishment of the truth or to secure the enforcement of the court sentence.

(3) The preventive measures are:

- 1. interdiction to leave the locality
- 2. interdiction to leave the country
- 3. personal guarantee
- 4. guarantee committing from an organization
- 5. temporary suspension of driver 's license
- 6. sending of the military under supervision
- 7. sending of the minor under supervision
- 8. provisional release under judicial control
- 9. provisional release on bail
- 10. home arrest
- 11. pretrial arrest.

(4) The home arrest and the pretrial arrest may be applied only to the indicted , suspect, defendant. The sending under supervision is applied only to minors. The sending under the supervision of the commanding officer is applied only to military staff or to conscripts. The temporary suspension of the driver's license may represent the main preventive measure or as a complementary preventive measure to another one .

(5) The provisional release on judicial control or on bail, as well as home arrest, shall be preventive measures alternative to arrest and may be applied only concerning the person related to whom a request to issue an arrest warrant has been lodged or concerning the suspect, the indicted, the defendant who are already under remand.

#### **Article 176. Grounds for imposing preventive measures**

(1) Preventive measures can be applied by the criminal investigation body, or if applicable, by the court only, in case s there are sufficient reasons to presume that the suspect, indicted, defendant:

- may hide from the criminal investigation body or from the court;
- may impede the establishment of truth in the criminal proceedings:
  - to influence persons participating in the trial;
  - to hide, to damage or to falsify the evidence or other materials that are important for the case;
  - to avoid coming to the penal pursuit body in case of legal summoning;
- or may commit new crimes; the court may also impose such measures in order to secure the enforcement of the sentence.

(2) Pretrial and preventive measures alternative to arrest are applied only in cases of committing a crime for which the law provides imprisonment for a period of more than two years, and in cases of crimes for which the law provides imprisonment for a period of less than two years, are to be applied if the indicted, the defendant has committed at least one of the actions mentioned under paragraph (1) of the present article.

(3) When solving the matter regarding the need to apply the respective preventive measures the criminal investigation body and the court will take into consideration the following criteria:

- 1) character and damage level of the indicted crime;
- 2) person of the suspect, indicted , defendant;
- 3) age and the state of his/her health;
- 4) his/her occupation;
- 5) family situation and presence of persons to support;
- 6) financial situation;
- 7) presence of a permanent residence;
- 8) other essential circumstances.

(4) In the event when there no reasons to impose a preventive measure on the suspect, indicted, defendant, the latter shall undertake the written obligation to come before the criminal investigation body or before the court, upon their request and to inform them about the change of his residence.

#### **Article 177. Act imposing preventive measures**

(1) Regarding the application of preventive measures the prosecutor, leading or performing the penal pursuit, ex officio or upon the request of the criminal investigation body issues a reasoned ordinance, and the court adopts a reasoned court order, where it is indicated the crime for which the person is suspected, or indicted, grounds for choosing the respective preventive measure and specific information hat ahs determined the application of this measure. The prosecutor's ordinance or, if the case, the court order shall mention that the

indicted, the defendant have been explained the consequences entailed by the violation of the imposed preventive measure.

(2) Pretrial arrest, home arrest, provisional release on bail and on judicial control, are applied only by a court order upon the request of the prosecutor, as well as ex officio when the court examines the case. Pretrial arrest, home arrest, provisional release on bail and, on judicial control is applied by the court as alternative to pretrial arrest based upon the request of the criminal investigation body or at the request of the defense party.

(3) A copy of the ordinance or court order imposing the preventive measure is handed immediately to the person with regard to whom the preventive measure is applied and at the same time the procedure and the term for appealing these decisions is explained, rules that are provided in article 196.

### **Article 178. Interdiction to leave the locality and interdiction to leave the country**

(1) Interdiction to leave the locality is the obligation imposed in a written form on the suspect, indicted, defendant by a prosecutor or by the court to be available for the criminal investigation body or for the court, not to leave the town where the person has his permanent or temporary residence without the consent of the prosecutor or of the court, not to hide from the prosecutor or the court, not to impede the penal pursuit and case examination, to come when invited by the criminal investigation body and the court and to communicate to them any change of residence.

(2) Interdiction to leave the country means an obligation imposed on the suspect, indicted, defendant by the prosecutor or by the court not to leave the country without the consent of the authority having imposed the measure, as well as the compliance with the obligation prescribed under paragraph (1).

(3) The term of preventive measures provided in paragraph (1) and (2) of the present article cannot exceed 30 days and in case of necessity can be prolonged if there are grounds. The prolonging of the term is decided by the prosecutor and each prolonging cannot exceed 30 days.

(4) A copy of the final decision of the prosecutor or of the court adopted under the terms of the present article is sent to police authority in the territorial jurisdiction of which the indicted, the defendant resides or, if applicable, to the border authorities for enforcement and temporary confiscation of the passport, in cases provided under paragraph 2.

### **Article 179. Personal guarantee**

(1) Personal guarantee is a written commitment undertaken by trustworthy persons take regarding the fact that they, through their authority and the amount of money that deposited, guarantee the respective behavior of the suspect, indicted, defendant, including his observing of public order and coming before the criminal investigation body or court, when invited, as well as the fulfilling of other procedural obligations. The number of guaranteeing persons cannot be less than two and more than five.

(2) The personal guarantee as a preventive measure is allowed only at the written request of the guaranteeing persons and with the agreement of the person for whom the guarantee is given.

(3) When presenting the written guarantee each guaranteeing person deposits on the prosecutor's office or the court account an amount of money of one fifty to three hundred

conventional units.

(4) The rights and obligations of the guaranteeing person, as well as the procedure of giving the guarantee are provided in article 181.

#### **Article 180. Guarantee offered by an organization**

(1) The guarantee of an organization is a written commitment of a trustworthy legal entity which undertakes it in the sense that by its authority and the deposited amount of money, guarantees the respective behavior of the suspect, indicted, defendant, including his observing of the public order and his coming before the criminal investigation body or court, when invited, as well as fulfilling other procedural obligations.

(2) By taking the guarantee, the legal entity has to deposit on the prosecutor's office or the court account an amount of money of three hundred to five hundred conventional units.

(3) The rights and obligations of the organization that guarantees as well as the procedure of giving guarantees are shown at article 181.

#### **Article 181. Order for imposing and exercising the guarantee by natural persons and legal entities a citizen or a legal entity**

(1) Personal guarantee and the guarantee of an organization are ordered by the prosecutor leading or performing the penal pursuit by an ordinance or by the court issuing a court order.

(2) The prosecutor or the court establishing that the guaranteeing person is trustworthy and the suspect, the indicted, the defendant may be subject to personal guarantee or the guarantee of the organization provided in articles 179-180 shall decide applying such preventive measure and shall inform the guaranteeing persons the essence of the case and their obligations. After this the guaranteeing person or organization supports the request or withdraws it, this fact is included in the verbatim record.

(3) The guarantor has a right at any moment of the criminal proceedings to withdraw the undertaken guarantee. In case the withdrawal of the guarantee was caused by new charges, appearance of new circumstances that the guarantor did not know or could not know about at the moment of undertaking the guarantee, impossibility of the guarantor to undertake the guarantee any further, the respective behavior of the indicted, defendant from the moment of moving into a different locality or illness of the guarantor or ending of existence of the legal entity, leaving the locality or indicted, defendant transferring to another organization, the deposited amount for the guarantee is returned to the guarantor by the authority where the money had been deposited.

(4) The guarantor may also recover the amount of guarantee in cases:

- 1) if the prosecutor or the court has changed the preventive measure based on reasons that are not related to the behavior of the indicted, of the defendant or has annulled the preventive measure;
- 2) if the legal entity –guarantor has lost the legal capacity and cannot assure the guarantee;

(5) The amount of money deposited as a guarantee is transferred to the state, based on the decision of the court in case:

- 1) the guarantor did not ensure the obligation of a respective behavior of the

suspect or indicted , defendant;  
2) inexplicably has withdrawn the undertaken guarantee;

(6) The decision adopted in the order provided for in paragraph (5) of the present article regarding the transfer to the state of the amount of money deposited as a guarantee can be appealed with appeal in cassation before the hierarchically higher court.

### **Article 182. Temporary suspension of driver's license**

(1) The temporary suspension of the driver's license is a preventive measure to be imposed on persons for having committed criminal offences in the field of transportation, as well as for having used the transportation vehicle for committing the criminal offence.

(2) The temporary suspension of the driver's license may be imposed as a main or as a complementary preventive measure and is ordered by the instruction judge upon the reasoned request of the prosecutor leading or performing the penal pursuit or by the court by a court order.

(3) The copy of the court order on the temporary suspension of the driver's license is transmitted to the road police for enforcement.

### **Article 183. Sending under supervision of a military**

(1) Sending under supervision of the suspect, indicted, defendant who is a military means sending under supervision to the commander of the military unit to assure the respective behavior and presence of the military suspect, indicted , defendant when invited by the criminal investigation body or by the court. Sending under supervision of a military is ordered by the prosecutor, or if applicable, by the court.

(2) The ordinance on the preventive measure for sending under supervision is handed to the commander of the military unit and s/he is informed about the merits of the case, his obligations and responsibilities, a fact that is noted in the verbatim record.

(3) In order to exercise his obligation of applying preventive measures, the commander of the military unit has a right to apply measures shown at the Disciplinary Statute of the Armed forces.

(4) When the preventive measures are applied the military sent under supervision does not have a right to bear firearms and to be sent to work outside the unit.

(5) If the military suspected, indicted, defendant has committed actions provided under Article 176 para.1, the commander immediately informs the prosecutor or, if applicable, the court that has imposed this measure.

(6) Persons appointed to supervise the suspect, indicted, defendant and who did not perform the duties are liable according to the Disciplinary Statute of Armed Forces.

### **Article 184. Sending under supervision of a minor**

(1) Sending under supervision of the minor is the written obligation taken by one of the parents, tutor, guardian or other trustworthy persons, as well as by the management of the special education institution to assure presence when invited by the criminal investigation body or by the court, as well as to counteract the actions prescribed under Article 175 para. 1.

(2) Before the sending under supervision of the minor the prosecutor or the court has to get

information from the guardianship authority about the persons the minor is sent to and to assure that these are able to assure the supervision of the minor. When establishing to apply such a preventive measure for the minor, the prosecutor adopts an ordinance or the court adopts a court order for applying the preventive measure.

(3) Sending under supervision of the minor is performed only upon the request of persons indicated under paragraph, who are informed about the merits of the case and their obligations, a fact that is noted in the verbatim record.

(4) If the person who has the minor under supervision did not fulfill the obligations, s/he can be fined for an amount of 10 to 25 conventional units by the instruction judge or in other cases by the court. The decision for applying the judicial fine under the terms of this article can be appealed by appeal in cassation.

### **Article 185. Pretrial arrest**

(1) Pretrial arrest means detaining the suspect, the indicted, the defendant under remand in places and conditions provided by the law.

(2) The pretrial arrest can be applied in cases and in conditions provided by article 176, as well as in the following cases:

- 1) When the suspect, indicted, defendant does not have a permanent residence on the territory of the Republic of Moldova;
- 2) The identity of the suspect, indicted, defendant is not known;
- 3) The suspect, indicted, defendant violated the conditions of other preventive measures applied on him/her.

(3) When solving the matter regarding the pretrial arrest the instruction judge or the court has a right to order house arrest, provisional release under judicial control or on bail.

(4) The court order on pretrial arrest can be appealed in appeal in cassation before the hierarchically superior court.

### **Article 186. Term for holding a person under remand and its prolongation**

(1) The term for holding a person under remand starts from the moment of depriving a person of liberty at his/her apprehension, and in case the person was not held in custody – from the moment of executing the court order imposing the preventive measure. The term of pretrial arrest includes the time in which the person:

- 1) has been apprehended and under remand;
- 2) under home arrest;
- 3) was placed in a medical institution at the decision of the instruction judge or of the court for an expert examination in stationary conditions as well as for treatment as a result of applying coercive medical measures.

(2) Holding under remand a person during penal pursuit until sending the case to the court will not exceed 30 days, with the exception of cases provided by the present Code. Counting the term of pretrial arrest during the penal pursuit ends at the moment when the prosecutor sends the case to the court, the pretrial arrest or the house arrest is annulled or replaced with another non-custodial preventive measure.

(3) In exceptional cases, depending on the complexity of the criminal case, on the seriousness of the crime and in the event of the imminent disappearance of the indicted or



of risk him exercising pressure upon witnesses or to destroy or alter evidence, the term for the pretrial arrest can be prolonged:

- 1) up to 6 months, if the person is indicted of committing a crime for which the criminal legislation provides as maximum punishment of 15 years of imprisonment;  
2) up to 12 months, if the person is indicted of committing a crime for which the criminal legislation provides as maximum punishment of 25 years of imprisonment or detention for life.

(4) For indicted minors the preventive measure can be prolonged for no more than 4 months.

(5) Each prolongation of the term of the pretrial arrest cannot exceed 30 days.

(6) In case it is necessary to prolong the term of pretrial arrest of the indicted, the prosecutor not later than 5 days before expiry of the term presents a request to the instruction judge for prolonging the term of arrest.

(7) When solving the issue of prolonging the term of arrest, the instruction judge or in other cases the court has a right to replace the pretrial arrest with house arrest, provisional release under judicial control or on bail.

(8) After sending the case to the court all issues regarding preventive measures are solved by the court that examines the case.

(9) Prolonging the term of pretrial arrest for up to 6 months, is decided by the instruction judge based on the request of the prosecutor of the sector in which territorial jurisdiction the penal pursuit is performed and in case of necessity to prolong the pretrial arrest exceeding this term – based on the request of the same prosecutor with the consent of Prosecutor General of his deputies.

(10) The request for prolonging the term of the preventive arrest can be appealed in recourse in the hierarchically superior court.

### **Article 187. obligations of the administration of detention institutions holding apprehended or arrested persons**

The administration of detention institutions holding apprehended or arrested persons is obliged:

- 1) to assure the security of the detained persons, to offer them protection and the necessary help;  
2) to secure the access of detained persons to an independent medical aid;  
3) to hand to the detained persons copies of the received procedural documents;  
4) to register the complaints and other requests of the detained persons;  
5) to send on the same day complaints and requests of the detained addressed to the court, the prosecutor and other officers of the penal pursuit bodies, without verifying or censoring them.  
6) to draw up the verbatim record on the refusal of the detained person to be brought before the court;  
7) to allow meetings of the detained person with the defense attorney and his/her legal representative, with the mediator, in confidential conditions without pmiting their number and duration;  
8) to bring the detained person to the criminal investigation body or to the court at the time indicated by these;

- 9) to assure at the request of the criminal investigation body or of the court the possibility to perform procedural actions with the participation of the detained person;
- 10) based on the decision of the criminal investigation body or of the court to transfer the detained person to another detention place, as well as to follow other requests of this body in the limits when these decisions do not contradict to the legal requirements of the detention regime;
- 11) 7 days before the expiry of the detention term to inform the respective body about this fact;
- 12) to release immediately persons detained without a decision of the judge, as well as at the expiry of the detention term set by the judge;
- 13) to hand to the detained person a certificate according to the provision of paragraph (3) of article 174.

### **Article 188. Home arrest**

(1) Domicile arrest is isolating the suspect, indicted, defendant from the society in his/her residence with some other restrictions.

(2) The home arrest is applied to the persons indicted of having committed petty crimes, misdemeanors and serious crimes, as well as crimes committed by negligence. Upon persons that have exceeded the age of 60 years, upon 1 st disability degree, upon pregnant women, and upon women supporting children under 8 years of age, home arrest may be imposed also in the event of indictment for having committed a extremely serious crime.

(3) Home arrest is applied to the suspect, indicted, defendant according to a court decision or decision of the instruction judge in the order shown at article 185 and 186, according to the conditions that allow applying the preventive measure in the form of arrest, but total isolation is not rational because of the age, health, family situation or other circumstances.

(4) Home arrest is associated with one or more of the following restrictions:

- 1) interdiction to leave the house;
- 2) restrictions on using the phone, receiving and sending mail and using other means of communication;
- 3) interdiction to communicate with certain persons and to receive someone in the house.

(5) The following obligations can be imposed on the person arrested at home:

- 1) to keep in good order electronic means of surveillance and to wear them permanently;
- 2) to answer surveillance signals and to issue telephone surveillance signals, to come personally to the criminal investigation body or court at the established time.

(6) The surveillance upon the enforcement of home arrest is performed by the body vested with such prerogatives.

(7) Term, order of imposing, of prolongation of the term and the appeal home arrest are similar to those applied for pre trial arrest.

(8) In case the suspect, indicted, defendant does not comply with the restrictions and obligations established by the instruction judge or the court, the home arrest may be replaced with pre trial arrest by the court, ex officio or upon the request of the prosecutor.

## **Article 189. The right of the apprehended or arrested person to protection measures**

(1) In case the apprehended or arrested person has in his/her care underage children, persons acknowledged as mentally disabled, persons under guardianship or persons who because of illness, age or other reasons need help, the competent authority needs to be informed in order to take necessary protection measures. The obligation to inform about the need to institute protection measures belongs to the body that performed the apprehension or the pretrial arrest.

(2) The instructions of the criminal investigation body or of the court pursuing the institution of protection measures for the persons mentioned in paragraph (1) of the present article, left without protection, are enforceable for the guardianship authority, as well as for heads of medical institutions or for state – social institutions. The criminal investigation body or the court can transfer underage persons, mentally disabled persons or those of age for protection to relatives, with their consent.

(3) The person whose property is left without supervision as a consequence of apprehension, pre trial arrest or home arrest, is entitled to supervision of these goods, including taking care and feeding of domestic animals, assured by the criminal investigation body at the request of this person and on his/her expense. The instructions of the criminal investigation body or of the court regarding the supervision of goods and their maintenance are binding for the heads of the respective state institutions.

(4) The protection measures prescribed by the present article may be taken regarding persons who were under the protection of the injured party, concerning their goods and residence.

(5) Regarding the protection measures instituted under the conditions of the present article, the criminal investigation body or the court informs immediately the apprehended person, the person under remand and under home arrest, as well as other interested parties.

## **Article 190. Provisional release of the arrested person**

The person under remand as prescribed under Article 185 can request during the criminal proceedings his provisional release under judicial control or on bail.

## **Article 191. Provisional release under judicial control of the detained person**

(1) The provisional release under judicial control of the person under remand, apprehended person or one concerning whom a request for arrest has been lodged can be offered by the instruction judge or the court, only in cases of crimes by negligence, as well as crimes by intent for which the law provides punishment that does not exceed 10 years of imprisonment.

(2) The provisional release under judicial control is not granted to the suspect, indicted, defendant in case the latter has a previous criminal record not extinct for serious and for particularly serious or exceptionally serious crimes or if there is available information on his intention to commit another criminal offence, if he may try to influence the witnesses or to destroy evidence or to flee.

(3) The provisional release under judicial control of the detained person is associated with one or more of the following obligations:

- 1) not to leave the locality of his residence, only under the conditions established by

- the instruction judge or in other cases by the court;
- 2) to inform the criminal investigation body or the court about any change of residence;
  - 3) not to visit certain established places;
  - 4) to come to the criminal investigation body or the court when ever invited;
  - 5) not to contact certain indicated persons;
  - 6) not to commit acts that could impede learning the truth during the criminal proceedings;
  - 7) not to drive vehicles, not to exercise the profession similarly to the one exercised and used for committing the crime .

(4) The police authority in the territorial jurisdiction of which resides the suspect, the indicted, the defendant provisional released under judicial control shall monitor the observance by such persons of the obligations set by the court.

(5) The judicial control upon the provisional released person can be canceled partially or totally for well founded reasons, in the order established for taking such measure.

### **Article 192. Provisional release on bail of the detained person**

(1) The provisional release on bail of the person under remand, of the apprehended person or concerning whom a request for arrest has been lodged, can be granted in cases when the reparation of the damage caused by the crime is secured and the bail established by the instruction judge or by the court has been paid, in cases of crimes by negligence, as well as of crimes with intent, for which the law provides imprisonment for a period of no more than 25 years.

(2) The provisional release on bail is not granted in cases shown at paragraph (2) of the article 191.

(3) During the provisional release on bail the person is obliged to come to the criminal investigation body or the court to communicate any change of residence. Other restrictions and obligations prescribed under paragraph (3) of article 191 may be applied regarding the person temporarily released on bail.

(4) The amount of the bail is established by the instruction judge or by the court in the limits of 300 to 100.000 conventional units, depending on the financial situation of the respective person and seriousness of the crime.

### **Article 193. Revoking provisional release**

(1) Provisional release may be revoked in the event:

- 1) are discovered circumstances and facts not known when the request for provisional release was submitted, facts that impede provisional release;
- 2) the indicted, defendant deliberately does not comply with the established obligations or has committed another crime with intent.

(2) In case of revoking the provisional release, the person shall be subject to pretrial arrest.

### **Article 194. Restitution of bail**

(1) The bail is restituted in cases when:

- 1) the provisional release is revoked on the grounds prescribed under Article 193

para. 1 point 1;

2) it is established by the instruction judge or the court that there are no grounds for the pretrial arrest;

3) an order on the termination of the criminal case, and the exemption of the person from indictment or his acquittal is issued;

4) the court examining the merits of the case delivers by a final judgment the punishment .

(2) The bail shall not be restituted in case the provisional release on bail is revoked on the grounds prescribed under point 2) paragraph (1) of article 193 and is transferred to the state budget by the instruction judge or in other cases by the court. The decision regarding transfer of the bail to the state budget can be appealed with appeal in cassation by the interested persons.

#### **Article 195. Replacement, revocation or ex officio termination of preventive measure**

(1) The applied preventive measure may be replaced if necessary with a harsher one if the need is confirmed with evidence or with an more lenient one if by applying it a respective behavior of the suspect, indicted, defendant will be assured for the purpose of normal performance of the criminal proceedings and assuring the enforcement of the sentence.

(2) The preventive measure is revoked by the body that has ordered it, in the case when the grounds for its application have disappeared.

(3) The preventive measure under the form of pretrial arrest, home arrest, provisional release under judicial control and provisional release on bail may be replaced or revoked by the instruction judge or, if applicable, by the court.

(4) In cases of revocation or replacement of the apprehension or of pretrial arrest the respective body shall send on the same day a copy of the decision to the administration of detention institution.

(5) The preventive measure shall cease ex officio:

- 1) upon the expiry of the terms prescribed by the law or established by the penal pursuit bodies or by the court, if not prolonged according to the law;
- 2) upon the exemption of the person from penal pursuit, upon the termination of criminal proceedings or the acquittal of the person;
- 3) upon the enforcement of the conviction sentence.

(6) The custodial preventive measure shall cease ex officio also in the event of a conviction sentence ruling a non-custodial punishment.

(7) In the cases mentioned under para.5 point 1, the administration of the apprehension or detention institution shall be bound to release the apprehended or arrested person immediately.

(8) In the cases mentioned under para.5 point 2 and para.6, the prosecutor, the instruction judge or, if applicable, the court shall be bound to send immediately the copies of the respective decisions to the administration of the apprehension or remand institutions, where the person is held in.

#### **Article 196. Appealing the decisions on preventive measures**

(1) The ordinance of the prosecutor on the application, prolongation or replacement of the preventive measure may be appealed with a complaint to the instruction judge by the suspect, indicted, their defense attorney or legal representative.

(2) The decision of the instruction judge or of the court on the application, prolongation or replacement of the preventive measure may be challenged with appeal in cassation before the hierarchically higher court.

### **CHAPTER III**

#### **OTHER PROCEDURAL COERCIVE MEASURES**

##### **Article 197. Other procedural coercive measures**

(1) For the purpose of assuring the order established by the present Code regarding the penal pursuit, the examination the case and the enforcement the application, prolongation or replacement of the preventive measure of the sentence , the criminal investigation body, the prosecutor, instruction judge or the court, according to their ambit of competence, shall be entitled to impose on the suspect, indicted, defendant as well other procedural coercive measures, such as:

- 1) be the obligation to come before the authority;
- 2) forced presentation;
- 3) temporary suspension from office;
- 4) measures securing the reparation of the damages inflicted by the crime ;
- 5) measures securing the enforcement of the fine sanction.

(2) In the cases prescribed by the present Code, the criminal investigation body or the court are entitled to impose on the injured party, on the witness, as well as on other persons participating in the criminal proceedings the following procedural coercive measures:

- 1) obligation to come before the authority;
- 2) forced presentation;
- 3) judicial fine (imposed only by the court).

##### **Article 198. obligation to come before the criminal investigation body or before the court**

(1) In cases when the application of preventive measures upon the suspect, indicted , defendant is not reasonable, for assuring the normal performance of criminal proceedings, the criminal investigation body or the court may oblige in a written form the suspect, indicted, defendant to come before this authority on the established date and time, and in case of change of residence to inform immediately the authorities. In the written obligation, the consequences entailed by the failure to observe it shall to be indicated.

(2) Written obligation to come before the criminal investigation body or before the court may also be taken from the injured party, witness and other participants to the trial in order to assure their presence at criminal proceedings.

##### **Article 199. Forced presentation**

(1) The forced presentation represents the forced bringing of the person before the criminal investigation body or before the court in the case when the latter, being invited in the legally established order, did not come without any reasons and did not inform the authority that invited him/her regarding the impossibility to come, and his/her presence was

necessary.

(2) May be subject to forced presentation only the person participating at the trial, for whom the summons of the criminal investigation body or of the court is mandatory and who:

- 1) avoids receiving the summons;
- 2) hides from the criminal investigation body or from the court;
- 3) does not have a permanent residence.

(3) The forced presentation is done based on an ordinance of bringing, issued by the criminal investigation body, or by a court order.

(4) A person cannot be brought forcibly during night, save for cases of no delay.

(5) Underage persons who is less than 14 years old, pregnant women, ill persons, whose state of health is confirmed by a certificate from a state medical institution may not be subject of forced presentation.

(6) Forced presentation shall be executed by police forces.

### **Article 200. Temporary suspension from office**

(1) The temporary suspension from office constitutes the temporary and reasoned interdiction imposed on the indicted, defendant to exercise his professional tasks or activities, which he performs or carries out in the interest of the public service.

(2) The person who is temporarily suspended from office does not get a salary, but the term for which the person was suspended temporarily from office as a procedural coercive measure shall be taken into consideration in the general working experience.

(3) The temporary suspension from office is decided by the instruction judge or, if applicable by the court, based on the reasoned request submitted by prosecutor.

(4) A copy of the order of the instruction judge or the court on the temporary suspension from office of a person is immediately sent for enforcement to the administration of the work place of the indicted, defendant. After receiving the copy, the indicated person shall be immediately suspended or shall not be admitted for work. In the event the person responsible of the enforcement of this procedural coercive measure does not comply with the respective court order, the instruction judge or, if applicable, the court may apply a judicial fine in accordance with article 201.

(5) The temporary suspension from office may be revoked by the instruction judge or, if applicable, by the court, upon the request of trial parties, if there is no longer any need to apply such a measure.

### **Article 201. Judicial fine**

(1) The judicial fine is a pecuniary sanction imposed by the court upon the person that has breached the order of the criminal proceedings.

(2) The judicial fine shall be imposed amounting from 1 to 25 conventional units.

(3) Judicial fine shall be imposed for the following violations:

- 1) failure of any person present in the session room to perform any measures adopted by the session chairman according to the requirements set under Article

334;

- 2) non-enforcement of the ordinance or of the court order on forced presentation;
- 3) unreasoned failure to come before the criminal investigation body or before the court, of the witness, of the expert, specialist, interpreter, translator or legal defendant duly summoned , as well as of the prosecutor to come before the court and the failure to inform these authorities about their impossibility to come before them, when their presence is necessary;
- 4) unduly delay by the expert, interpreter or translator in the performance of entrusted tasks;
- 5) failure to take all necessary measures for the performance of an expert examination by the head of the unit to perform the expert examination;
- 6) failure to execute the obligation to submit, upon the request of the criminal investigation body or of the court, object or other documents by the head of the unit or by the persons entrusted to carry out this task;
- 7) failure to observe the obligation to store the evidence;
- 8) other violations, for which the present Code prescribes the judicial fine.

(4) For the violations committed during the penal pursuit, the judicial fine shall be applied by the instruction judge upon the request of the person performing the penal pursuit.

(5) For the violations committed during the examination of the case, the judicial fine shall be applied by the court examining the case, and the court order imposing the judicial fine shall be included in the verbatim record of the court session .

(6) The order of the instruction judge imposing the judicial fine may be challenged with appeal in cassation before the hierarchically higher court by the person on whom the judicial fine has been imposed.

(7) The court order imposing the judicial fine may be challenged along with the delivered sentence, in the order prescribed under the present Code.

(8) The application of the judicial fine does not exempt from criminal accountability in the event the committed violation amounts to a criminal offence.

## **Article 202. Measures securing the reparation of damages and the enforcement of the fine sanction**

(1) The criminal investigation body ex officio or the court upon the request of parties may take during the criminal proceedings measures securing the reparation of damages inflicted by the crime and the enforcement of the fine.

(2) The measures securing the reparation of damages consist of the sequestration of movable assets and of real estate according to Article 203-210.

(3) The measures securing the reparation of the damages may be taken concerning the assets of the suspect, indicted, defendant, of the civilly accountable person in the amount of the approximate value of the damage.

(4) The measures securing the enforcement of the fine sanction are taken only concerning the assets of the indicted or the defendant.

## **Article 203. Placing under sequester**

1. The placement under sequester of assets, i.e. of material values, herein included the bank accounts and bank deposits, shall be a procedural coercive measure, implying the inventory



of material assets and prohibiting their owner or their possessor to dispose of them, and if necessary, to use them. After the placement under sequestration of bank accounts and deposits, all operations concerning them shall be stalled.

2. The placement of assets under sequester shall be performed in order to secure the reparation of the damage inflicted by the criminal offence, to secure the civil action and the eventual confiscation of assets to be used, used and resulted from committing the criminal offence.

#### **Article 204. Assets susceptible of sequester**

1. Under sequester may be placed the assets of the suspect, of the indicted, of the defendant, as well as the assets of the civilly accountable party, in the cases prescribed under the law, notwithstanding the nature of these assets and where they are located.

2. The sequester may be placed upon the assets constituting the share of the suspect, of the indicted, of the defendant from the joint spouses' or family ownership. In the event there are sufficient evidence that the joint ownership is acquired or increased by criminal ways, then the entire spouses' or family ownership or its largest part may be placed under sequester.

3. Food stuff necessary to the owner, to the assets possessor and to their family members, the fuel, the specialized literature and the professional labour tools, tools, the dishes and kitchen tools used permanently and which are not expensive, as well as first need objects and assets, even if eventually may be subject of confiscation, shall not be placed under sequester.

4. The assets of companies, organizations and institutions, save for the share acquired illegally from the collective ownership which may be separated without prejudicing the economic activity, shall not be placed under sequester.

#### **Article 205. Grounds for the placement under sequester**

1. The placement of assets under sequester may be performed by the criminal investigation body or by the court only in the cases when the accumulated evidence enable reasonably to allege that the suspect, the indicted, the defendant or other persons, holding the pursued assets, may hide, deteriorate or waste them. The assets shall not be placed under sequester if in the criminal proceedings has not been lodged a civil action and if the respective committed criminal offence does not entail their particular confiscation.

2. The placement of assets under sequester shall be applied relying on the ordinance of the criminal investigation body, with the authorization of the instruction judge or, if applicable, by a court order. The prosecutor, ex officio or at the request of the civil party, may address the instruction judge a request, accompanied by the ordinance of the criminal investigation body concerning the placement of assets under sequester. The instruction judge shall authorize by means of a resolution the placement of assets under sequestration, and the court shall decide upon the request of the civil or any other party, if sufficient evidence shall be submitted in order to confirm the circumstances set under paragraph (1).

3. The ordinance of the criminal investigation body or, if applicable, the court order on the placement of assets under sequestration shall indicate the material assets subject to sequester, to the extent they are established in the criminal proceedings, as well as the value of necessary and sufficient assets to secure the civil action.

4. In the event there are doubts about the voluntary submission of assets for their

placement under sequester, the instruction judge or, if applicable, the court, shall authorize the performance of search simultaneously with the placement of material assets under sequester.

5. In case of flagrante depcte or in cases susceptible of no delay, the criminal investigation body shall be entitled to place assets under sequester relying on its own ordinance, without the authorization of the instruction judge, communicating mandatory such circumstances to the instruction judge immediately, but not later than 24 hours from when this procedural act has been performed. Receiving the respective information, he instruction judge shall verify the lawfulness of the placement under sequester, shall confirm its results or shall declare its failure of validity. In the event the sequester is found unlawful or ill-founded, the instruction judge shall order the total or partial exemption of assets placed under sequester.

#### **Article 206. Assessment of the value of assets to be placed under sequester**

1. The value of assets to be placed under sequester shall be assessed according to average market prices from the respective location, without using any quotient.

2. The value of assets to be placed under sequester, with the purpose to secure the civil action lodged by the civil party or by the prosecutor, shall not exceed the value of the civil action.

3. While determining the share from the assets to be placed under sequester of each from several indicted persons, defendants or several persons accountable for their actions, one shall take due consideration of their participation degree to the commission of the criminal offence. In order to secure the civil action, sequester may be placed upon the entire ownership of one of these persons.

#### **Article 207. Manner of enforcing the ordinance or the order to place assets under sequester**

1. The representative of the penal pursuit bodies shall hand over, certified by signature, to the owner or to the assets possessor the copy from the ordinance or the order to place assets under sequester and shall request their transmission. In the event if refusal to enforce voluntarily this request, the placement of assets under sequester shall be performed in a coercive manner. If there are any grounds to assume that assets are hidden by the owner or by the possessor, the criminal investigation body , being lawfully vested with prerogatives, shall be entitled to perform a search.

2. The placement of assets under sequester by a court order, issued after the termination of the respective penal pursuit, shall be performed by the judicial bailiff.

3. A commercial specialist may be involved to participate at the placement of assets under sequester, in order to determine the approximate value of material assets, inasmuch as to exclude any sequestration of assets, the value of which does not correspond to the value indicated in the ordinance of the criminal investigation body or in the court order.

4. The owner or the assets possessor, being present at the action of placement under sequester, shall be entitled to indicate which material assets may be initially placed under sequester in order to cover the amount indicated in the ordinance of the criminal investigation body or in the court order.

5. The representative of the criminal investigation body shall draw up a verbatim record under the terms of Article 260 and Article 261, reflecting the placement of assets under sequester, and the judicial bailiff shall draw up an inventory list. The verbatim record and, if

applicable, the inventory list, particularly shall:

- 1) list all material assets placed under sequester, indicating their number, their dimensions, their weight, the material they are made of and other elements individuating them, and, to the largest possible extent, their value.  
2) indicate what material assets have been taken from their location and which are left for storage in the same location  
3) contain the declarations of present persons and of other persons, concerning the ownership upon the assets placed under sequester.

6. The copy of the verbatim record or of the inventory list shall be transmitted, certified by signature, to the owner or to the possessor of assets placed under sequester, and if the latter is absent – to an adult family member or to the representative of the local public executive administration. Having placed under sequester the assets located on the area of a company, organization or institution, the copy of the verbatim record or of the inventory list shall be handed over, certified by signature, to the administration representative.

### **Article 208. Maintenance of assets placed under sequestration**

1. The assets placed under sequester as a rule shall be taken from their initial location, save for real estate and for large objects.

2. Precious metals and stones, pearls, foreign currency, securities, bonds shall be transmitted for storage in the institutions of the National Bank; the amounts of money shall be placed on the deposit account of the court competent to consider the respective criminal case; other taken objects shall be sealed and stored by the body at the request of which the respective assets have been placed under sequester or shall be transmitted for storage to the representative of the local public administration executive authority.

3. The assets placed under sequester, that have not been taken from their location, shall be sealed and left for storage to their owner or possessor or an adult family member, who has been explained the liability prescribed under Article 251 of the Criminal Code, for disposing of, alienating, replacing or hiding these assets and concerning which the respective person has undertaken a written commitment.

### **Article 209. Challenging the placement of assets under sequester**

1. The placement of assets under sequester may be challenged in the order prescribed by the present Code, and the lodged complaint or the appeal shall not suspend the enforcement of this action.

2. The persons other than the suspect, indicted, defendant, who find the placement of assets under sequester to have been performed illegally or is ill-founded shall be entitled to request the criminal investigation body or the court to remove the sequester from the assets. In the event, they refuse to satisfy the request or have not communicated to the person that has lodged the petition an answer during 10 days from the moment of its reception, the person shall be entitled to solicit the removal of the sequester from upon the assets following the civil proceedings. The court judgment ruling upon the civil case on the removal of the sequester from upon the assets may be challenged by the prosecutor before the hierarchically superior court with an appeal in cassation during 10 days, but, after its entry in force, it shall be binding for penal pursuit bodies and for the court examining the criminal case to the extent to which the assets of what person need to be confiscated or, if applicable, pursued.

### **Article 210. Removal of the sequester from upon assets within criminal**

## **proceedings**

1. The sequester shall be removed from under the sequester by the decision of the criminal investigation body or of the court if, following the withdrawal of the civil action, the modification of the legal qualification of the criminal offence concerning the suspect, the indicted, the defendant, or due to other reasons, there has disappeared the need to maintain the sequester upon the assets. The court, the instruction judge or the prosecutor, within the ambit of their competence, shall remove the sequester from upon the assets, and in the event when the unlawfulness of their placement under sequester has been ascertained, the sequester shall be removed by penal pursuit bodies without the respective authorization.

2. Following the request of the civil party or of other interested persons, requiring the reparation of the material damage within civil proceedings, the criminal investigation body or the court shall be entitled to maintain the assets under sequester even after the termination of the criminal proceedings, after the exemption of the person from penal pursuit or the acquittal of the person, during one month from the entry in force of the respective decision.

## **Title VI**

### **MEASURES SECURING CONFIDENTIALITY, PROTECTION**

#### **AND OTHER PROCEDURAL MEASURES**

#### **CHAPTER I**

### **SECURING CONFIDENTIALITY IN CRIMINAL PROCEEDINGS**

#### **Article 211. Storing criminal files and penal pursuit materials**

(1) The criminal files and the penal pursuit materials shall be stored at the archives of the courts that had examined the merits of the case.

(2) The criminal files and the penal pursuit materials that have not been presented to the court shall be stored in the archive of the authority that has drawn them up.

(3) The criminal files and the penal pursuit materials which contain a state secret shall be stored in the archive of the institutions mentioned under para. 1 and 2, under the special terms prescribed by the legislation in force.

(4) The access to files and to materials stored under the terms prescribed by the present article shall be decided by the head of the authority or, if applicable, by the court president storing them, observing the provisions of the present chapter.

#### **Article 212. Confidentiality of the penal pursuit**

(1) The penal pursuit materials may not be published other than with the authorization of the person performing the penal pursuit and only to the extent he finds it possible, respecting the presumption of innocence principle, and without affecting the interests of other persons and of the penal pursuit development.

(2) In cases when it is necessary to keep confidentiality, the person performing the penal pursuit shall notify the witnesses, the injured party, the civil party, the civilly accountable party, and their representatives, the defense attorney, the expert, the specialist, interpreter, translator and other persons assisting the actions of the prosecution that they

can not disclose any information on the penal pursuit. These persons will make a written statement that they have been notified about their accountability according to the article 315 of the Criminal Code.

(3) The disclosure of the information on the penal pursuit by the persons performing the penal pursuit or by the person entrusted to perform the control upon the penal pursuit activity, if this action has caused moral or material damages to the witness, the injured party and to their representatives, or has damaged the process of penal pursuit shall entail the criminal accountability as prescribed under Article 315 of the Criminal Code.

### **Article 213. Protection of the state secret in the criminal proceedings.**

(1) During the criminal proceedings, in order to protect the information which constitutes a state secret measures provided by the present Code, by the Law on the state secret and other laws shall be taken.

(2) The persons which are requested by the criminal investigation body or by the court to tell or to submit information constituting a state secret have the right to convince themselves that this information is being collected for the respective criminal proceedings, otherwise to decline communicating or submitting this data. The persons requested by the criminal investigation body or by the court to tell or to submit information constituting a state secret may not decline this request by invoking the necessity to respect the state secret, but they are entitled to receive in advance, from the person performing the penal pursuit or from the court, an explanation which would confirm the necessity to provide the mentioned data, including the explanation in the verbatim record of the respective procedural action.

(3) The state servant that made statements with regard to the information entrusted to him/her and which constitutes a state secret notifies in written about this fact the leader of the state authority which has at its disposal this information, if this written notification will not be prohibited by the criminal investigation body or by the court.

(4) The performance of the penal pursuit and the examination of cases related to information which constitutes a state secret is entrusted only to persons who have made a written statement not to disclose this information. The statement of non-disclosure is taken by the head of the criminal investigation body or by the president of the court and is attached to the respective criminal file.

(5) The defense attorney and other representatives, as well as other persons which according to the criminal procedure provisions will be presented for consideration or will be informed in some other ways information constituting a state secret have to give in advance a written statement of non-disclosure regarding this information. In case that the defense attorney or another representative, save for the legal representative, refuses to make such a statement, s/he shall be deprived of the right to participate in the respective criminal proceedings, and the other persons will not have access to information constituting a state secret. The statement of non-disclosure made by the persons mentioned in this paragraph is taken by the person performing the penal pursuit or by the court and is attached to the respective criminal file. The obligation of non-disclosure undertaken by the participants at the trial does not impede them to request the examination of the data constituting state secret in a closed court session.

### **Article 214. Protection of the trade secret and any other secret protected under the law**

(1) In order to protect the information constituting a trade secret or any other secret protected by law, measures prescribed by the present Code, by the Law on the trade secret

and other laws are taken during the criminal the criminal proceedings.

(2) During the criminal proceedings it is prohibited to administrate, use or impart without necessity information constituting a trade secret or another secret protected by law.

(3) The persons which are requested by the criminal investigation body to communicate or to submit information constituting a trade secret or any other secret protected under the law shall be entitled to convince themselves that this information is being collected for the respective criminal proceedings, otherwise shall be entitled to decline communicating or submitting this information. The persons requested by criminal investigation body or by the court to communicate or to submit information constituting a trade secret or any other secret protected under law may not decline this request by invoking the necessity to preserve the secret, but they are entitled to receive priory from the person soliciting this information a written explanation which would confirm the ne ed to provide the mentioned information.

(4) The public servant, the employee of the company or of the organization, notwithstanding the form of ownership, that has made statements on the information entrusted to him/her and which constitute a trade secret or another secret protected under law shall inform the head of the respective economic unit, if this notification is not prohibited by the criminal investigation body or by the court.

(5) The evidence disclosing information containing a trade secret or an other secret protected under the law, upon the request of parties, shall be examined in closed court session.

## **CHAPTER II**

### **PROTECTION MEASURES**

#### **Article 215. The obligation of the criminal investigation body and of the court to take measures insuring the safety of trial participants and of other persons**

(1) In the event there sufficient grounds to consider that the injured party, the witness or other persons participating at proceedings, as well as the members of their famipes or their close relatives may be threatened with death, with use of violence, with deterioration or destruction of assets or with other illegal act, the criminal investigation body and the court shall be bound to take the measures prescribed by the legislation for the protection of the life, health, honor, dignity and assets of these persons, as well as for the identification and holding liable of responsible persons.

(2) T he request for the protection of persons mentioned under para.1 shall be lodged with and examined by the criminal investigation body or by the court in a confidential manner. The decision on assuring state protection shall be transmitted immediately to the body vested with such prerogatives under the Law on the state protection of the injured party, of witnesses and of other persons contributing to the criminal proceedings.

## **CHAPTER III**

### **MEASURES REMOVING THE CIRCUMSTANCES THAT HAVE CONTRIBUTED TO THE COMMISSION OF CRIMES AND OF OTHER BREACHES OF THE LEGISLATION**

#### **Article 216. Ascertaining the cause and the circumstances , that have contributed to the commission of the crime**

During the criminal proceedings and the examination of the case, the criminal investigation body shall be bound to ascertain the cause and the circumstances that have contributed to the commission of the crime.

#### **Article 217. Notification performed by the criminal investigation body in the criminal proceedings**

(1) In the event the criminal investigation body has ascertained the existence of some cause and circumstances that have contributed to the commission of the crime, it shall be bound to notify the respective authority or the official to take certain measures to remove this cause and circumstances.

(2) In the event the criminal investigation body finds during the penal pursuit certain violations of the legislation in force or of human rights and freedoms, it shall notify concerning these violations the respective state authorities .

(3) During a month at most, relying on the notification, necessary measures shall be taken and the outcome shall be communicated to the prosecutor leading the penal pursuit in the respective case and to the body that has addressed the notification.

#### **Article 218. Court interlocutory order**

(1) The court, ascertaining during the trial any fact breaching the legislation or human rights, along with the adoption of the judgment, shall issue an interlocutory order, informing the respective authorities, the officials and the prosecutor about the relevant fact.

(2) During a month at most, the court shall be informed about the outcome of the examination of facts described in the interlocutory order.

### **Title VII**

## **PATRIMONIAL ISSUES IN CRIMINAL PROCEEDINGS**

### **CHAPTER I**

#### **CIVIL ACTION IN CRIMINAL PROCEEDINGS**

#### **Article 219. Civil action in the criminal proceedings**

(1) Civil action in the criminal proceedings may be started upon the request of natural persons or legal entities who suffered material, moral or, if applicable, professional reputation damage directly from the fact (action or failure to act) prohibited under the criminal law or related to its commission.

(2) The natural persons and legal entities who were directly damaged by the action forbidden under the criminal legislation may initiate a civil action for compensating the damage by :

- 1) restitution in kind of the assets of the counter value of lost or destroyed assets as a consequence of the fact prohibited under the criminal law;
- 2) compensation of expenses for the procurement of lost or destroyed assets or for reestablishing the quality, the trade image, as well as the reparation of deteriorated assets;
- 3) compensation of lost profit as a result of the acts prohibited under the criminal law;
- 4) reparation of moral damages or in certain cases of the damage brought to the

professional reputation.

(3) The material damage is considered to be related to the commission of the action forbidden under the criminal law if it may be expressed in expenses for:

- 1) treatment of and care afforded to the injured party;
- 2) burial of the injured party;
- 3) payment of insurance, indemnities and pensions;
- 4) execution of the assets deposit contract.

(4) Assessing the amount of the pecuniary reparation of the moral damage, the court shall take due consideration of the physical suffering of the victim, the aesthetic damage, loss of hope in life, loss of trust for conjugal faithfulness, loss of honor by slander, psychological suffering determined by the decease of close relatives, etc.

(5) The civil action may be initiated at any time from the inception of the criminal proceedings until the end of the judicial investigation.

(6) The civil action may be initiated on behalf of the natural person or of the legal entity by their legal representatives.

(7) In case of decease of the natural person who is entitled to the right to initiate a civil action during the criminal proceedings, this right shall pass onto his successors, and in case of reorganization of the legal entity, the right shall be passed onto the lawful successor.

(8) The claims of the natural persons and of legal entities damaged directly by the act prohibited under the criminal law shall have priority over the claims of the state addressed to the perpetrator.

(9) The criminal investigation body and the court shall be bound to inform the person about his right to initiate a civil action.

#### **Article 220. Applying the legislation in the examination of the civil action**

(1) The civil action in the criminal proceedings shall be settled under in accordance with the provisions of the present Code.

(2) Civil procedure rules shall be applicable if they do not run counter the principles of criminal proceedings and if the criminal procedure rules do not provide for such regulations.

(3) The judgment ruling on the civil action shall be delivered in accordance with the provisions of civil law and of other areas of law.

(4) The limitation term provided by the civil legislation shall not be applied at the examination of the civil action in the criminal proceedings.

#### **Article 221. Initiation of the civil action in criminal proceedings**

(1) The civil action in the criminal proceedings is initiated upon the written request of the civil party or his representative at any moment from the inception of criminal proceedings until the end of the judicial investigation.

(2) The civil action is filed against the suspect, indicted, defendant, against an unidentified person who is to be held liable or against the person who may be responsible for the actions of the indicted , defendant.



(3) The request filing the civil action shall provide the criminal case in the criminal proceedings of which the civil action is to be initiated, the person filing the action and against whom, the value of the action and the request for reparation. In case it is necessary, the civil party may submit a request to clarify the civil action.

(4) The prosecutor initiates or supports the initiated civil action in case the natural person or the legal entity entitled to file the civil action does not have the possibility to defend its interests. The prosecutor may initiate civil action concerning the moral damage only upon the request of the injured party, who is unable to defend his interests.

(5) The person who did not file a civil action during the criminal proceedings, as well as the person whose civil action was left unsettled, shall be entitled to file such an action in civil proceedings. In the event the lodged civil action has been rejected by the civil court, the plaintiff shall no longer be entitled to lodge the same action in criminal proceedings. In the event the lodged civil action has been rejected in the criminal proceedings, the plaintiff shall not be entitled to lodge the same action in civil proceedings.

#### **Article 222. Acknowledgement and refusal to acknowledge the civil party**

(1) The natural person or the legal entity that has filed the civil action shall be acknowledged as a civil party by the ordinance of the criminal investigation body or by the court order, and shall be submitted written information on their rights and obligations as prescribed under Article 62.

(2) In case the grounds prescribed under Article 219 and 221 for filing the civil action lack, the criminal investigation body or the court by a reasoned decision shall refuse acknowledging as civil party the natural person or the legal entity that have filed the civil action, explaining to the person the right to challenge with appeal in cassation this decision.

(3) The refusal of the criminal investigation body or of the court to acknowledge a person as civil party, shall not deprive the person of the right to file a civil action in the civil proceedings.

#### **Article 223. Acknowledgement of the party civilly accountable**

Establishing the person accountable for the caused damage by the actions or failures to act prohibited under the criminal law, the criminal investigation body shall acknowledge this person as civilly accountable party and shall submit to him written information about his rights and obligations as prescribed under Article 74.

#### **Article 224. Withdrawing the civil action**

(1) The civil party may withdraw the civil action at any moment during the criminal proceedings, and not later than the moment when the court panel goes in deliberation chamber to rule on the merits of the case. The person may withdraw the civil action also in case when the prosecutor in his/her interests has filed the action.

(2) Withdrawing the civil action accepted by the criminal investigation body or by the court shall determine the termination of the proceedings on the civil action, fact hindering the eventual filing of the same action in criminal proceedings.

(3) The criminal investigation body or the court may reject the withdrawal of the civil action in case this leads to violation of the rights of other interested parties or other interests

protected under the law.

### **Article 225. Examination of the civil action**

(1) The court competent to consider the criminal case shall examine the civil action in the criminal proceedings, notwithstanding the value of the action.

(2) Delivering the conviction sentence or the sentence imposing medical coercive measures , the court also examines the civil action by admitting the action totally or partially or rejecting it.

(3) If during the examination of the civil action, it is necessary to postpone the examination of the case for the administration of additional evidence, in order to determine amount of reparations, the court in exceptional cases may allow the civil action in principle, following that the amount of reparations to be determined by the civil court.

( 4) The court shall not examine the civil action in case when a decision to cease the criminal proceedings or an acquittal judgment is delivered due to the lack of crime elements, fact that does not impede the person who initiated the civil action to file one civil proceedings.

### **Article 226. Effects of entering into force of the judgment ruling on the civil action**

The final court judgment ruling on the civil action, including decision of the criminal investigation body or of the court accept ing the withdrawal of the civil action, as well as the decision of the court acknowledging the reconciliation of parties in the same litigation shall hinder any eventual filing of a new civil action relying on the same grounds.

## **CHAPTER II**

### **JUDICIAL EXPENSES**

### **Article 227. Judicial expenses**

(1) Judicial expenses are the expenses that according to the law are needed for assuring the proper development of the criminal proceedings.

(2) Judicial expenses include the following amounts:

- 1) paid or to be paid to witnesses, injured party, their representatives, experts, specialists, interpreters, translators and procedural assistants;
- 2) expenses for storage, transportation and research of material evidence;
- 3) to be paid for the legal aid provided by the publicly appointed attorney;
- 4) expenses for restituting the counter value of deteriorated or destroyed objects during the performance of the expert examination or during the reconstruction of the deed;
- 5) other expenses related to procedural actions in the criminal case .

(3) The judicial expenses are paid from the state budget if the law does not provide for other modality.

### **Article 228. Compensating the expenses of the persons participating at criminal proceedings.**

(1) As prescribed by the criminal procedure regulations, the following judicial expenses paid

by the witnesses, injured party, civil party, publicly appointed defender, procedural assistants, interpreters, translators, experts, specialists, legal representatives of the injured party, of the civil party are to be paid from the state budget:

- 1) travel expenses when coming before the criminal investigation body or before the court when subpoenaed;
- 2) accommodation expenses;
- 3) average salary for the entire period of their participation at the criminal proceedings;
- 4) expenses related to the repairing, restoration of objects deteriorated during their use in procedural actions upon the request of the criminal investigation body or of the court.

(2) The authorities, enterprises, state institutions and organizations shall be bound to maintain the average salary for the entire period during which the injured party, his legal representative, procedural assistants, interpreter, translator, specialist, expert, witness who participated in the criminal proceedings when subpoenaed by the criminal investigation body or by the court.

(3) The expert and the specialist also get reimbursed the cost of materials belonging to them and used during the performance of the respective task.

(4) The expert, the specialist, the interpreter and the translator shall be entitled to be remunerated for performing their obligations, save for the cases when these obligations have been carried out by virtue of their professional tasks.

(5) The expenses covered by the persons indicated under paragraph (1) shall be reimbursed upon their request based on a decision of the criminal investigation body or of the court in the amount established by the legislation in force.

## **Article 229. Payment of judicial expenses**

(1) Judicial expenses are covered by the convicted person or are transferred from the state budget.

(2) The court may oblige the convicted person to recover the judicial expenses, save for the costs paid to the interpreters, translators, as well as to the publicly appointed defense attorneys, when the interests of justice require inasmuch and the convicted person does not dispose of the necessary means. Judicial expenses may also be covered by the convicted person released from the enforcement of the punishment, as well as by the person concerning whom the penal pursuit was terminated on the grounds of non-rehabilitation.

(3) The court may exempt totally or partially from the payment of judicial expenses the convicted person or the person who has to pay the judicial in case of their bankruptcy or if the payment of judicial expenses may influence substantially the material situation of the persons in his/her care.

(4) In case of several convicts on the same case, the judicial expenses are distributed depending on the level of guilt, level of liability and the financial situation of each of them.

(5) In case the penal pursuit is terminated due to the reconciliation of the injured party with the indicted, defendant, the court may request the payment from the injured party, from the indicted or the defendant or only from one of the parties.

In case of decease of the convicted person before the entry in force of the court sentence,

the judicial expenses cannot be imposed on his/her successors.

In case of minor convicted persons, the parents or the guardians of the convicted minor may be obliged to cover the judicial expenses , if it is ascertained that they have seriously failed complying with their duties towards the minor.

## **Title VIII**

### **PROCEDURAL TERMS AND COMMON PROCEDURAL ACTS**

#### **CHAPTER I**

#### **PROCEDURAL TERMS**

##### **Article 230. Notion of procedural terms and the consequences of failure to observe them.**

(1) The terms in the criminal proceedings are the periods of time during or after the expiry of which procedural actions in conformity with the provisions of the present Code may be exercised.

(2) In case when, for the exercise of a procedural right, there is provided a certain term, the failure to observe it shall entail the loss of this procedural right and the nullity of the tardy act.

(3) If a certain procedural measure may be taken only during a term prescribed by law, the expiry of this term shall entail the cessation of effects generated by this measure.

##### **Article 231. Calculation of procedural terms.**

(1) The terms established by the present Code shall be calculated in hours, days, months and years.

(2) The calculation of procedural terms shall start with the hour, day, month or year mentioned in the act which has determined the running of the term, save for cases when the provides otherwise.

(3) Calculating the terms in hours or days, the hour and the day from which the term has started running or the hour and the day when it expires shall not be taken into calculation.

(4) The terms calculated in months or years shall expire at the end of the respective day of the last month or at the end of the respective day of the last year. If this day turns out to be in a month which does not have such a date, then the term expires in the last day of the month.

(5) If the last day of a term is a day off, then the term shall expire at the end of the following first working day.

##### **Article 232. Acts considered as performed within the term.**

(1) The act lodged within the term provided by law with the administration of the detention place, with the military unit, the administration of the medical institution or submitted to the post office to be sent as "recommendation" letter is considered as performed in term. The registration or the confirmation of the lodged act made by the administration of the detention place, by the medical institution, or by the military unit, as well the post office confirmation on the reception of the submitted act, shall serve as proof certifying the date

when the act had been lodged or submitted.

(2) The act performed by the prosecutor is considered as being filed within term if the date from the outgoing act register is within the term prescribed by law for the performing of this act, save for the terms prescribed for exercising remedies.

#### **Article 233. Calculation of terms for preventive measures**

Calculating alculating the terms of preventive measures, the hour or the day from which they start and when they end should be included in their duration.

#### **Article 234. Re-establishment of the expired term**

(1) If the respective person has omitted the procedural term due to justified reasons, the term may be re-established upon the person's request, by the decision of the criminal investigation body or of the court, under the provisions of the law. The omitted term may be re-established only regarding the person mentioned in this paragraph, disregarding other persons.

(2) The refusal to re-establish the omitted term may be appealed, according to the provisions of the law.

### **CHAPTER II**

#### **SUBPOENAS AND COMMUNICATION OF OTHER**

#### **PROCEDURAL ACTS**

#### **Article 235. Purpose of subpoena and the consequences of failure to comply with subpoena**

(1) In the criminal proceedings, the subpoena is the procedural action by means of which the criminal investigation body, the instruction judge or the court assures the presence of a person before it, for the normal development of the criminal proceedings.

(2) The subpoenaed person is bound to comply with the subpoena, and in case of impossibity to come at the time and to the place where s/he was subpoenaed, is required to inform the respective body about this, indicating the grounds for the impossibity to come.

(3) If the subpoenaed person does not inform about his/her impossibity to come at the indicated hour, date and place and does not come, unjustifiably, before the penal pursuit body or the court, this person may be subject to a judicial fine or to forced presentation.

#### **Article 236. Modality of subpoena .**

(1) A person is called before the criminal investigation body or before the court by a written subpoena. The subpoena may be performed through a phone or telegraph notification, or electronic means.

(2) The summoning shall be performed in such a way as the subpoenaed person to receive the subpoena at least 5 days before the date when the person has to come according to subpoena before the respective body. This rule shall not be applicable to summoning the suspect, indicted, the defendant, and other trial participants for performing urgent procedural measures during the penal pursuit or court trial.

(3) The subpoena is handed by the agent empowered to transmit the subpoena (herein after referred to as agent), or by the postal service.

### **Article 237. Content of a subpoena**

(1) The subpoena shall be individually and shall contain:

- 1) denomination of the criminal investigation body or of the court which issues the subpoena, its headquarters, the date when issued, and the number of the file;
- 2) first and last name of the subpoenaed person, the procedural quality in which s/he is subpoenaed and an indication to the subject of the case;
- 3) address of the subpoenaed person, which has to include the locality, street, house number, apartment number, as well as any other data necessary to establish the address of the subpoenaed person;
- 4) hour, day, month, year and place to come, mentioning the legal consequences of the failure to comply with the subpoena.

(2) The subpoena shall be signed by the person who issues it.

### **Article 238. Place of summoning.**

(1) The person is summoned at his residence, and in case if the address is unknown, then at his workplace by the personnel service of the employer institution.

(2) If the person, by a previous statement given during the criminal proceedings has indicated another place to be subpoenaed at, this person is summoned at the indicated place.

(3) In case that the address indicated in the statement has changed, the person is summoned at his/her new residence address only if the person had informed the criminal investigation body or the court about the occurred changes, or if the penal pursuit body or the court have ascertained the change of residence relying on the information obtained by the respective agent.

(4) The patients placed in hospital or in another medical institution are summoned through the administration of these institutions.

(5) The detainees are summoned at the detention place through the administration of the detention institution.

(6) The persons in military service are summoned at their respective unit through this unit's commander.

(7) If the summoned person lives abroad, the subpoena is made according to the provisions of the treaties on legal assistance in criminal matters.

### **Article 239. Handing the subpoena to the addressee**

(1) The subpoena is handed personally to the summoned person, who will have to sign the receipt.

(2) If the summoned person does not want to receive the subpoena or refuses to sign or is not able to sign the receipt, the agent leaves the subpoena at the summoned person or posts it on the door of this person, drawing up a verbatim record about this.

(3) In case of the summoning made according to the article 238 paragraphs (1), (4) - (5), the

administration s of the respective institutions shall be bound to hand immediately the subpoena to the summoned person, get the signature for the receipt, certifying his/her signature or indicating the reason why it was not able to obtain his/her signature. The receipt is handed to the procedural agent, which at his/her turn hands it over to the criminal investigation body or to the court which has issued the subpoena.

#### **Article 240. Handing the subpoena to other persons.**

(1) If the summoned person is not at home, the agent hands the subpoena to the spouse, a relative or to any other person who is living with the summoned person, or who usually receives the correspondence of the summoned person. The subpoena can not be handed to a minor under 14 years of age or to a mentally ill disabled person.

(2) If the summoned person lives in a house which has several apartments, in a hostel or in a hotel and if the persons from the paragraph (1) of this article are not available, the subpoena is handed to the administrator, to the person on duty or to the persons who usually replace them.

(3) The person who receives the subpoena signs the receipt and the agent, after certifying the identity and the signature, draws up a verbatim record. If the person doesn't want to receive the subpoena or refuses to sign or is not able to sign the receipt, the agent posts it on the door of the house, drawing up an official minute on this.

(4) If the persons mentioned under paragraphs (1) and (2) of this article are not available, the agent must inquire about when the summoned person may be found in order to hand him/her the subpoena. If the agent fails after using this method as well, the agent posts on the door of the summoned person's home, drawing up a verbatim record on this.

(5) In case that the summoned person lives in a house which has several apartments, in a hostel or in a hotel and if the apartment or the room where this person lives is not indicated in the subpoena, the agent must make the necessary investigations in order to find out this information. If these investigations have failed, the agent posts the subpoena on the main door of the building or at the special information posting place, drawing up a verbatim record where there are indicated the circumstances which have made impossible the handing of the subpoena.

#### **Article 241. Research made for the handing the subpoena.**

If the summoned person has changed the address, the agent posts the subpoena on the door of the house indicated in the subpoena and inquires to find out the new address, mentioning the new obtained data in the verbatim record.

#### **Article 242. Receipt and the verbatim record on the handing of the subpoena.**

(1) The receipt of the subpoena has to contain the number of the respective file, the name of the criminal investigation body or of the court which has issued the subpoena, the first name, last name and the procedural quality of the summoned person, as well as the date for when this person is being summoned. Also, it has to contain the date of subpoena's handing, the first and the last name, the trial quality and the signature of the person to whom the subpoena is handed, the confirmation of her identity and the signature of the person to whom the subpoena was handed, as well as the capacity of this person has to be indicated.

(2) Always when the subpoenaing is made, either by handing the subpoena or by posting it, a verbatim record shall be drawn up, and it shall contain the mentions indicated in the first

paragraph of this article in the respective manner.

#### **Article 243. Communication of other procedural acts .**

The communication of other procedural acts is made according to the provisions stipulated in the present chapter.

### **CHAPTER III**

#### **PETITIONS AND REQUESTS IN CRIMINAL PROCEEDINGS**

##### **Article 244. Petitions and requests**

(1) The petitions in criminal proceedings are motions which are addressed written or orally by the parties involved in the trial or by other interested persons to the criminal investigation body or to the court, related to the development of the procedure, to the ascertaining of relevant circumstances to the case, as well as to the guaranteeing the rights and legitimate interests of persons.

(2) The requests is the action taken by the criminal investigation body, by the non-governmental organization or by labor group, with the purpose to perform certain procedural actions, under the terms of the present Code. The requests of the criminal investigation body are addressed to the instruction judge or, upon the case, to the respective court. The requests made by the non-governmental organizations or by a labor group s are addressed to the penal pursuit or to the court .

##### **Article 245. Filing petitions and requests.**

(1) Petitions and requests may be filed in any phase of the criminal proceedings. The person who files a petition or a request has to indicate the circumstance due to which s/he is soliciting the performance of the respective procedural action or the adoption of a certain decision. The written petitions and requests are attached to the criminal file, and the oral are included in the verbatim record of the procedural action or in the verbatim record of court hearing.

(2) The rejection of petitions and requests does not deprive the person, the non-governmental organization or the labor group of the right to bring in again the request at a new phase of the criminal proceedings.

##### **Article 246. Examination term of petitions and requests.**

(1) The petitions as well as the requests of labor groups and non-governmental organizations shall be examined and solved immediately after they have been filed. In case that the body to which the request or the petition is addressed is not able to solve them immediately, the latter shall be solved not later than the next three days from the day when they have been received.

(2) The requests of the criminal investigation body shall be examined in the terms prescribed by the present Code.

##### **Article 247. Examination petitions and requests.**

(1) The petition or, if applicable, the request of the non-governmental organization or of the labor group shall be admissible if it contributes to the examination of the case circumstances in all their aspects, to a complete and objective manner, if it insures the observance of the rights and legitimate interests of the parties involved in the trial and of



other participants in the trial.

(2) In case of partial or total rejection of the petition, or if applicable , of the request of the non-governmental organization or of the labor group, the criminal investigation body shall adopt an ordinance, and the court - a court order, which are made known to the applicant. The decision of the criminal investigation body and of the court to reject the petition or the request can be appealed in the cases and in the ways established by the present Code.

(3) The requests of the penal pursuit bodies shall be examined in the manner established under the present Code.

## **CHAPTER IV**

### **MODIFICATION OF THE PROCEDURAL ACTS, RECTIFICATION OF THE MATERIAL ERRORS AND REMOVAL OF OBVIOUS DEFICIENCIES**

#### **Article 248. Modifications of procedural acts.**

(1) Any modification (amendment, rectification, deletion) made in the text of a procedural act is valid if it is confirmed in writing, in its text, or at the end of this act by those who had signed this act.

(2) The unconfirmed modifications which do not change the meaning of the sentence stay valid.

(3) The unwritten portions of a statement have to be barred, so that it be impossible to add something in those places.

#### **Article 249. Rectification of material errors**

(1) Obvious material errors in the text of a procedural act are rectified by the criminal investigation body itself, by the instruction judge or by the court which has drawn up this act, upon the request of the interested person or ex officio.

(2) The parties might be called at the rectification of the material errors to give explanations.

(3) The criminal investigation body shall draw up a verbatim record on the performed rectification, and the instruction judge or the court shall draw up an order concerning this fact, mentioning as well as the end of the rectified act.

#### **Article 250. Removal of some obvious deficiencies.**

The provisions of article 249 are applicable in the case when the criminal investigation body, the instruction judge or the court, as a result of an obvious deficiency, did not deliver on the money claimed by the witnesses, experts, interpreters, translators, defense- attorneys, as well as on the restitution of assets, of real evidence or on the removal of insuring measures as well as of other measures.

## **CHAPTER V**

### **NULLITY OF PROCEDURAL ACTS**

## **Article 251. Breaches which entail the nullity of procedural acts.**

(1) The violation of the legal provisions regulating the development of the criminal proceedings shall entail the nullity of the procedural act only in case when a violation of criminal procedural provisions has been ascertained, which is irremovable other than by quashing the act.

(2) The violation of the legal provision referring to the material competence or to the standing of a person, to the notification of the court, to the court's composition and to the publicity of the court hearing, to the participation of parties in mandatory cases, to the presence of the interpreter, translator, if it is mandatory under the law, shall entail the nullity of the procedural act.

(3) The nullity provided in the paragraph (2) of this article shall not be removable, may be invoked by the parties in any phase of the proceedings and shall be taken into consideration by the court, both ex officio, if the annulment of the procedural act is necessary to the finding out of the truth and to the fair examination of the case.

(4) The violation of any other legal provisions besides those provided in the paragraph (2) of this article shall entail the nullity of the act if it has been invoked during the performance of the act – when the party was present, or at the termination of the penal pursuit – when the party takes knowledge of the file materials, or in court – when the party was absent at the performance of the procedural act, as well as when the evidence is brought directly before the court.

## **SPECIAL PART**

### **TITLE I**

### **CRIMINAL PROSECUTION**

### **CHAPTER I**

### **CRIMINAL PROSECUTION**

## **Article 252. The object and the goal of the criminal prosecution**

The criminal prosecution has as an object the collecting of the necessary evidence with regard to the existence of the criminal offense, to the identification of the perpetrator and to the establishing of the offender's liability, in order to identify whether it is necessary to send the criminal case to trial under the conditions of law.

## **Article 253. Criminal prosecution bodies**

(1) The criminal prosecution is carried out by the prosecutor and by criminal prosecution bodies, constituted according to the law within the:

- 1) Ministry of Internal Affairs;
- 2) Information and Security Service;
- 3) Customs Department;
- 4) Centre for Combating Economic Crimes and Corruption.

(2) Criminal prosecution bodies are represented by criminal prosecution officers especially

assigned by the institutions mentioned in the paragraph (1), and organizationally subordinated to the leader of the respective institution.

(3) Criminal prosecution officers are independent, subjected only to the law and to the written indications of the leader of the criminal prosecution body and of the prosecutor.

(4) The status of the criminal prosecution officer is established by law.

#### **Article 254. The active role of the criminal prosecution body**

(1) The criminal prosecution body has the obligation to take all the measures provided by law in order to carry out under all aspects, complete and objective examination of the circumstances of the case necessary to establish the truth.

(2) The activity of the criminal prosecution body provided in the paragraph (1) is carried out as well in the case when the suspect or the accused recognizes his/her guilt.

#### **Article 255. Ordinances and resolutions of the criminal prosecution body**

(1) During the criminal prosecution process the criminal prosecution body will order the procedural actions and measures through ordinances or resolutions, under the conditions of the present Code.

(2) The ordinance has to be motivated and has to include: the date and the place where it is drawn up, the first name, the family name and the capacity of the person who is drawing it up, the case to which it refers, the object of the procedural action or measure, its legal grounds and the signature of the person who has drawn it up. The ordinance that is not signed by the person who has drawn it up will have no legal power and will be considered null. In case, if the criminal prosecution body considers that certain measures have to be taken, it makes motivated suggestions in the ordinance.

(3) The criminal prosecution body has the discretion of performing procedural actions through an explained and justified resolution in the cases provided by the present Code.

(4) If the law provides that a certain procedural action or measure has to be approved, authorized or confirmed by the prosecutor, or depending on the case, by the instruction judge, then a copy of the ordinance or of the procedural act is kept by the prosecutor or by the instruction judge.

#### **Article 256. Carrying out of the criminal prosecution jointly by several criminal prosecution officers**

(1) If the case is rather complicated or big the leader of the criminal prosecution body, with the prior approval of the prosecutor will order the carrying out of the criminal prosecution jointly by several criminal prosecution officers.

(2) The prosecutor may order the carrying of the criminal prosecution jointly by several officers from different criminal prosecution bodies, in some cases mentioned in the paragraph (1).

(3) The disposition regarding the carrying out of the criminal prosecution jointly by several criminal prosecution officers is made through an ordinance in which is indicated the officer who will be heading the actions of the rest of the officers. This ordinance is made known to the suspect, accused, damaged party, civil party, civilly accountable party and to their representatives, and their right to challenge any of the officers is explained to them.

## **Article 257. Place of carrying out of the criminal prosecution**

(1) The criminal prosecution is conducted in the sector where the crime was committed or, upon the prosecutor's decision, in the sector where the crime was discovered or where the suspect, accused or the majority of witnesses are located.

(2) Establishing that this case is not appropriate to his/her competence or that the criminal prosecution may be more efficiently and completely carried out by another criminal prosecution body, the criminal prosecution officer is obligated to take all the criminal prosecution actions which may not be postponed and after that to hand over the case to the prosecutor, who will further on decide on the sending of this case to the competent criminal prosecution body.

(3) If the place where the offense was committed is unknown, the criminal prosecution is carried out by the criminal prosecution body in the activity sector of which the crime was discovered or the domicile of the suspect, accused has been positioned.

(4) The hierarchically superior prosecutor to the prosecutor participating in criminal prosecution regarding the respective case may order, justifiably, the transmission of the case to another sector within the limits of the circumscription where s/he serves.

(5) The Prosecutor General and his/her deputies may order, justifiably, the transmission of the case from one criminal prosecution body to another in order for the criminal prosecution to be exercised in a more efficient, complete and objective manner.

## **Article 258. Extension of the territorial competence and the delegations of the criminal prosecution body**

(1) In case when certain criminal prosecution actions have to be taken outside the territorial area of the criminal prosecution, the criminal prosecution body may carry out these actions itself or may order the delegation of another respective body to carry out these actions, this body being obligated to execute this delegation within a term not exceeding 10 days.

(2) In case when the criminal prosecution body itself proceeds at the carrying out of these procedural actions under the conditions of the paragraph (1), it announces the respective body from that territorial area where these actions will be carried out.

## **Article 259. Terms of criminal prosecution**

(1) The criminal prosecution has to be conducted within the limits of a reasonable term.

(2) The reasonable term of criminal prosecution in a certain case is established by the prosecutor through a resolution, after having considered the complexity of the case and the behavior of the parties in the proceeding.

(3) The criminal prosecution term established by the prosecutor is obligatory for the criminal prosecution officer and can be prolonged upon his/her request.

(4) In case the prolongation of the term is necessary, the criminal prosecution officer draws up a motivated request in this respect and submits it to the prosecutor before the expiring of the term established by him/her.

## **Article 260. The minutes of the criminal prosecution action**

(1) The minutes of the criminal prosecution action will be drawn up during the carrying out of this action or immediately after its termination by the person carrying out the criminal

prosecution.

(2) The minutes will include:

- 1) the place and the date where the criminal prosecution action is carried out;
- 2) the function, first name and family name of the person who draws up the minutes;
- 3) first name, the family name and the capacity of the persons who have participated in the carrying out of the criminal prosecution action, and if necessary their addresses, objections and explanations as well;
- 4) the date and the hour of the start and termination of the criminal prosecution action;
- 5) the detailed description of the established facts, as well as of the measures taken during the carrying out of the criminal prosecution action;
- 6) if during the carrying out of the criminal prosecution action, photographing, filming, audio and video recording, interception of the phone and other conversations or casting and molding of the tracks were applied, regarding the technical means applied at the carrying out of the respective criminal prosecution action, the conditions and their way of application, the objects to which this measures have been applied, the obtained results, have to be indicated in the minutes. The fact that before application of technical means, the participants at the criminal prosecution actions have been briefed about this will be, as well, mentioned in the minutes.

(3) If during the carrying out of the criminal prosecution action, objects which might constitute a corpus delicti have been discovered and seized, they shall be thoroughly described in the minutes, mentioning their photographing, if it has taken place, and about their attachment to the file.

(4) The minutes will be read out to all the persons who have participated in the criminal prosecution action, at the same time explaining them their right to objections, which are to be written down in the minutes as well.

(5) The minutes will be signed on every page by the person who has drawn it up and by the persons indicated in the point 3) of the paragraph (2) of this article. If one of the persons is not able or refuses to sign, this is mentioned in the minutes.

(6) The sketches, photographs, films, audio and video tapes, casts and moulds of tracks executed during the criminal prosecution action are attached to the minutes.

#### **Article 261. Confirmation of the refusal or of the impossibility to sign the minutes of the criminal prosecution action**

(1) If the person who had participated in the carrying out of the criminal prosecution action refuses to sign the minutes, this is mentioned in the minutes and is signed for confirmation by the person who had carried out the action.

(2) The person who has refused to sign the minutes has to be given the possibility to explain the reasons for his/her refusal and his/her explanations shall be written in the minutes.

(3) If the person who had participated in the carrying out of the criminal prosecution action is not able to sign the minutes due to a physical deficiency, the person who has drawn up the minutes calls an outside person who, with the consent of the person who is not able to

sign, certifies with his/her signature the exactness of the contents of the minutes.

## **CHAPTER II**

### **NOTIFICATION OF THE CRIMINAL PROSECUTION BODY**

#### **Article 262. Notification of the criminal prosecution body**

(1) The criminal prosecution body may be notified about the committing or about the preparation for the committing of a crime, provided by the Criminal Code, through:

- 1) complaint;
- 2) denunciation;
- 3) self-denunciation;
- 4) direct discovery of the crime by the collaborators of the criminal prosecution body.

(2) If, according to the law, the criminal prosecution starts only upon the preliminary complaint or with the authorization of a body provided by law, the criminal prosecution can not start if these are lacking.

(3) In case the crime is discovered directly by the collaborator of the criminal prosecution body, s/he draws up a report with the description of the discovered circumstances and orders registration of the crime.

#### **Article 263. Complaint and denunciation**

(1) The complaint is the notice made by a person or by a legal entity to which damage was caused by a crime.

(2) The denunciation is the notice made by a person or by a legal entity regarding the commission of the crime.

(3) The complaint or, depending on the case, the denunciation has to include: the first name, the family name, the capacity and the domicile of the petitioner, the description of the action which constitutes the object of the complaint or the denunciation, indication of the perpetrator, if s/he is known and an indication of the means of evidence.

(4) The complaint can be made personally or through an authorized representative under the conditions of the law.

(5) The complaint or the denunciation made orally are written down in the minutes signed by the person who files the complaint or the denunciation and by an officer of the criminal prosecution body.

(6) The complaint can be filed by one of the spouses for the other spouse or by the adult child for his/her parents. The plaintiff may declare that s/he does not consider the complaint appropriate.

(7) The person who makes a denunciation or a complaint which includes a denunciation is explained that s/he will be held responsible if the denunciation pursues slandering and this is mentioned in the minutes or, depending on the case, in the text of the denunciation or a complaint and is confirmed by a signature of the person who has filed a denunciation or

complaint.

(8) Anonymous complaints and denunciations can not be grounds for the start of the criminal prosecution, but after the control carried out based on these complaints and denunciations the criminal prosecution body can be notified ex-officio regarding the carrying out of the criminal prosecution.

#### **Article 264. Self-denunciation**

(1) Self-denunciation is the voluntary notice made by a person or by a legal entity regarding the commission of the crime by this person in case when the criminal prosecution bodies are not aware of this fact.

(2) The statement of self-denunciation is made in written or orally. In case the self-denunciation is made orally, the minutes is drawn up under the conditions provided by the paragraph (5) of the article 263 with sound or video recording of the declaration of self - denunciation.

(3) Before a person starts making a self-denunciation statement, s/he is explained his/her right to keep silence and his/her right against self-incrimination, as well as in the case of self-slandering, which impedes the finding of the truth and in this case the person will not be entitled to the compensation of damages under the conditions of law, all these being mentioned in the minutes of the self-denunciation or in the text of the self-denunciation statement.

(4) Self-denunciation, in case of awareness of the criminal prosecution bodies regarding this fact, will be important for the establishment and identification of the perpetrator of the crime and will be considered as a voluntary statement of the perpetrator, under the conditions of the law.

#### **Article 265. Obligatory character of reception and examination of the complaints and of the denunciations referring to the crimes**

(1) The criminal prosecution body is obliged to receive the complaints and the denunciations referring to the committed, prepared crimes or crimes in the stage of preparation, even if the case does not fall in the competence of this body. The person who has filed a complaint or denunciation is handed over a certificate on this fact immediately, indicating the person who has received the complaint or denunciation and the time when the complaint or denunciation was registered.

(2) The refusal of the criminal prosecution body to receive the complaint or the denunciation can be challenged immediately to the instruction judge, but not later than 5 days from the moment when the refusal occurred.

### **CHAPTER III**

#### **COMPETENCE OF THE CRIMINAL PROSECUTION BODIES**

#### **Article 266. Competence of the criminal prosecution body of the Ministry of Internal Affairs**

The criminal prosecution body of the Ministry of Internal Affairs will carry out the criminal prosecution of any crime which the law does not establish the competence of other criminal prosecution bodies or if this crime is given into its competence through a prosecutor's

ordinance.

### **Article 267. Competence of the criminal prosecution body of the Information and Security Service**

Criminal prosecution body of the Information and Security Service will carry out the criminal prosecution of crimes against peace and security of humanity (articles 135 – 144 of the Criminal Code), crimes against security of the state (articles 337 – 347 of the Criminal Code).

### **Article 268. Competence of the criminal prosecution body of the Customs Department**

Criminal prosecution body of the Customs Department will carry out criminal prosecution of crimes set forth in articles 248 and 249 of the Criminal Code.

### **Article 269. Competence of the criminal prosecution body of the Centre for Combating Economic Crimes and Corruption**

The criminal prosecution body of the Centre for Combating Economic Crimes and Corruption will carry out criminal prosecution of crimes set forth in articles 191, 195, 236 – 261, 324 – 336 of the Criminal Code.

### **Article 270. Competence of the prosecutor in the criminal prosecution**

(1) The prosecutor will carry out the criminal prosecution exclusively in the following cases:

1) crimes committed by:

- a) President of the country;
- b) members of the Parliament;
- c) members of the Government;
- d) judges;
- e) prosecutors;
- f) generals;
- g) criminal prosecution officers;

2) attempt on the police officers', criminal investigation officers', prosecutors', judges' or the members of their families life, in case the attempt is related to their activity;

3) crimes committed by the Prosecutor General.

(2) The prosecutor carries out the supervision of the criminal prosecution actions carried out by the criminal prosecution body.

(3) The prosecutor is competent to carry out the criminal prosecution in the cases provided by paragraph (1) and to exercise supervision of the criminal prosecution activity of the prosecutor from the prosecutor's office of the same level, jointly with the court which, according to the law, is examining the case in first instance. The prosecutor from the hierarchically superior prosecutor's office may carry out the criminal prosecution and



supervision over the criminal prosecution actions in these cases if it is necessary in the interest of the criminal prosecution.

(4) The hierarchically superior prosecutor may order through the motivated ordinance the carrying out of the criminal prosecution by the prosecutor from another prosecutor's office of the same level, in the case provided by the paragraph (1) of this article.

(5) The General Prosecutor may order the carrying out of the criminal prosecution in the case provided by the paragraph (1) by a prosecutor from the General Prosecutor's Office through a motivated ordinance.

(6) The prosecutor or a group of prosecutors assigned by the Parliament at the proposal of the President of the Parliament are competent to carry out the criminal prosecution in case provided by point 3) of paragraph (1).

(7) If the case is rather complicated and big, the hierarchically superior prosecutor in whose competence is given the criminal prosecution of the case may order through a motivated ordinance the criminal prosecution by a group of prosecutors and criminal prosecution officers, indicating the prosecutor who will be carrying out the criminal prosecution actions.

### **Article 271. Verification of competence**

(1) The criminal prosecution body notified in conformity with the provisions of the article 262 is obliged to verify its competence.

(2) If the criminal prosecution body finds that it is not competent to conduct the criminal prosecution, it sends the case to the prosecutor who is exercising supervision of the case immediately, but not later than 3 days, in order to be transmitted to the competent body.

(3) The competence conflict between the criminal prosecution bodies is inadmissible. Competence conflict issues are settled by the prosecutor, who is exercising the supervision of the criminal prosecution or, depending on the case, by the hierarchically superior prosecutor.

(4) The prosecutor may order, justifiably, that a given case, which has to be prosecuted by a certain criminal prosecution body, be prosecuted by another similar body.

(5) When the criminal prosecution is carried out by the prosecutor, s/he may order that certain criminal prosecution actions be carried out by a criminal prosecution body.

### **Article 272. Urgent cases**

In case when the criminal prosecution body finds that the criminal prosecution does not fall under its competence it is obliged to carry out the criminal prosecution actions on urgent cases. The minutes of the actions taken in these cases are attached to the case-file which is sent to the prosecutor, according to the provisions of the paragraph (2) of the article 271.

### **Article 273. Actions taken by other verification bodies**

(1) The following are obliged to proceed to the taking of the eyewitnesses' statements at the committing of an offense and to draw up the minutes of the concrete circumstances of its commission:

1) state bodies exercising control functions for the crimes which constitute violations of the activity which they control, according to the law;

2) commanders of the ships and planes for the crimes committed on their board during the period of time when the ships and planes are outside the ports' and airports' limits.

3) the court or, depending on the case, the instruction judge in case of the hearing crimes.

(2) The bodies mentioned in the paragraph (1) have the right to apprehend the perpetrator, to seize the corpus delicti under the conditions of the present Code, to proceed to the evaluation of the damages and to carry out any other actions if the law provides so.

(3) The minutes of the procedural actions carried out according to the provisions of paragraph (2) are handed over to the prosecutor immediately, together with the material means of evidence. The commanders of the ships and planes hand over to the prosecutor the minutes of the actions carried out immediately after the anchorage of the ship or the landing of the plane on the territory of the country.

(4) The minutes drawn up by the bodies mentioned in paragraph (1) are considered as means of evidence.

## **CHAPTER IV**

### **STARTUP OF THE CRIMINAL PROSECUTION**

#### **Article 274. Start of the criminal prosecution**

(1) The criminal prosecution body notified according to the provisions of the articles 262 and 273 orders the start of the criminal prosecution through resolution in case if from the contents of the notification act or of the finding acts result the constitutive elements of the crime and if there are no circumstances that would exclude criminal prosecution.

(2) If the criminal prosecution body is notified ex officio regarding the start of the criminal prosecution, it draws up the minutes which constitute the start act of criminal prosecution.

(3) The resolution, or depending on the case, the minutes of the criminal prosecution start are issued by the criminal prosecution body and are subjected to the confirmation of the prosecutor carrying out the supervision over the criminal prosecution activity within 24 hours from the date of start of the criminal prosecution, at the same time presenting the respective file. Together with the confirmation of the criminal prosecution start the prosecutor establishes the criminal prosecution term for the respective case.

(4) In case when the contents of the notification act results any of the reasons which impede the start of criminal prosecution, the criminal prosecution body submits to the prosecutor the drawn up acts with the proposal not to start criminal prosecution. In case, the prosecutor finds that there are no circumstances that would impede criminal prosecution, s/he returns the acts with his/her resolution to the mentioned body in order to start criminal prosecution.

(5) If the prosecutor agrees with the proposal not to start criminal prosecution, s/he confirms this fact through the motivated resolution and announces the person who has submitted the notification about this.

(6) the resolution of non-start of the criminal prosecution may be challenged through a complaint filed at the court of the same level with the respective prosecutor's office.

(7) If later on it is found that the circumstance which has served basis for the proposal of not to start criminal prosecution had not existed or has disappeared, the prosecutor annuls his/her resolution and orders the start of the criminal prosecution.

### **Article 275. Circumstances which exclude criminal prosecution**

The criminal prosecution can not start and in case it started it can not be carried out and stops in the cases when:

- 1) the deed of the crime does not exist;
- 2) the deed is not defined by the criminal law as a crime;
- 3) the deed does not cumulate the elements of the crime, except the cases when the crime was committed by the legal entity;
- 4) the terms of limitation or amnesty occurred;
- 5) the death of the perpetrator occurred, with the exception of the rehabilitation cases;
- 6) the complaint of the plaintiff lacks, in case that the criminal prosecution already starts, according to the provisions of the article 276, it can start only on the grounds of the plaintiff's complaint;
- 7) there is a final court judgment regarding a person, related to the same charges, or through which the impossibility of criminal prosecution on the same grounds was found;
- 8) there is a not annulled decision of starting or cessation of criminal prosecution regarding a person according to the same charges;
- 9) there are other circumstances provided by the law which condition the exclusion or, depending on the case, exclude the criminal prosecution.

### **Article 276. Start of criminal prosecution based on the plaintiff's complaint**

(1) The start of the criminal prosecution is made only on the basis of the preliminary complaint of the plaintiff in case of the crimes provided by the articles: 152 paragraph (1), 153, 155, 157 paragraph (1), 161, 170, 177, 179 paragraph (1), 200, 202, 203, 204 paragraph (1), 274 of the Criminal Code, as well as in case of theft of the owner's property committed by a spouse, close relatives, in the legal guardian's damage or of the person living together or hosted by the plaintiff.

(2) If as a result of the committed crime several persons have been damaged, the criminal prosecution starts even if the preliminary complaint is submitted only by one of the plaintiffs.

(3) In case that at the committing of the crime several perpetrators have participated, even if the preliminary complaint submitted refers only to one of the perpetrators, the criminal prosecution starts against all the perpetrators.

(4) In case if the plaintiff participates in the proceeding regarding to a crime provided by the paragraph (1) of this article, due to incompetence or limited competence, state of helplessness or due to dependence on the suspect, or due to other reasons s/he is not able to defend his/her legitimate rights and interests, the prosecutor starts the criminal

prosecution even if the plaintiff has not filed a complaint.

(5) The criminal prosecution stops upon the reconciliation between the damaged party and the suspect, accused, defendant in the cases mentioned in the paragraph (1) of this article. The reconciliation is made personally and produces effects only if it occurs before the court judgment becomes final.

(6) The reconciliation for the incompetent persons can be made only by their legal representatives. The persons with limited competence may reconcile only with the prior approval of their legal representatives. The reconciliation may take place as well if the criminal prosecution has been started ex officio by the prosecutor.

(7) The reconciliation of the parties may take place as well through the application of mediation.

### **Article 277. Obligatory character of explaining the rights and obligations of the participants at the criminal prosecution**

(1) The criminal prosecution body is obliged to explain the rights and the obligations to the participants at the criminal prosecution. This is registered in the minutes of the respective procedural action.

(2) The criminal prosecution body is obliged to hand over to the suspect, accused, defendant, plaintiff, damaged party, civil party, civilly accountable party and to their legal representatives the information in written, signed by them, regarding their rights and obligations according to the provisions of the present Code and to give explanations on all these rights and obligations.

### **Article 278. Obligatory character of examination of the applications and requests**

The criminal prosecution body is obliged to examine the applications and requests of the participants in the proceeding as well as of the other interested persons under the conditions of the articles 246 and 247.

## **CHAPTER V**

### **DEVELOPMENT OF THE CRIMINAL PROSECUTION**

### **Article 279. Carrying out of the criminal prosecution actions**

(1) The criminal prosecution body carries out the criminal prosecution actions in strict conformity with the provisions of the present Code and only after the start of the criminal prosecution, except the actions provided by article 118 (the crime scene investigation) and article 130 (corporal search and seizing), which may be carried out even before the prosecution starts.

(2) Any criminal prosecution action within a public or private institution can be carried out only with the consent of that institution, of its owner, or with the prosecutor's authorization and in other cases provided by the present Code - with the authorization of the instruction judge.

(3) Investigation, search, seizing of goods and other procedural actions at the domicile can be carried out only with the consent of the person who is the resident at the respective address or with the respective authorization.

(4) In case of the flagrant crimes, the consent and authorization provided in the paragraphs (2) and (3) are not necessary, but the prosecutor or, depending on the case, the instruction judge who would issue the authorization have to be informed immediately, within 24 hours on the carrying out of the respective actions.

(5) The criminal prosecution actions at the headquarters of the diplomatic offices and of similar institutions, as well as within the buildings where the members of these offices and of similar institutions and their families live can be carried out only by the prosecutor and only upon the application or with the consent of the diplomatic representative or of the leader of the institution similar to the diplomatic representative and in their presence. The consent for carrying out criminal prosecution actions under the conditions of this paragraph is required through the Ministry of External Affairs of the Republic of Moldova and these actions are carried out only in the presence of a representative of the Ministry of External Affairs of the Republic of Moldova.

#### **Article 280. Proposal to press charge**

(1) In case of existence of satisfactory number of evidence that the crime was committed by a certain person, the criminal prosecution body draws up a report on proposal to press charge to the respective person. The report containing the materials of the case is submitted to the prosecutor.

(2) In case that the criminal prosecution body considers that the conditions provided by law for taking preventive measures are met, it submits proposals in this respect.

#### **Article 281. Pressing the charge**

(1) In case if the prosecutor, after having examined the report and the materials of the case submitted by the criminal prosecution body, considers that the collected evidence is sufficient, issues an ordinance of pressing the charge against the person.

2) The ordinance of pressing the charge has to include: the date and place of drawing up; the name of the person who has drawn it up; first name, family name, date, month, year and place of birth of the accused person, as well as other data about this person which have legal importance for the case; the formulation of the charges, indicating the date, place, means and way of commission of the crime and its consequences, the character of guilt, reasons and the distinctive signs for the legal classification of the deed, the circumstances by the virtue of which the crime, in case of preparation and attempt of crime, was not finished, the forms of participation if the crime had been committed by a group of persons; the circumstances aggravating the responsibility, the mentioning of the charging of the respective person as an accused in this case according to the article, paragraph and point of the article from the Criminal Code, which provide the responsibility for the committed crime.

(3) In case if the accused is held liable for the commission of several crimes which have to be legally classified based on different articles, paragraphs or points of the article of the Criminal Code, the ordinance indicates which crimes exactly have been committed and the articles, paragraphs or points of the articles which provide liability for these crimes.

#### **Article 282. Bringing of the accusation**

(1) The accusation has to be brought to the accused by the prosecutor in the presence of the lawyer within 48 hours from the moment of issue of the ordinance of pressing the charge, but not later then the day in which the accused has shown up or have been brought by force.

(2) The prosecutor, after having established the identity of the accused, notifies him/her

regarding the ordinance of pressing the charge and explains its contents. These actions are certified by the signatures of the prosecutor, accused, lawyer and of the other persons participating at this procedural action, applied to the ordinance of pressing the charge, indicating the date and hour of pressing the charge.

(3) After having brought the accusation the prosecutor has to explain to the accused his/her rights and obligations provided by the article 66. A copy of the ordinance of pressing the charge and the written information on the rights and obligations of the accused are handed over to him/her. The nominated actions are also written down in the ordinance of pressing the charge in the way provided by the paragraph (2).

(4) The accused will be heard in the same day under the conditions provided by the article 104.

### **Article 283. Changing and completion of the accusation**

(1) In case if during the criminal prosecution the grounds for the changing or completion of the accusation brought to the accused appear, the prosecutor is obliged to press new charge to the accused or to complete the previous one according to the respective provisions of the articles from the present Code.

(2) In case if during the criminal prosecution the pressed charge did not confirm in its certain part, the prosecutor orders the dropping of the criminal prosecution of that part of the charges.

### **Article 284. Dropping of the criminal prosecution of the person**

(1) The dropping of the criminal prosecution of the person occurs in case if it is found that the deed had not been committed by the suspect or accused, in case provided by article 275, point 1) – 3), as well as if at least one of the cases provided by article 35 of Criminal Code, which eliminates the criminal aspect of the deed.

(2) The dropping of the criminal prosecution of the person may be total or may refer to only one part of the charges.

(3) The prosecutor, upon the proposal of the criminal prosecution body or ex officio, in case that the grounds provided in the paragraphs (1) and (2) are found, orders the dropping of the criminal prosecution of the person through a motivated ordinance.

(4) The dropping of the criminal prosecution of the person is done according to the provisions of the present Code, regulating the cessation of criminal prosecution, which is applied in the corresponding way.

(5) In case that the prosecutor orders the dropping of the criminal prosecution of the person, s/he sends back the file to the criminal prosecution body with the resolution of continuing the criminal prosecution, establishing the term for it to be carried out.

### **Article 285. The cessation of the criminal prosecution**

(1) The criminal prosecution is ceased in cases provided by article 275, as well as in case if it is found that:

1) the preliminary complaint has been withdrawn by the damaged party or the parties have reconciled – in the cases in which the criminal prosecution starts only based on the preliminary complaint or the criminal law allows reconciliation;

2) at least one of the cases provided by article 35 of the Criminal Code, which eliminate the criminal character of the deed exists;

3) the person has not reached the age when s/he can be imposed criminal liability;

4) the person committed a social dangerous action being in a condition of irresponsibility and the application of the medical constraint measures is not necessary;

5) there is a final decision of the criminal prosecution body or of the court related to the same charges or through which it had been established the impossibility of the criminal prosecution on the same grounds.

(2) In the case when the deed of the suspect, accused constitutes an administrative offence, the criminal prosecution is ceased, sending the case to the competent body to examine the offence.

(3) The criminal prosecution will be ceased at any moment during the criminal prosecution if the existence of the grounds provided by the paragraphs (1) and (2) is established and the cessation is applicable only regarding one person or regarding one of the deeds.

(4) The prosecutor orders ex officio the cessation of the criminal prosecution through an ordinance or at the proposal of the criminal prosecution body.

(5) The ordinance of cessation of the criminal prosecution has to include, besides the elements provided by the article 255, data on the person and the deed to which the cessation refers, as well as the de facto and the de iure grounds on the basis on which the cessation is ordered.

(6) At the cessation of the criminal prosecution the prosecutor, if it is the case, takes, at the same time, the necessary measures for:

1) revocation of the preventive measures and other procedural measures in the way provided by law;

2) repayment of the bail in the cases and in the way provided by the law;

(7) The copy of the ordinance of cessation of the criminal prosecution is handed over to the interested persons, explaining to them the modality and procedure to challenge it.

(8) In case the prosecutor finds that it is not the case of disposing the cessation of the criminal prosecution or if s/he orders the cessation partly, s/he sends back the file to the criminal prosecution body with the resolution of continuing the criminal prosecution, establishing the term for it to be carried out.

#### **Article 286. Dismissal of the criminal case**

(1) In case that an accused does not exist in the case and if one of the circumstances provided by the article 275 paragraph (1) point 1) – 3), occurs, as well as in the case when the term of limitation for the imposing criminal liability has expired, the prosecutor, ex officio or at the proposal of the criminal prosecution body, orders the dismissal of the criminal case through a motivated ordinance.

(2) The copy of the ordinance on dismissal is handed over to the interested persons, at the same time explaining to them the modality and term to challenge it.

#### **Article 287. Resumption of the criminal prosecution after the cessation of the**

## **criminal prosecution, dismissal of the criminal case, or after dropping of the criminal prosecution of the person**

(1) The resumption of the criminal prosecution after the cessation of the criminal prosecution, dismissal of the criminal case or dropping of the criminal prosecution will be ordered by the hierarchically superior prosecutor through an ordinance, if it is found afterwards that, in fact, the reasons which have determined the taking of these measures did not exist or that the circumstance on which the cessation of the criminal investigation, dismissal of the criminal case and dropping of the criminal prosecution was based, disappeared.

(2) The resumption of the criminal prosecution may be ordered by the instruction judge if the complaint filed against the prosecutor's ordinance on the cessation of the criminal prosecution, dismissal of the criminal case or dropping the criminal prosecution was admitted.

(3) In case of resumption of the criminal prosecution under the conditions provided by the present article, in case if based on the data of the file, the prosecutor considers necessary taking of one preventive measure or an insuring measure, s/he orders the taking of the necessary measure or, depending on the case, makes the necessary proposals to the instruction judge.

(4) In cases when the ordinances on the cessation of the criminal prosecution, dismissal of the criminal case or dropping of the criminal prosecution have been legally adopted, the resumption of the criminal prosecution may occur only if new or recently discovered facts appear or a fundamental fault committed in the previous proceeding affected the respective judgment. In case of discovery of the fundamental fault, the criminal prosecution may be resumed not later than one year after the entering into force of the ordinance on cessation of the criminal prosecution, dismissal of the criminal case or dropping of the criminal prosecution.

## **Article 288. Criminal investigations aimed at searching the accused**

(1) In case when the place where the charged person can be found is unknown, as well as in the case when the accused, after the pressing of the charges, is hiding from the criminal prosecution body, the latter submits to the prosecutor the proposal for the ordering the criminal investigations aimed at finding the accused.

(2) The prosecutor, based on the proposal of the criminal prosecution body, after having studied it, or ex officio, orders the searching of the accused through a motivated ordinance. The prosecutor indicates all known information on the person of the accused sought after, in the ordinance.

(3) If there are grounds for applying the preventive measure to the accused, the prosecutor, orders at the same time the application of the preventive measure through the ordinance, under the conditions of the present code.

(4) Criminal investigations related to the finding of the accused are carried out by the competent bodies, qualified by the law with such functions. The prosecutor who orders the carrying out of the criminal investigations related to the finding the accused leads this activity and checks its development periodically.

## **CHAPTER VI**



## **COMPLETION OF CRIMINAL PROSECUTION AND**

### **SENDING OF THE CASE TO TRIAL**

#### **Article 289. Completion of criminal prosecution and sending the case to the prosecutor**

(1) Finding that the number of collected evidence is sufficient to conclude criminal prosecution, the criminal prosecution body submits the file to the prosecutor, accompanied by a report in which s/he consigns the result of the prosecution with the proposal to order one of the solutions provided by the article 291.

(2) The report has to include the deed which had served as grounds for the starting of the criminal prosecution, information on the person of the accused, the last legal classification of the deed and the collected evidences.

(3) In case when the criminal prosecution is carried out for several deeds and against several persons in the same case, the report should include the mentions indicated in the paragraph (2) regarding all the deeds and all the persons. At the same time the report has to include information on the deeds or persons regarding which the criminal prosecution has been ceased, the person regarding whom the criminal prosecution was dropped, in case these have occurred.

(4) The report has to include also information on:

1) corpus delicti and the measures taken regarding them, as well as the place where they are located;

2) safety measures taken during the criminal prosecution;

3) judicial expenses;

4) preventive measures applied.

#### **Article 290. Verification of the received case by the prosecutor**

(1) The prosecutor in a term not exceeding 10 days from the receiving of the file sent by the criminal prosecution body, verifies the materials of the file and of the procedural actions carried out, making his/her decision on them.

(2) The settlement of the cases in which there are arrested persons or juveniles is urgent and has priority.

#### **Article 291. The solutions ordered by the prosecutor at the completion of the criminal prosecution**

(1) If the prosecutor establishes that the provisions the criminal prosecution of the present Code have been observed, that the criminal prosecution is complete, that there is a sufficient number of evidence legally collected, then s/he orders on one of the following solutions:

1) when it results from the materials of the file that the deed exists, that the perpetrator was identified and that s/he can be held criminally liable then:

a) presses the charges to the perpetrator according to the provisions of the articles 281 and 282, if s/he has not been pressed charges during the criminal prosecution, after

that s/he draws up the indictment through which s/he orders the sending of the case to trial;

b) if the perpetrator has been pressed charges during the criminal prosecution, then s/he draws up the indictment through which s/he orders the sending of the case to trial.

2) orders the cessation of the criminal prosecution, dismisses the criminal case or drops the prosecution of the person through a motivated ordinance.

### **Article 292. Restitution of the case or its sending to another criminal prosecution body**

(1) If the prosecutor finds the criminal prosecution incomplete or that the legal dispositions were not observed in the carrying out of the criminal prosecution, restitutes the case to the body which carried out the criminal prosecution or sends the case to the competent body or to another body, according to the provisions of the article 271 for completion of the criminal prosecution or, depending on the case, for the elimination of the violations committed on the legal dispositions. If the completion of the criminal prosecution or elimination of the committed violations is necessary only regarding some deeds or regarding some of the accused persons, and the severance is impossible, the prosecutor orders the restitution of the whole case for the carrying out of these actions.

(2) Restitution or sending of the case is made through an ordinance in which, besides the mentions stipulated by article 255, the procedural actions which have to be carried out or redone, the deeds and circumstances which have to be found, the means of evidence which have to be used are indicated, and the term for the criminal investigation is set.

(3) In case when the prosecutor restitutes the case or sends it to another criminal prosecution body, s/he is obliged to decide, in the way provided by law, on the protection measures and on other procedural measures of constraint.

### **Article 293. Presentation of the criminal prosecution materials**

(1) After the verification made by the prosecutor of the materials of the case and after adopting of one of the solutions provided by the article 291, the prosecutor informs the accused, his/her legal representative, defense counsel, damaged party, civil party, civilly accountable party and their representatives about the completion of the criminal prosecution, the place and the term they can take knowledge of the criminal prosecution materials. The civil party, the civilly accountable and their legal representatives are presented only the materials regarding the civil action to which they are parties.

(2) The arrested accused will be informed of the criminal prosecution materials in the presence of his/her defense counsel and, upon the request of the accused, each of them will be separately informed.

(3) In order to take knowledge of the criminal prosecution materials, they are presented sewn in the file, numbered and enumerated in an inventory. Upon the request of the parties the corpus delicti will be also presented, the audio and video records will be displayed, except for the cases provided by the article 110. If the criminal case consists of several volumes, these are presented concomitantly, in order for the respective materials to be taken knowledge of, so that the person who takes knowledge of them be able to return to any of these volumes more times.

(4) The term for getting knowledge of the criminal prosecution materials can not be limited, but if the person who takes knowledge of the materials abuses of his/her situation, then the

prosecutor establishes the modality and the term of this action, taking into account the volume of the file.

(5) In order to assure the keeping of the state secret, trade secret or any other secret protected by law, the prosecutor can limit the right to transcribe data from the criminal prosecution materials, or if they are done, they are attached to the file for preservation and are presented during the court hearing to the person who made them, for his/her use in the court. In order to assure the protection of witness and other persons, the prosecutor may limit the right of the persons mentioned in paragraph (1) of this article, to take knowledge of their identity.

(6) After having taken knowledge of the criminal prosecution materials, the persons mentioned in the paragraph (1) of this article can submit new applications connected to the criminal prosecution, which are settled according to the provisions of the articles 245 – 247.

#### **Article 294. The minutes of presentation of the criminal prosecution materials**

(1) The minutes are drawn up on the presentation of the criminal prosecution materials, in which, besides the mentions from article 260, the number of volumes and pages of each volume of the file taken knowledge of, the corpus delicti, the displayed audio and video records. In the minutes, the date, hour and minute of the beginning and end of the taking knowledge of the materials of the file, for each day, are indicated.

(2) The applications, statements submitted during this action are consigned in the minutes and the written applications are attached to the minutes, and this the mention is made in the minutes.

(3) About the informing of each person mentioned in the paragraph (1) of the article 293 paragraph (1) a separate minutes is drawn up. In case, the accused takes knowledge of the materials of the case in the presence of his/her defense counsel, one and only minutes are drawn up.

#### **Article 295. Settlement of the applications connected to the completion of the criminal prosecution**

(1) The applications filed after having taken knowledge of the criminal prosecution materials are examined immediately by the prosecutor, who orders their admission or rejection through a motivated ordinance and during 24 hours informs about this the persons who have filed them.

(2) In case the prosecutor orders the admission of the applications, at the same time, in necessary cases, orders the completion of the criminal prosecution, indicating the additional actions to be carried out and, depending on the case, sends the file to the criminal prosecution body for execution, establishing the term of execution.

(3) After the completion of the criminal prosecution the additional materials of the criminal prosecution will be presented in the way provided by the article 293.

(4) The rejection of the application and the statement by the prosecutor does not deprive the person who has filed it of the right to submit it afterwards to the court.

#### **Article 296. The indictment**

(1) After the criminal prosecution materials being presented, the prosecutor draws up the indictment within a term that will not exceed 3 days, but in the complicated and big cases

within a term that will not exceed 10 days.

(2) The indictment includes two parts: exposition and resolution. The exposition contains information on the deed and the person regarding whom the criminal prosecution has been carried out, enumeration of the evidence which confirm the deed and guilt of the accused, the circumstances which mitigate or aggravate the liability of the accused, as well as the grounds for liberation from criminal liability according to the provisions of the article 53 of the Criminal Code, if such grounds were found. The resolution contains data on the person of the accused and the formulation of the accusation against him/her together with the legal classification of his/her actions and a mention on the sending of the file to the competent court.

(3) The indictment is signed by the prosecutor who has drawn it up, indicating the date and the place of its drawing up.

(4) An information on the duration of the criminal prosecution, the applied preventive measures, the duration of the pretrial arrest, the corpus delicti and their place of preservation, the civil action and its protection measures, other procedural measures, as well the judicial expenses is attached to the indictment.

(5) The copy of the indictment is handed over under receipt to the accused and his/her legal representative. This will be mentioned in the information attached to the indictment act.

(6) The accused may present in writing a comment to indictment which is attached to the file.

#### **Article 297. Sending of the case to trial**

(1) The case shall be sent to trial by the prosecutor who has drawn up the indictment.

(2) If the accused abstains to take knowledge of the criminal prosecution materials and to receive the indictment, the prosecutor shall send the case to trial without taking these procedural actions, but he shall attach to the file the evidence which confirms the abstention of the accused and in case of hiding - the measures taken for his finding, if the case may be tried in absentia.

(3) In the situation provided by par.(2) the copy of the indictment shall be handed obligatorily to the defense counsel of the accused and to his legal representative, who shall also be presented the materials of the case in order to take knowledge of them.

(4) All the applications, complaints and requests filed after the sending of the case to trial shall be solved by the court trying the case.

### **CHAPTER VII**

#### **LEGALITY CONTROL OVER THE ACTIONS OF THE**

#### **CRIMINAL PROSECUTION BODY AND OF THE BODY**

#### **EXERCISING OPERATIONAL INVESTIGATION ACTIVITY**

#### **Article 298. Complaints against the actions taken by the criminal prosecution body and by the body exercising operational investigation activity**

(1) Against the actions taken by the criminal prosecution body and by the body exercising operational investigation activity complaints may be filed by the suspect, accused, their

legal representative, defense counsel, damaged party, civil party, civilly accountable party and their representatives, as well as by other persons whose rights and legitimate interests have been violated by these bodies.

(2) The complaints filed against the actions taken by the criminal prosecution body and by the body exercising operational investigation activity shall be addressed to the instruction judge.

(3) The complaint filed under the conditions of this article shall not suspend the execution of the challenged activity, if the person conducting the criminal prosecution or the operational investigation activity does not consider it necessary.

#### **Article 299. Examination of complaints by the instruction judge**

Within up to 72 hours since the reception of the complaint, the instruction judge shall be bound to examine it and to communicate his decision to the person who has filed the complaint.

### **CHAPTER VIII**

#### **JUDICIAL CONTROL OVER THE PRETRIAL PROCEDURE**

#### **Article 300. Sphere of the judicial control**

(1) The instruction judge shall examine the requests filed by the prosecutor regarding the authorization of taking the criminal prosecution actions, of operational investigation measures and of application of the coercive procedural measures which limit the constitutional rights and freedoms of the person.

(2) The instruction judge shall examine the complaints against illegal acts of the criminal prosecution body and of the body exercising operational investigation activity.

(3) The instruction judge shall examine the complaints against the illegal actions of the prosecutor who is directly involved in taking criminal prosecution actions.

(4) The requests and complaints filed according to the provisions of the par.(1)-(3) of this article shall be examined by the instruction judge at the place of the conducting of the criminal prosecution or of the operational investigation measures.

#### **Article 301. Criminal prosecution actions taken with the authorization of the instruction judge**

(1) The criminal prosecution actions connected to the limitation of the inviolability of the person, home, limitation of the secrecy of correspondence, phone conversations, telegraphic and other types of communications, as well as other actions provided by law shall be taken with the authorization of the instruction judge.

(2) Such criminal prosecution actions as search, investigation of the crime scene at the domicile and laying sequester upon the property after the search, may be taken, as an exception, without the prior authorization of the instruction judge, but on the basis of the motivated ordinance issued by the prosecutor, in case of flagrante delicti. The instruction judge shall be informed about the taking of these criminal prosecution actions within 24 hours, and for the purpose of control he shall be presented the materials of the criminal case. If there are enough grounds, the instruction judge, through a motivated order, may declare the criminal prosecution action as lawful or, depending on the case, illegal.

(3) If the lawful requirements of the criminal prosecution body are not fulfilled, then forced physical examination, hospitalization of the person in a medical institution for the expert examination, taking of samples for comparative investigation are made with the authorization of the instruction judge.

**Article 302. Coercive procedural measures applied with the authorization of the instruction judge**

(1) Only with the authorization of the instruction judge the following coercive procedural measures may be applied:

1) apprehension of the convict before the settlement of the issue regarding the annulment of the conviction with the conditional suspension of the punishment enforcement;

2) postponing the notification of the relatives of the apprehension of the person up to 12 hours;

3) provisional suspension from the occupied position;

4) imposing of judicial fine;

5) laying sequester upon property, as well as;

7) other measures provided by the present Code.

(2) The judgment of the instruction judge regarding the authorization of the coercive procedural measures may be challenged in recourse by the prosecutor in the hierarchically superior court in a term of 3 days. The recourse shall be considered according to the provisions of art.311 and 312.

**Article 303. Operational investigative actions taken with the authorization of the instruction judge**

(1) Operational investigative actions related to limitation of inviolability of the citizens' private lives, entering the room against the will of the persons living in it may be taken with the authorization of the instruction judge.

(2) The following operational investigative actions shall be taken with the authorization of the instruction judge:

1) investigation of the domicile and installing in it the audio-visual, photographing, filming etc. devices;

2) surveillance of the domicile through the use of the technical means;

3) interception of phone and other conversations;

4) control of the telegraph communication and other communication;

5) collection of information from the telecommunication institutions.

**Article 304. Requests regarding the authorization to conduct the criminal prosecution actions, operational investigative actions or for the application of the coercive procedural measures**

(1) Ground for starting the procedure of authorization of the criminal prosecution actions, operational investigative measures or application of coercive procedural measures shall be the motivated ordinance issued by the body vested with such rights, according to the present Code or to the Law on Operational Investigative Activity and the prosecutor's request, which requires approval for the conduction of the respective actions.

(2) In the descriptive part of the ordinance there shall be described the incriminated perpetration, indicating the place, time and manner of its commission, the type of guilt, the consequences of crime on the basis of which the criminal prosecution actions or the operational investigative actions to be taken are established, the results which have to be obtained after the taking of the measures, the term for taking the respective actions, the place, the persons responsible for implementation, the methods of securing the actions' results, and other data important to the instruction judge in taking a lawful and founded judgment. Materials which confirm the necessity of performing these actions shall be attached to the ordinance.

**Article 305. Procedure for examining the regarding the authorization of the conduction of criminal prosecution actions, operational investigative actions and the application of the coercive procedural measures**

(1) The request regarding the conduction of the criminal prosecution actions, operational investigative measures and coercive procedural measures shall be examined by the instruction judge in a closed hearing, with the participation of the prosecutor and, in case of necessity, of the representative of the body exercising operational investigative actions.

(2) The person placed in a medical institution, if his health condition allows him to participate in the court hearing, the person in whose respect there was made a request of dismissal from his job or work, the person regarding whom the issue of taking coercive procedural measures is to be solved, the defense counsel, the legal representatives and the representatives of the above mentioned persons shall participate in the court session, under the provisions of the present code.

(3) The request on the conduction of operational investigation of the room, interception of phone and other conversations shall be examined by the instruction judge immediately, but not later then the 24 hours term from the receiving of the request.

(4) At the established term, the instruction judge shall open the court session, announce the request to be examined and shall check upon the empowerment of the participants at the trial.

(5) The prosecutor who has submitted the request shall explain the reasons and answer the questions of the instruction judge and of the other participants at the trial.

(6) If the hearing is attended by the persons whose interests are touched in the request or by their defense counsels or representatives, they shall be provided with an opportunity to give explanations.

(7) After having exercised the control over the well-founding of the request, the instruction judge, through a court order, shall authorize the conduction of the criminal prosecution actions, operational investigative actions, application of the coercive procedural measures or shall reject the request.

(8) The court order of the instruction judge adopted under the conditions of this article shall be final, except for the cases provided by the present Code.

**Article 306. Court orders regarding the conduction of criminal prosecution actions, operational investigative actions and the application of the coercive procedural measures**

The court order regarding the conduction of criminal prosecution actions, operational investigative actions and the application of the coercive procedural measures shall include: the date and place of its draw up, the first name and the family name of the instruction judge, responsible official and the body which has submitted the request, the body conducting the criminal prosecution, the operational criminal investigation or the application of the coercive procedural measures with the indication of the reason of performing of these acts or measures and the person they refer to, as well the mention about authorization or rejection of the action, the term for which the action is authorized, the responsible person or body empowered to execute the court order, signature of the instruction judge certified with the stamp of the court.

**Article 307. Examination of the requests regarding the application on the suspect of the pretrial arrest, home arrest**

(1) Finding the necessity of choosing the measure of pretrial arrest or of home arrest for the suspect, the representative of the criminal prosecution shall file a request with the court regarding the choice of the preventive measure. In the request there shall be indicated the reason and ground which gave rise to the need to apply the suspect the measure of pretrial arrest or home arrest. Materials that confirm the justification of the submitted request shall be attached to the request.

(2) The request on the application of the pretrial arrest or home arrest shall be examined without delay by the instruction judge in a closed hearing with the participation of the representative of the criminal prosecution, defense counsel and suspect. Presenting the request in court, the representative of the criminal prosecution shall ensure the participation at the court hearing of the suspect, shall notify the defense counsel and the suspect's legal representative. If the notified defense counsel does not show up at the hearing, the instruction judge shall ensure the suspect with an ex officio defense counsel.

(3) Upon opening the court hearing, the instruction judge shall announce the request to be examined, then the representative of the criminal prosecution shall present the reasons supporting the request, after which other persons present at the hearing shall be heard.

(4) After the examination of the request, the instruction judge shall adopt a motivated court order on the application of the preventive measure towards the suspect, such as the pretrial arrest or home arrest, or shall reject the request. Based on the court order, the instruction judge shall issue an arrest warrant, which shall be handed to the representative of the criminal prosecution and suspect, and shall be executed immediately.

(5) The term of suspect's arrest shall not exceed 10 days.

(6) The instruction judge shall have the right to solve the issue of the necessity to choose a milder preventive measure. In case there was adopted a judgement on provisional release of the person on bail, the suspect shall be held under arrest until the bail is deposited on the deposit account of the prosecutor's office, but the term of arrest shall not exceed 10 days.

**Article 308. Examination of requests concerning the application on the indicted of the pretrial arrest, home arrest or prolongation of the arrest duration**

(1) Finding the necessity of choosing for the indicted the measure of pretrial arrest or of



home arrest or to prolong the duration of arrest, the prosecutor shall file a request with the court regarding the choice of the preventive measure or the prolongation of the indicted arrest duration . In the request there shall be indicated the reason and ground which gave rise to the need to apply the indicted the measure of pretrial arrest or home arrest or to prolong the duration of his arrest . Materials that confirm the justification of the submitted request shall be attached to the request.

(2) The request on the application of the pretrial arrest or home arrest shall be examined without delay by the instruction judge in a closed hearing with the participation of the prosecutor , defense attorney and indicted, save for the case when the indicted is eluding from coming before the court, before the criminal investigation body or at the apprehension place, as well as of its legal representative . Presenting the request in court, the prosecutor shall ensure the participation at the court hearing of the indicted , shall notify the defense attorney and the indicted's legal representative . If the notified defense counsel does not show up at the hearing, the instruction judge shall ensure the indicted with a publicly appointed defender .

(3) Upon opening the court hearing, the instruction judge shall announce the request to be examined, then the prosecutor shall present the reasons supporting the request, after which other persons present at the hearing shall be heard.

(4) After the examination of the request, the instruction judge shall adopt a motivated court order on the application of the preventive measure towards the indicted , such as the pretrial arrest or home arrest, or shall reject the request. Based on the court order, the instruction judge shall issue an arrest warrant, which shall be handed to the prosecutor and to the indicted , and shall be executed immediately.

(5) The repeated submission of the request to apply the pretrial or home arrest measure concerning the same person on the same case, after the rejection of the previous request, shall be admissible only if new circumstances arise, serving as grounds to apply on the indicted pretrial or home arrest .

(6) The instruction judge shall have the right to solve the issue of the necessity to choose a milder preventive measure. In case there was adopted a judgment on temporary release of the person on bail, the indicted shall be held under remand until the bail established by the judge is deposited on the deposit account of the prosecutor's office .

### **Article 309. Request for provisional release and its examination**

(1) The request for provisional release, under the terms of Article 191 and 192 may be submitted by the suspect, the indicted, the defendant, by their spouse, close relatives during the penal pursuit and during the examination of the case , before the termination of the judicial investigation on the merits of the case.

(2) The request shall comprise the first and last name, the residence and the procedural standing of the person submitting it, as well as the indication on the acknowledgement of provisions of the present Code concerning the cases when the revocation of provisional release is admissible.

( 3 ) In the event of provisional release on bail, the request shall comprise also the obligation to deposit the bail, as well as to mention the acknowledgment of the provisions of the present Code concerning the cases on non-restitution of bail.

(4) The request submitted to the administration of the detention institution where the

person is, shall be sent to the competent court during 24 hours.

### **Article 310. Admissibility of the provisional release request and its examination**

(1) The instruction judge shall verify the consistency of the request for provisional release with Articles 191 or 192. If the request does not comply with these provisions, the instruction judge, by an order, shall reject the request as inadmissible, without summoning the parties.

(2) If the request complies with the requirements set under paragraph 1, but is submitted by the suspect, indicted, the instruction judge shall deliver on the admissibility of the request and shall set a date for its examination , summoning the parties.

(3) If the request complies with the requirements set under paragraph 1, but is submitted by a person from among those specified under Article 309, other than the suspect, the indicted, the instruction judge shall order the presentation of the suspect, of the indicted, asking him to certify the ownership of the request, and then shall decide upon its admissibility.

(4) Delivering on the admissibility on the request for provisional release on bail, the instruction judge shall establish also the amount of the bail, informing about this the person that has submitted the request. After the presentation of the proof of bail deposit on the account of the court, the judge shall set the term for the examination of the request.

(5) At the set date, the instruction judge shall deliver on the request for provisional release with the participation of the prosecutor, of the suspect, of the indicted, of the defense attorney and of his legal representative, as well as of the person that has submitted the request. The examination of the request shall be performed after the hearing of present persons.

(6) If the request is well founded and complies with the requirements of the law, the instruction judge, by a motivated order shall order the provisional release of the suspect, of the indicted, establishing also the obligations he has to observe.

(7) The copy of the order or, if applicable, an excerpt of the order shall be sent to the administration of the detention institution holding the suspect, the indicted, as well as to the police authority in the territorial jurisdiction of which resides the suspect, the indicted.

### **Article 311. Recourse against the court order of the instruction judge on the application or non-application of arrest, on the prolongation or refusal to prolong its duration or on the provisional liberation or refusal to grant provisional liberation**

(1) The recourse against the court order of the instruction judge on the application or non-application of the pretrial arrest or home arrest, regarding the prolongation or refusal to prolong its duration, regarding the provisional liberation or refusal to grant provisional liberation shall be filed by the prosecutor, suspect, accused, his defense counsel, his legal representative, with the hierarchically superior court directly or through the mediation of the court which has adopted the court order, or through the mediation of the administration of the detention place within a term of 3 days since the adoption of the court order.

(2) The administration of the detention place, upon receiving the recourse, shall be obliged to register it immediately and to send it according to the competence, informing the prosecutor on this.

(3) The recourse instance, receiving the recourse, shall require from the prosecutor the

materials which prove the necessity of applying the respective preventive measure or its prolongation.

(4) The prosecutor shall be obliged to provide the court with the respective materials within 24 hours from the moment of receiving from the administration of the detention place of the suspect, accused the information on the filed recourse or from the moment when the court has required the materials which prove the necessity of the respective preventive measure or the prolongation of its duration.

### **Article 312. Judicial control over the legality of the court order on the applied preventive measures and the prolongation of their duration**

(1) The judicial control over the legality of the court order of the instruction judge on the applied preventive measures and the prolongation of their duration, adopted under the conditions provided by art.307-310, shall be exercised by the hierarchically superior court in a panel of 3 judges.

(2) The recourse instance shall try the case within 3 days since the moment of its reception.

(3) The judicial control over the legality of the arrest shall be exercised in a closed hearing, with the participation of the prosecutor, suspect, accused, his defense counsel and legal representative. The non-presentation of the suspect, accused who is not under arrest and of his legal representative who had been summoned as provided by the law shall not impede the examination of the recourse.

(4) Upon the opening of the court session in the recourse instance, the president of the hearing shall announce the recourse to be examined, shall clarify whether the present persons understand clearly their rights and obligations. After that, the recourse applicant, if he participates at the hearing, shall bring the arguments of his recourse and then the rest of the persons present at the hearing shall be heard.

(5) After the judicial control, the recourse instance shall deliver one of the following decisions:

1) to admit the recourse through:

- a) annulment of the preventive measure ordered by the instruction judge or annulment of its prolongation and, if the case be, to release the person from arrest.
- b) application of the respective preventive measure rejected by the instruction judge and the issuance of the arrest warrant or application of another preventive measure upon the choice of the recourse instance, but not a more severe one than requested in the prosecutor ' s request, or the prolongation of the respective measure's duration.

2) to reject the recourse.

(6) If during the court hearing there were not presented the materials which prove the legality of the application of the respective preventive measure or the prolongation of its duration, the recourse instance shall deliver the decision on the annulment of the ordered preventive measure or, depending on the case, the prolongation of its duration, and shall release the apprehended or arrested person.

(7) The copy of the recourse instance decision, or if the case, the arrest warrant shall be handed to the prosecutor and to the suspect, accused immediately and if a decision on the annulment of the preventive measure or of its prolongation was delivered, then the copy has

to be sent, in the same day, respectively, to the detention place of the arrested person, at the police station, at the place where the suspect, accused lives and to the border bodies for execution. If the person to whom the preventive arrest or arrest at the domicile was applied participates in the court session, he shall be released immediately from arrest, in the courtroom.

(8) If the recourse is rejected, the repeated examination of a new recourse on the same person in the same case may be admitted, at any new prolongation of the respective preventive measure.

### **Article 313. Complaint against the illegal actions and acts performed by the criminal prosecution body and by the body exercising operational investigative activity**

(1) Complaints against the illegal actions and acts performed by the criminal prosecution body and by the body exercising operational investigative activity may be submitted to the instruction judge by the suspect, accused, damaged party, by other participants at the trial or by other persons whose rights and legitimate interests have been violated by these bodies.

(2) The persons indicated in the par.(1) shall have the right to challenge to the instruction judge:

1) the refusal of the criminal prosecution body to:

- a) receive the complaint or denunciation on the preparation or commission of a crime;
- b) satisfy the requests, in the cases provided by law;
- c) start the criminal prosecution.

2) the ordinances on the cessation of the criminal prosecution, dismissal of the criminal case or withdrawing the person from the criminal prosecution;

3) other acts and actions for which the law provides this type of remedy.

(3) The complaint may be submitted, within a 10 days term, to the instruction judge at the place where the body that has committed the violation is located.

(4) The complaint shall be examined by the instruction judge within a 10 days term, with the participation of the prosecutor and the summoning of the person that has lodged the complaint. The non-presentation of the person that has lodged the complaint shall not impede the examination of the complaint. The prosecutor shall be obliged to provide the court with the respective materials. The prosecutor and the person that has lodged the complaint shall give explanations during the examination of the complaint.

(5) The instruction judge, considering that the complaint is founded, shall adopt a court order obliging the prosecutor to liquidate the found violations of human rights and freedoms or the rights and freedoms of the legal entity and, depending on the case, shall declare the nullity of the challenged act or procedural action. Finding that the challenged acts or actions have been taken according to the law and that the human rights and freedoms or the rights and freedoms of the legal entity have not been violated, the instruction judge shall deliver a court order on the rejection of the submitted complaint. The copy of the court order shall be sent to the person who has lodged the complaint and to the prosecutor.

## **TITLE II**

### **The Court**

#### **CHAPTER I**

##### **GENERAL CONDITIONS FOR EXAMINING A CASE**

###### **Article 314. The principle of immediacy, publicity and adversity in case examination**

(1) During a case examination the court is obliged to study directly, under all aspects, the evidence relating to the process presented by the parties or administered at the request of these, as well as to hear the defendants, injured parties, witnesses, to examine real evidence, to read expert reports, the verbatim records and other documents, as well as other evidence provided for in the present code.

(2) During the case examination the court creates necessary conditions for prosecution and defense sides for a multilateral investigation and complete of the case circumstances.

(3) Derogation from the terms mentioned under paragraph 1 and 2 may be admitted only in cases provided for in the present code.

###### **Article 315. Equality of rights of the parties before the court**

The prosecutor, the injured party, the civil party, the defense attorney, defendant, the civilly accountable party and their representatives shall enjoy equal rights in before the court regarding the administration of evidence, participation in the examination and addressing petitions and requests.

###### **Article 316. Publicity of court proceedings**

(1) The court proceedings are public, with the exception of the case set forth in article 18. In the public session anyone can be present, with the exception of minors under 16 years old and persons bearing arms.

(2) The chairman of the court session may allow the presence of underage and armed persons who are obliged to bear arms from the office.

(3) The chairman of the court session may allow mass-media representatives, in case when the case presents interest for the public, to record on audio tapes, video and photograph some moments of the opening of the court session in the extent when all these actions do not interrupt the normal procedure and does not infringe upon the interests of the parties.

(4) The chairman may limit the access of the public to the session, taking into consideration the conditions available in the courtroom.

###### **Article 317. Chairman of the court session**

(1) The court sessions are chaired by a judge or the chairman of the judge panel who to which the case has been distributed for examination according to the provisions of Article 344.

(2) The chairman conducts the court session in the interests of justice and takes all measures set forth in the present code for assuring the equality of the rights of the parties, keeping the objectivity and impartiality, creating necessary conditions for the examination

of the case under all aspects, in full extent and objectively of all evidence presented by the parties or administered upon their request.

(3) The chairman shall set for discussion the presented requests by the parties and shall decide upon them. During the examination , the questions are asked through the chairman. The latter may approve for the questions to be asked directly.

(4) The chairman assures the court order, removing everything that does not relate to the case examination. The chairman also verifies if the trial participants know their rights and duties and assures their exercise.

(5) In case one of the participants presents objections against actions of the chairman, this fact is included in the verbatim record of the court session.

#### **Article 318. Session court clerk**

(1) The session court clerk shall take all preparatory measures resulting from the provisions of the present code and from the indication of the session chairman necessary inasmuch as at the established term, the examination of the case not to be adjourned.

(2) The session court clerk calls the parties and other persons who need to participate in the court session, establishes who is absent and what the reasons are, and informs the court.

(3) The session court clerk draws up the verbatim record of the court session. In case there are differences between the court clerk and the chairman concerning the content of the verbatim record, the court clerk has the right to attach to the verbatim record his objections, examined as prescribed under Article 336.

#### **Article 319. Summoning parties before the court**

(1) Case examination can be done only if the parties are legally summoned and the summoning procedure is carried out.

(2) The party, which is present at a term, is not summoned in the future terms, even if the party is absent at one of the following terms.

(3) When the case examination is adjourned, the present witnesses, the experts, the interpreters and the translators are announced about the new date for the examination.

(4) Upon the request of the persons mentioned in paragraph (2) and (3) of the present article, the court gives subpoena for justification at the working place in regard to coming to a new session.

(5) When the court session is continuing , the parties and other persons participating in the court session are not summoned.

(6) The military persons are summoned for each term of examination.

(7) Persons who are in detention are also summoned on every date of the court session , fact brought to the knowledge of the administration of the detention institution.

(8) The persons complying with the subpoena, shall be issued, upon their request, a certificate confirming their presence before the court.

#### **Article 320. Participation of the prosecutor in case examination and the**

### **consequences entailed by his failure to participate**

(1) The participation of the prosecutor in case examination is compulsory and he exercises the duties set forth in article 53. At the examination of the case shall participate the prosecutor that has lead the penal pursuit or, if applicable, has performed himself the penal pursuit in the respective case. In case of impossibility to do so, the hierarchically superior prosecutor shall order, reasoning his order, the participation to the session of another prosecutor.

(2) Representing the state accusation, the prosecutor shall be guided by the provisions of the laws and his own beliefs based on the evidence examined in the courtroom.

(3) The failure of the prosecutor to come before the court shall entail the adjournment of the court session informing about this fact the hierarchically superior prosecutor. For a failure to come without well-founded reasons, the prosecutor may be sanctioned with judicial fine in the event when his actions has inflicted additional court expenses

(4) If during the process, it is established that the prosecutor cannot participate further at the trial, another prosecutor can replace him. The prosecutor who has intervened in the trial shall be offered by the court sufficient time to take knowledge of the materials of the case, including those examined by the court, and to prepare his participation further in the proceedings, and the prosecutor's replacement shall not require the re-examination of the case from the very beginning. The prosecutor shall be entitled to request the reiteration of some procedural actions already performed in session in his absence if he needs to specify additional issues.

### **Article 321. Participation of the defendant at the examination of the case and the consequences entailed by his failure to come**

(1) The examination of the merits of the case and in appeal shall take with the participation of the defendant, save for cases prescribed in the present article.

(2) The examination of the case in the absence of the defendant may take place in the event:

- 1) the defendant hides and does not come to the trial;  
2) when the defendant is under remand and refuses to be brought before the court for the examination of the case and his refusal is confirmed also by his defense attorney;  
3) the examination of cases concerning petty crimes, when the defendant has requested the examination of the case in his absence.

(3) In cases of the case examination in the absence of the defendant, the participation of the defense attorney and if applicable of the legal representative shall be mandatory.

(4) In case the defendant does not attend the trial, when invited, with the exception of the cases presented in paragraph (2) of the present article, the examination of the case is adjourned.

(5) The court has the right, in case the defendant is absent without any reason, to order his forced presentation and to apply preventive measures or replace it with another measure that shall secure his presentation before the court.

(6) The court decides to examine the case in the defendant's absence of the motives provided in paragraph 2 point 1), only in case the prosecutor presented strong evidence that

the indicted person and concerning whom the case has been sent to court had denied directly to exercise his/her right of being present in the court at the trial and to defend oneself personally, as well as to hide from the penal pursuit and from trial.

**Article 322. Participation of the defense attorney in the trial and the consequences entailed by his failure to come**

- (1) The defense attorney participates at the trial and exercises his duties and rights according to provisions of the articles 67- 69 and that are applied respectively.
- (2) The defense attorney at the examination of the case shall enjoy rights equal to the prosecutor in the trial.
- (3) In case the defense attorney cannot attend the trial and it is not possible to replace him, the court session shall be adjourned. For unmotivated failure to come before the court, the attorney may be sanctioned with a judicial fine in case this action caused additional court expenses.
- (4) The replacement of the defense attorney in case he did not come to the trial may be done only with the consent of the defendant.
- (5) If the participation of the defense attorney chosen by the defendant is not possible for a duration exceeding five days, the court shall adjourn the session and shall propose to the defendant to choose another defense attorney, and in case of defendant's refusal to choose another defense attorney, the court shall decide upon the designation of a publicly appointed defense attorney. For the replacement of the defense attorney under the terms of the present paragraph, the court gives the defendant a term of five days.
- (6) While taking a decision on the matter of adjourning the trial in cases of replacement of the defense attorney, the court takes into consideration the appropriateness of such a decision, taking into consideration the period of time already spend for a certain case examination, complexity of the case and the time period necessary for studying the materials of the case and also the time frame necessary to prepare for the case and also takes into consideration other circumstances. The defense attorney who replaces someone and comes with a new mandate shall be offered by the court sufficient time to take knowledge of the materials of the case, including those examined by the court, but attorney's replacement shall not require the re-examination of the case from the very beginning. The defense attorney shall be entitled to request the reiteration of some procedural actions already performed in session in his absence if he needs to specify additional issues.

**Article 323. Participation of the injured party at the examination of the case and the consequences entailed by his failure to participate**

- (1) The injured party when participating at the examination of the case shall be entitled to exercise his rights and obligations set forth in article 60.
- (2) The examination of the merits of the case and in appeal shall be performed with the participation of the injured party or of his representative.
- (3) In case of justified absence of the injured party, the court taking into consideration opinions of the other parties shall decide the examination or the adjournment of the examination depending on the fact whether the case may be examined in the absence of the injured party without breaching the rights and interests of the injured party.
- (4) Upon the well-argued request of the injured party the court may examine the case in his/



her absence, obliging the injured party to come to the trial on a certain time for hearing.

(5) In case of unmotivated absence of the injured party the court may decide the forced presentation and may subject him to judicial fine.

#### **Article 324. Participation of the civil party and civilly accountable party at the examination of the case and the consequences entailed by their failure to participate**

(1) The civil party and the civilly accountable party or their representatives shall participate at the examination of the case and shall enjoy the rights and obligations set forth in articles 60, 74, and 80.

(2) In case of absence of the civil party or the representative the court shall leave the civil action without examination and, in this case, the civil party shall preserve its right to address a civil action as prescribed under the civil procedure.

(3) The court upon the request of the civil party and the representative may decide to examine the civil action in their absence.

(4) The absence of the civilly accountable party and his representative at the examination shall not hinder the examination of the civil action.

#### **Article 325. Limits for the examination of the case**

(1) The examination of the merits of the case shall be performed only concerning the indicted person and only in the limits of the charges brought in the indictment.

(2) Changing the accusation in the court is allowed only if it does not worsen the situation of the defendant and if this change does not violate the right to defense of the defendant. Changing the accusation, when it worsens the situation of the defendant is allowed only in cases set forth in the present code.

#### **Article 326. Aggravating the accusation in the court**

(1) The prosecutor who participates at the examination of the merits of the criminal case shall be entitled to modify, by an ordinance, the charges brought to the indicted during the penal pursuit in the sense of worsening it if the evidence examined in court session prove beyond any doubts that the defendant has committed a crime more serious than the one initially indicted, bringing to the defendant's knowledge, to his attorney and, if applicable, to his legal representative the new charges. In such cases, the court upon the request of the defendant and his defense attorney shall offer a term necessary for the preparation of defense from the new charges, afterwards the examination of the case shall continue.

(2) If during the trial it is established that the defendant committed another crime related to the one he/she is accused of, the court at the request of the prosecutor shall adjourn the examination for up to a month, returning the case to the prosecutor for performing the penal pursuit on this crime, to draw up another indictment and to present it to the defendant, with the participation of the defense attorney. In this case the court returns the case without presenting the verbatim record of the session, without the indictment and the attachments to them. Afterwards the defendant, defense attorney and other interested parties are informed on the new materials obtained as a result of the criminal prosecution under provisions of articles 293-299, and then the case is presented to the court for continuation of the trial. At the request of the prosecutor the term indicated in this article can be prolonged to two months, at the expiry of which it shall mandatorily be sent to court for the

continuation of the examination.

(3) If as a result of the new charges, more serious, the court competence changes, the court by a court order shall send the file according to the material competence.

### **Article 327. Presenting additional evidence**

Upon the request of the parties the court may adjourn the examination of the case trial for a term of one month so that they present additional evidence in case they consider that the presented evidence are not sufficient for confirming his/her position. The additional evidence is examined in the court according to the usual procedure. If the parties do not present the additional evidence in the established term, the court examines the case based on the existent evidence.

### **Article 328. Refusing the evidence**

(1) During the trial, the parties may refuse to use certain evidence proposed by them.

(2) After discussing the refusal of certain evidence and witnesses, the court may decide not to examine certain evidence, if this evidence is not requested to be examined by another party.

### **Article 329. Solving the issue of preventive measure**

(1) At the examination of the case, the court, ex officio or upon the request of parties and hearing their opinions, shall be entitled to order the application, the replacement or the revocation of the preventive measure imposed on the defendant. A new request for application, replacement or revocation of the preventive measure may be ordered if new grounds for such have arisen, but not earlier than after a month from the moment when the previous order ruling on the same matter has entered in force or if no new grounds have arisen determining the new request.

(2) In the event of imposed pretrial arrest, the decision of the court may be challenged during 3 days before the hierarchically appeal court, to be examined under the provision of article 312, applied appropriately.

### **Article 330. Suspending and continuing the examination of the case**

(1) Suspending the trial is done in cases when it is established that at the moment of the examination of the case, the defendant suffers of a serious illness that hinders his participation at the examination of the case, the court shall order the suspension and the continuation of the examination after suspension by a motivated order.

(2) In the criminal case, when there is more than one defendant, and one of them is seriously ill, the criminal proceedings in regards to him is suspended until he is healthy, and the trial for the rest of the defendants continues. The defense attorney of the defendant concerning w h om the trial has been suspended, shall participate at the trial for the rest of the defendants and represents them if the crime is committed with co-participation.

(3) After continuing the trial under conditions of paragraph (2) of the present article, the same judge, or in other cases, panel of judges examines the case of the defendant for whom the cases was suspended. For this purpose, the chairman of the session presents the materials of the trial of the convicted persons to the defendant to acknowledge them and to prepare the defense. For the defendant for whom the trial was suspended, the trial continues from the moment it was suspended. The defendant and the defense attorney are

entitled to the right of requesting repeating any procedural actions performed in the absence of the defendant, if he/she has additional questions to clarify.

### **Article 331. Adjourning the court session**

(1) If the case cannot be examined because of the absence at the trial of one of the parties, witnesses or other serious reasons, the court, having consulted the parties, decides adjourning of the trial and orders the party obliged to submit evidence to take all necessary measures for assuring presence of the person who were not present and to insure the examination of the case on the established date.

(2) In case it is established during the trial that it is necessary to administer new evidence or to change the charges brought to the defendant in the sense of its aggravation, as well as relation to other conditions, the court decides to adjourn the trial, in accordance with the conditions of articles 326, 327 for an established period of time, consulting the parties regarding the date for the continuation of the trial. When announcing the adjournment, the chairman announces the date, time, and place for continuation of the trial, and the parties and interested persons are obliged to be present on the date of continuation of the trial without being additionally summoned. Provisions of the article 201 are applied respectively.

(3) The decision of the court to adjourn the session shall be adopted by a motivated order, and reflected in the session verbatim record.

### **Article 332. Cessation of the criminal proceedings in court sessions**

(1) In case during the examination of the case one of the grounds prescribed under Article 275 point 2) – 9) , 285 paragraph 1, point 1), 2), 4), 5), as well as one of the cases prescribed under Article 53-60 of the Criminal Code, the court by a motivated sentence shall cease the criminal trial in the respective case.

(2) In the event the deed of the person constitutes an administrative offence, the court shall cease the criminal proceedings, imposing administrative sanction

(3) At the same time with the cessation of the criminal proceedings the court shall take the measures set forth in articles 54 -55 of the Criminal Code, and shall decide upon the issues prescribed under Article 285 paragraph 6.

(4) The sentence ceasing the criminal proceedings may be challenged with appeal in cassation in the manner prescribed by the present Code.

### **Article 333. Order and solemnity in the courtroom**

(1) The trial of the case shall be performed in conditions ensuring the well-functioning of the court and security of the participants at trial.

(2) When the judge or the panel of judges enter the courtroom, the court clerk shall announce: "The court enters, please honor" and all present in the courtroom shall stand up. Afterwards, upon invitation of the president of the court, everybody shall take the seat.

(3) All participants at the trial shall address the court using the expression: "Honorable court" or "Your honor", after which, standing up, they may give testimony, formulate applications and answer questions. Deviations from this rule shall be allowed only with the permission of the president of the courtroom.

(4) All participants at the trial, including persons present in the courtroom shall abide the

dispositions of the presiding judge regarding the maintenance of order in the courtroom.

#### **Article 334. Measures taken against the violators of the court order**

(1) The presiding judge shall watch the maintenance of order and solemnity in the courtroom and shall take the necessary measures for this purpose.

(2) If the defendant violates the court order and does not comply with the dispositions of the presiding judge, the latter shall draw his attention on the need of observing the discipline, and in case of repeated violation or severe deviation from the order, the judge or, upon the case, the panel shall dispose his removal from the courtroom and shall continue the trial in his absence. The sentence, however, shall be delivered in the presence of the defendant or he shall be announced immediately after the sentence is delivered.

(3) If the prosecutor or the defense counsel violate the court order and do not follow the dispositions of the court, they may be sanctioned with a judicial fine, after which the Prosecutor General and respectively the Counsel of the Bar and the Minister of Justice are informed about their behavior.

(4) If the damaged party, civilly accountable party or their representatives violate the court order and do not follow the dispositions of the court, the court may decide by order their removal from the courtroom. Other persons present at the trial may be removed from the courtroom for the same actions based on the decision of the presiding judge.

(5) Persons indicated in paragraph (4) of the present article, in case of showing lack of respect for the court through disturbing the court order, as well as through commission of actions revealing obvious contempt of the court, may be imposed a judicial fine by court order.

#### **Article 335. Finding of crimes committed during the hearing**

(1) If during the trial of a case a perpetration provided by the Criminal code is committed, the instruction judge or, if the case, the president of the hearing shall find the fact, identify the perpetrator and register it in the minutes. The extract from the minutes shall be handed over to the prosecutor.

(2) The court may, if the case, dispose the apprehension of the perpetrator by court order, a copy of which together with the perpetrator shall be sent to the prosecutor immediately.

#### **Article 336. Minutes of the judicial proceedings**

(1) When the case is tried in first and appeal instance, the unfolding of the court proceedings shall be registered in the minutes drawn up by the court clerk.

(2) The minutes shall be drawn up in written. In order to ensure the plentitude of the minutes short hand writing, audio and video recording may be used, and this fact shall be indicated in the minutes, and the short hand writing, audio and video records shall be attached to the minutes.

(3) The minutes of the judicial proceedings shall include:

- 1) date, month, year, name of the court and time when the court hearing started;
- 2) first name, last name of the judge, court clerk and interpreter if he attended the hearing;

- 3) first and last name of the parties, and other persons who participate in the proceedings and are present at the court hearing, as well as those who are not present, with an indication of their procedural capacity and a mention about the fulfillment of the service of summons procedure;
- 4) mention on whether the proceeding is public or closed;
- 5) indication of the crime for which the defendant was sent to court and the law that provides for the crime;
- 6) record of all the court actions in the order that they were taken;
- 7) applications and requests formulated by the parties and other participants at the trial and the orders issued by the court, either recorded in the minutes, or drawn up separately, with a respective indication in the minutes;
- 8) documents and other evidence that was examined in the court hearing;
- 9) actions violating the court order and the measures taken against those who committed them;
- 10) summary of the judicial debates, of the reply as well as the summary of the last word of the defendant;
- 11) hour when the judgement was delivered and a mention that the defendant was explained the procedure and the term of challenging it.

(4) The minutes shall be proofread by the court clerk within 48 hours from the closing of the hearing and shall be signed by the presiding judge and the court clerk.

(5) The presiding judge shall notify in written the parties about the drawing up and signing of the minutes and shall ensure the possibility, based on a written application, to read the minutes within a term of 5 days from the moment it has been notified about its proofreading and signing.

(6) After having read the minutes, the respective party may raise objections regarding it within a term of 3 days.

(7) The objections regarding the minutes shall be examined by the presiding judge who, in order to make certain clarifications, may call the person who presented them. The result of the examination of the objections, in case they are accepted, is presented in a resolution based on the text of the objections, and in case of refusal – by a well-founded court order. The objections and the court order regarding them shall be attached to the minutes.

### **Article 337. Registering the statements of the parties and witnesses in the court hearing**

(1) The statements of the defendant, damaged party, civil party, civilly accountable party and witnesses in the court proceedings shall be registered in writing by the court clerk as separate documents and shall be attached to the minutes. The written statement shall be read by the court clerk, and if the person who made it so requests, he shall be offered the possibility to read it. If the person who made the statement confirms the text, he shall sign it on each page and at the end. If the person who made the statement cannot sign the document or refuses to, this fact is mentioned in the registered statement, and the grounds of refusal shall be indicated.

(2) The written statement shall be signed by the presiding judge and the court clerk, as well as by the interpreter in case he participated at the statement.

(3) If the person who submitted the statement goes back to one of his previous statements or makes completions, rectification or clarifications, these shall be registered and signed under the conditions of the present article.

### **Article 338. Settlement of the case**

(1) Deliberations and judgement delivery shall be done immediately after the closing of debates. For serious reasons the deliberation and judgement delivery may be postponed up to 10 days.

(2) If the case is tried by one judge, he may adopt the judgement right away in the courtroom. If it is necessary, the judge may announce a break for the same day or, if the case, he may postpone the delivery of judgement for a term provided in paragraph (1).

(3) If the delivery of judgement is postponed the president of the hearing shall announce the present parties regarding the time and date of the judgement delivery.

### **Article 339. The procedure of deliberations**

(1) Only judges before whom the case was tried may participate in the deliberations. The panel of judges shall deliberate in secret. Disclosure of the discussions held during the deliberations shall be forbidden.

(2) The panel of judges shall deliberate on all the issues provided by the law for judicial settlement under the leadership of the president of the hearing. Every issue has to be formulated in such a way that it is possible to provide an affirmative or negative answer. As a rule, the judgement shall be taken unanimously.

(3) In case it is not possible to reach unanimity on the deliberated issue, the judgement shall be adopted by a majority of votes.

(4) If as a result of the deliberations, there are two opinions, the judge who chooses for a harsher solution has to join the one that is closer to his opinion.

(5) None of the judges shall be entitled to abstain in any of the issues subject to settlement. The president in all cases shall vote the last.

(6) The result of the deliberations shall be consigned in the respective integral judgement or its resolution, signed by all the judges who participated in the deliberations.

(7) In case one of the judges from the panel has a dissenting opinion, he shall write and motivate it, at the same time being obliged to sign the judgement adopted by the majority.

### **Article 340. Delivery of judgement**

(1) The adopted judgement shall be delivered in a public hearing by the president of the hearing or by one of the judges in the panel, assisted by the court clerk.

(2) Upon the delivery of judgement, all present in the courtroom shall listen to it while standing.

(3) If a dissenting opinion was stated upon the adoption of judgement, the audience present at the judgement delivery shall be informed about that.

### **Article 341. Kinds of court judgements**

(1) The court, while making justice in criminal cases, shall adopt sentences, decisions, judgements and orders.

(2) The judgement by which the criminal case is settled on the merits in first instance shall

be called sentence.

(3) The judgement by which the court rules on the appeal, recourse, annulment recourse, as well as the judgement delivered by the appeal instance and recourse instance when the case is reheard shall be called decisions.

(4) The Plenary of the Supreme Court of Justice shall adopt judgements.

(5) The rest of judgements delivered by a court during the hearing of a case shall be called orders.

#### **Article 342. Court orders**

(1) All the matters that come up during the trial of the case shall be settled by court orders.

(2) The court orders regarding preventive, protection and assurance measures, challenges, declining the competence, transferring the case, disposing an expertise as well as interlocutory orders shall be adopted as separate documents and shall be signed by the judge or, if the case, by all judges in the panel.

(3) Court orders in other matters shall be included in the minutes of the court hearing.

(4) The court orders adopted during the trial of the case shall be delivered publicly.

#### **Article 343. Proofreading the court judgement**

(1) If only the resolution of the judgement was delivered, the latter has to be fully proofread in up to 10 days since its delivery, by one of the judges who participated in the trial of the case and shall be signed by all judges in the panel.

(2) If one of the judges from the panel does not have the possibility to sign the proofread decision, the president of the hearing shall sign it in his place, and if the president of the hearing is also unable to sign the judgement, the president of the court shall sign it. In any cases an indication about the reasons why the judge was not able to sign the judgement shall be made in the judgement.

## **CHAPTER II**

### **PUTTING OF THE CRIMINAL CASE ON THE ROLL OF THE COURT**

#### **Article 344. Allocation of the case brought for trial**

A case brought to the court in a term of up to three days shall be allocated to a judge or, if the case, to a panel of judges by the president or vice-president of the court through a resolution in accordance with the manner established at the beginning of the year through the allocation of the cases in alphabetical order of the names of the judges. Derogation from this order may take place only in cases of serious illness of the judge who is supposed to receive the case according to the respective case file number, or in cases of other justified reasons that need to be motivated in the court order of the case transfer to another judge. At the same time with the allocation of the case to the panel of judges, the president or vice president shall dispose on who from the panel of judges will preside the hearing.

#### **Article 345. Preliminary hearing**

(1) Within a term of up to 10 days from the date the case was allocated for trial, the judge

or, if the case, the panel of judges, when reading the materials of the file shall set a date for the preliminary hearing. In cases when the defendants are juveniles or under arrest, the preliminary hearing shall be held in order of emergency and priority.

(2) In case it is possible to try the case in emergency proceeding, the judge may put the case on the roll of the court without holding the preliminary hearing and shall take the necessary measures for the preparation and unfolding of the case hearing, so that it is not postponed.

(3) The preliminary hearing shall consist of the parties' attending the settlement of issues related to the putting of the case on the roll of the court. The preliminary hearing shall be performed according to the general conditions of case trial set forth in Chapter I of the present Title, which shall be applied accordingly.

(4) The following matters shall be solved in the preliminary hearing:

- 1) applications and requests as well as declared challenges;
- 2) list of evidence that the parties are going to present at the trial of the case;
- 3) transfer of case based on competence issue, in certain cases total or partial dismissal of the criminal proceeding;
- 4) suspension of the criminal proceeding;
- 5) setting the date of the trial;
- 6) preventive and protection measures;

#### **Article 346. Examination of the applications, requests and challenges**

At the settlement of applications, requests and challenges brought forward by the parties at the preliminary hearing, the parties shall express their opinion on the respective matter. In case the applications, requests or challenges were rejected, the parties may bring them forward repeatedly in the hearing of the case trial.

#### **Article 347. Presentation and examination of the list of evidence**

(1) The parties shall be obliged to present in the preliminary hearing the list of evidence, intended for examination during the case examination, including those that were not examined during the criminal prosecution.

(2) The copy of the list of evidence presented to the court by the party shall be obligatorily handed over to the opponent party. The civil party and the civilly accountable party shall be handed over the list of evidence that relate to the civil action.

(3) The court taking into consideration the opinion of the parties shall decide on the pertinence of evidence proposed in the lists and disposes on which of them shall be presented at the case trial. However, at trial on the merits of the case, the party may repeatedly request the bringing of evidence that were qualified as impertinent in the preliminary hearing.

#### **Article 348. Sending the case to a competent court**

In case the examination of a certain case is not in the jurisdiction of the requested court, this court may dispose in a motivated order the transfer of the case to the competent court. This fact shall be announced to the parties that were not present to the preliminary hearing.

#### **Article 349. Suspension and resumption of the criminal proceeding**



(1) Suspension of the criminal proceeding shall be disposed in case the court found that upon the bringing of the case to court the defendant was suffering of a severe illness which makes impossible for him to participate at the trial of the case.

(2) The court shall dispose the suspension and resumption of the criminal proceeding through a motivated order. The suspension and resumption of the criminal proceeding shall be done according to the conditions set forth in article 330, which shall be applied accordingly.

#### **Article 350. Dismissal of the criminal proceeding**

(1) If during the preliminary hearing grounds set forth in article 332 were found, the court, through motivated sentence, shall dismiss the criminal proceeding in the respective case.

(2) Together with the dismissal of the criminal proceeding, the court shall also decide on the matters provided in art.285 par.(6).

(3) A copy of the sentence regarding the dismissal of the criminal proceeding shall be handed over to the parties and interested persons, with explanations regarding the manner and order of challenging the sentence.

#### **Article 351. Appointment of the case for trial**

(1) If there were not found grounds for applying the provisions of articles 348-350, the court appoints the case for trial.

(2) Upon appointing the case, the court shall decide on the following matters:

- 1) place, date and time when the case is going to be tried;
- 2) procedure according to which the case is going to be tried - general or special;
- 3) approval of the defense counsel chosen by the defendant or, if the defendant does not have one, his ex officio appointment;
- 4) list of persons whose presence at the trial has to be ensured by the parties;
- 5) trial of the case in the absence of the defendant if the law allows so;
- 6) trial of the case in public or closed hearing and the language of the trial;
- 7) matters regarding preventive and protection measures;

(3) Before deciding on the matters provided in points 1), 2), 4) - 7) of par.(2), the court shall consult the parties that are present at the preliminary hearing, and regarding the matter provided in point 3) of par.(2) shall consult with the defendant and his legal representative.

(4) When setting the date of the trial, the court shall oblige the parties to ensure the presence of persons from the lists presented by them.

(5) If it is not possible for one of the parties to ensure the presence of one person from the list, he may request by application the summoning of these persons by the court.

(6) If the case was sent to the court without the accused having taken knowledge of the materials of the case file and without a copy of the indictment having been presented to him and if the defendant showed up at the preliminary hearing, the court disposes the execution of these measures by the prosecutor.

(7) When setting the case of trial, the court shall dispose on the maintenance, change, revocation or, if the case, dismissal of the preventive measures in accordance with the

provisions of the present Code.

(8) Upon the need, the court may decide on the connection or severance of the cases under the conditions of law.

#### **Article 352. Unfolding of the preliminary hearing and adoption of the court order**

(1) The preliminary hearing shall start with announcing the name and surname of the judge or, if the case, of the judges from the panel, of the prosecutor and the court clerk. Afterwards representatives of the accusation, and then of the defense shall express their opinion regarding matters provided for in articles 346-351. The president of the hearing may ask the parties questions at any moment. Regarding proposals, applications and requests presented by the parties each of the participants at the trial has the right to express his opinion.

(2) The unfolding of the preliminary hearing shall be consigned in the minutes written in accordance with the provisions of article 336, which shall apply accordingly. The minutes shall be signed by the president of the hearing and the court clerk.

(3) The court shall solve the matters provide for in articles 346-351 though a court order.

(4) In case the preliminary hearing is held by one judge, he may adopt the respective order immediately in the hearing or may announce a break in order to adopt the order and afterwards shall announce it publicly.

(5) In case a panel of judges carries out the preliminary hearing, the order shall adopted in the deliberation room.

(6) The court order adopted in the preliminary hearing shall be final.

#### **Article 353. Other preparatory measures of the trial**

(1) The judge, or in certain cases the president of the panel of judges, has to take beforehand all the necessary measures and to provide the necessary indications so that the trial on the set date is not postponed.

(2) Also, the judge shall make sure that the list of cases set for trial is written and is posted in the court in a public place with at least three days before the set date of the trial.

### **CHAPTER III**

#### **TRIAL IN FIRST INSTANCE**

##### **Section I**

##### **Preparatory part of the hearing**

#### **Article 354. Opening the court hearing**

On the date and time set for the trial the president of the hearing shall open the court hearing and shall announce which criminal case is going to be tried.

#### **Article 355. Verification of the presence in the court**

After calling the roll of the parties and other invited persons, the court clerk shall report the

presence in the courtroom and the reasons for absence of those who are not present.

#### **Article 356. Removing the witnesses from the courtroom**

After calling the roll of witnesses, the president of the hearing shall ask them to leave the courtroom and shall draw their attention to the fact that they may not leave the building without his consent. The president shall take measures so that the heard witnesses cannot communicate with the unheard ones.

#### **Article 357. Establishing the identity of the interpreter, translator and explaining his rights and obligations**

(1) The president of the hearing shall establish the identity and competence of the interpreter, translator and shall explain their rights in accordance with the provisions of article 87.

(2) The interpreter, translator shall be warned under signature about the liability he incurs in case of intentional false interpretation or translation, according to article 312 of the Criminal Code.

#### **Article 358. Establishing the identity of the defendant**

(1) The president of the hearing shall establish the identity of the defendant, namely:

- 1) Last name, first name and the patronymic;
- 2) Year, month, day and place of birth, citizenship;
- 3) Home address;
- 4) Occupation and information about the military record;
- 5) Family situation and information about existence of other persons in his care;
- 6) Education;
- 7) Information about disability;
- 8) Information about the existence of special titles, qualification merits, and state distinctions;
- 9) Information about his knowledge of the language of the criminal proceeding;
- 10) If he has been under arrest in this case and for what period;
- 11) Other information regarding the defendant;

(2) The president of the hearing shall verify if the defendant has the information in writing about his rights and obligations, a copy of the indictment and if these documents are clear to him;

(3) In the situation that the case was sent to court under the provisions of the article 297, and the defendant came to the trial, he shall be handed over the copy of the indictment and shall be given the possibility to read the materials of the file. If after that the defendant requests a term for preparing for his defense the court shall settle this matter.

#### **Article 359. Establishing the identity of other parties and verifying knowledge of their rights and obligations**

(1) The president shall establish the identity of the prosecutor and of the counsel and the documents that confirm their capacity and powers.

(2) The identity of the damaged party shall be similarly established, as well as that of the

civil party and the civilly accountable party and their representatives.

(3) The president of the hearing shall verify if the persons mentioned in paragraph (2) were given information about their rights and obligations and if these are clear to them.

(4) In case one of the parties declares that he does not clearly understand what his rights and obligations are, the president shall provide the respective explanations.

#### **Article 360. Announcing the panel that is going to try the case and settlement of the applications for challenges**

(1) The president of the hearing shall announce his first and last name and, if the case, that of the other judges from the panel, of the prosecutor, court clerk, as well as of the expert, interpreter, translator and the specialist if these participate in the trial and verifies if there are no applications for challenges or abstention.

(2) The applications for challenges or abstentions shall be solved according to the respective provisions of the present Code.

#### **Article 361. Solving the matters regarding the participation of the defense counsel**

(1) The president of the hearing shall announce the first and last name of the defense counsel and finds whether the defendant accepts the legal assistance of this defense counsel, refuses or changes the defense counsel or declares that he will exercise his defense on his own. If the defendant formulates an application, the court shall solve the matter according to the provisions of articles 69-71.

(2) The president of the hearing shall at the same time verify whether there are circumstances that make the participation of the defense counsel at the criminal proceeding impossible, according to provisions of article 72.

#### **Article 362. Settling the issue of trying the case in the absence of one of the parties or other summoned persons**

(1) In case of the absence at the trial of one of the parties, the court, having heard the opinion of the present parties on that issue, shall decide in accordance with the provisions of Chapter I of the present Title.

(2) In case of absence of one of the lawfully summoned witnesses, expert or specialist, the court, having heard the opinion of the present parties on that issue, shall dispose on the continuation of the hearing and shall take the necessary measures for assuring their presence, if necessary, or disposes the person who did not ensure the presence, to ensure it for the next hearing.

#### **Article 363. Establishing the identity of the expert and specialist and explaining their rights and obligations**

If the expert or legal specialist participate in the trial, the judge shall establish their identity and competence and explain them their rights and obligations according to articles 90-91 of the present Code.

#### **Article 371. Formulation and settlement of applications and requests**

(1) The judge shall ask each party before the trial if there anybody has applications or

requests.

(2) The applications and requests have to be motivated, and if new evidence is requested, there shall be indicated the facts and circumstances that are to be proved, means through which the evidence may be administered, place where the evidence is to be found, and in regards to witnesses, experts and specialists, there shall be indicated their identity and address if the party cannot ensure their presence in the court.

(3) The court shall settle the applications and requests after having heard the opinions of other parties regarding the requirements brought forward.

(4) The parties may and ask for the administration of evidence during the judicial investigation.

## **Section 2**

### **Judicial Investigation**

#### **Article 365. The order of judicial investigation**

(1) During the judicial investigation, the evidence brought by the party of prosecution shall be examined first.

(2) The court, at the request of the parties or other participants in the trial may decide changing the order of evidence examination if this is necessary for the well unfolding of the judicial investigation. The defendant may ask to be heard at the beginning of the evidence examination or at any stage of the judicial investigation.

#### **Article 366. Staring the judicial investigation**

(1) The president of the hearing shall announce the beginning of the judicial investigation. The judicial investigation shall start with the prosecutor's presentation of the formulated accusation. If a civil action was started in the criminal proceeding, it shall be presented as well.

(2) In case reference to the indictment was made, the president of the hearing shall bring to the knowledge of those present its content.

(3) The president of the hearing shall ask the defendant if the accusation is clear and if he accepts to make declarations and answer questions. In case the defendant is not clear on the accusation the prosecutor shall provide the necessary explanations.

#### **Article 367. Hearing of the defendant**

(1) If the defendant accepts to be heard, the president of the hearing shall ask what is the relationship with the damaged party and shall propose to declare everything he knows about the crime he has been sent to the court for. The first entitled to put questions are the defense counsel and the participants at trial from the side of defense, then the prosecutor and the rest of the participants at the trial.

(2) The president of the hearing and in certain cases, the rest of the judges may ask questions the defendant only after the rest of the parties have asked their questions, but clarification questions may be asked by the president of the hearing and judges at any moment of the trial.

(3) If there are more than one defendant, each of them shall be heard in the presence of

the rest of defendants.

**(4)** Hearing of a defendant in the absence of the another defendant who participates at the trial may be done only at the request of the parties, based on a motivated court order, when it is necessary for establishing the truth. In this case, when the absent defendant returns, he shall be informed of the contents of the statements made in his absence and shall be given the possibility to ask questions the defendant who was interrogated in his absence.

**(5)** The defendant may be interrogated as many times, as it is necessary during the judicial investigation and may make additional statements at any time with the permission of the president of the hearing.

**(6)** The president of the hearing shall deny suggestive questions and those that do not relate to the case.

### **Article 368. Reading the statements of the defendant**

(1) Reading of the statements of the defendant made during the criminal prosecution, as well as displaying their audio and video records may be done at the request of the parties in the following cases:

- 1) when there are essential contradictions between the statements made during the judicial investigation and those given during the criminal prosecution;
- 2) when the case is tried in the absence of the defendant.

(2) The same rule shall apply in cases when the statements of the defendant made previously before in court or before an instruction judge, if the last informed him about the possibility of their being read during the trial in court.

(3) It shall be prohibited to display the video or audio records before the reading previously the statements consigned in the respective minutes.

### **Article 369. Hearing of other parties**

(1) Hearing of the damaged party shall be carried out according to the provisions dealing with the hearing of witnesses and shall be applied respectively.

(2) Hearing of the civil party and the civilly accountable party shall be carried out according to the provisions dealing with the hearing of defendants and shall be applied respectively.

(3) The damaged party may be heard as many times, as it is necessary during the judicial investigation and he may make additional statements at any time with the permission of the president of the hearing.

### **Article 370. Hearing of witnesses**

(1) The witnesses shall be heard separately and in the absence of the witnesses were not heard yet. The witnesses of the prosecution shall be heard first.

(2) The hearing of the witnesses shall be done in accordance with the provisions of the article 105-110, which shall apply respectively.

(3) The parties in trial shall be entitled to ask questions to the witness. The first to ask questions shall be the participants at trial of the party that requested the witness, and then the other participants. The president of the hearing as well as the rest of judges may ask

questions to the witness under the conditions of paragraph (2) of the article 367.

(4) Each party may ask additional questions in order to elucidate and complete the answers provided to the questions of the other party.

(5) The judge may allow the heard witness to leave the courtroom before the end of the judicial investigation, by only after taking into consideration the opinions of the parties participating at the trial on this issue.

(6) The witness, whose absence is not justified, in case the party insists him to be heard, may be brought forcibly.

#### **Article 371. Reading the depositions of the witness during the trial**

(1) Reading the statements of the witness presented during the criminal prosecution, as well as displaying of audio and video records, may be done at the request of the parties in the following cases:

- 1) when there are essential contradictions between the statements made during the trial and those given during the criminal prosecution;
- 2) when the witness is absent, and his absence is justified either by the absolute impossibility to attend the trial or by the impossibility of ensuring his safety.

(2) It shall be prohibited to display the video or audio records before the reading previously the statements consigned in the respective minutes.

(3) In case the witness who is released by the law from making depositions in the court session, his declarations given during the criminal prosecution may not be read during the trial, as well as the audio or video records may not be displayed.

#### **Article 372. Examination of corpus delicti**

(1) The corpus delicti presented by the parties may be examined at any point of the judicial investigation. At the request of one of the parties, as well as at the court's initiative, the corpus delicti may be presented for examination to the parties, witnesses, expert or specialist. The persons to whom the court presented the corpus delicti may draw the court's attention on different circumstances related to their examination, this information being consigned in the minutes.

(2) The corpus delicti which cannot be brought to the court may be examined, if necessary, at the place where they are.

#### **Article 373. Examining the documents and minutes of the procedural actions**

(1) Documents and minutes presented by the party of prosecution shall be presented first, and then those presented by the defense party.

(2) Minutes of the procedural actions may be read integrally or partially, minutes that confirm circumstances and facts established through search, confiscation, enquiry on the crime scene, corporal examination, reconstitution of the crime, interception of the communications, examination of the seized correspondence, technical-scientific and forensic medical findings, expertise report and other means of evidence, as well as the documents attached to the file or presented to the court, if they contain or confirm important circumstances for the case. The documents presented at the trial shall be attached to the file based on a court order.

(3) Examination of the documents and minutes of the procedural actions shall be done though their reading by the party that requested their examination or by the president of the hearing.

#### **Article 374. Disposing by the court the performance of the expertise and hearing to the expert in the trial**

Disposing the expertise by the court and hearing the expert in the trial shall be done in cases and under the conditions provided for in articles 142-155.

#### **Article 375. Other procedural actions at the trial**

At the request of the parties, in case it is necessary, the court may perform other procedural actions under the conditions of the present Code in order to establish other circumstances of the case.

#### **Article 376. Termination of the judicial investigation**

(1) After the examination of all evidence of the file and of that one presented at the trial of the case, the president of the hearing shall ask the parties if they wish to provide additional explanations or to formulate applications or, if the case, new requests for the completion of the judicial investigation.

(2) If there were no new applications or requests or after the settlement of the new applications and requests and fulfillment in necessary case of additional procedural acts, the president of the hearing shall declare the judicial investigation terminated.

(3) The president of the hearing shall explain to the parties that they, during the judicial debates and at the adoption of the sentence by the court, shall be entitled to refer only to the evidence examined during the trial.

### **Section 3**

#### **Judicial Debates and the Last Word of the Defendant**

#### **Article 377. Announcing and the order of judicial debates**

(1) After the end of judicial investigation the president of the hearing shall announce the judicial debates.

(2) The judicial debates shall contain speeches of the prosecutor, damaged party, civil party, civilly liable party, defense counsel and defendant if the defense counsel does not participate in that case or if the defendant asks to speak. If there are several representatives of the parties the court shall establish their order.

(3) In case when at least one persons participating at the debates requests more time for preparing for the judicial debates the president of the hearing shall announce a break and indicate its term.

#### **Article 378. Contents of the judicial debates**

(1) In their speeches, the participants in the judicial debates do not have a right to refer to new evidence that was not examined during the judicial investigation. In case it is necessary to present new evidence, the participants to the debates may request repetition of the judicial investigation indicating at the same time, what circumstances need to be additionally examined and based on what new evidence. The court, having heard the



opinions of the other parties shall adopt a motivated order regarding admission or rejection of the respective request.

(2) The court may not limit the duration of debates to a certain time, but the president of the hearing has a right to interrupt the speeches of the participants in trial if these exceed the limits of the tried case.

(3) No breaks shall be admissible between the speeches, but, for motivated reasons the debates may be interrupted, but the interruption shall not exceed 3 days.

#### **Article 379. Reply**

After all the participants at the debates presented their speeches, they may take the floor repeatedly in reply to what has been said in the previous speeches. The right of the last reply shall always be of the defendant or defense counsel, if the case.

#### **Article 380. The last word of the defendant**

(1) After the end of the judicial debates the president of the hearing shall offer the last word to the defendant.

(2) During the last word the defendant may not be asked questions and he may not be interrupted, although he refers to other circumstances than those pertaining to the case.

(3) If the defendant during his last word reveals new facts or circumstances, essential for the settlement of the case, the court may decide on resuming the judicial investigation in order to check them.

#### **Article 381. Written conclusions**

(1) After the end of the judicial debates and the last word of the defendant the parties may present to the court in written form their conclusions regarding the solution for the case proposed by them.

(2) The conclusions proposed by the parties shall not be mandatory for the court.

(3) The written conclusions shall be attached to the minutes.

### **Section 4**

#### **Deliberations and Adoption of the Sentence**

#### **Article 382. Object of the deliberations**

(1) The panel of judges or the judge, when the case is tried only by one judge, shall deliberate on the factual matters first and then on the legal ones:

(2) The deliberations shall be done on the issues provided for under art.385.

#### **Article 383. Resumption of the judicial investigation**

(1) If during the deliberation, the court finds that a certain circumstance needs to be clarified for the fair settlement of the case, the court may resume the judicial investigation through a motivated order.

(2) At the resumption of the case the court may specify the necessary circumstances in the

same hearing, if it is possible, or may interrupt the hearing for no longer than 10 days with the summoning of the parties and interested persons.

(3) After the termination of the additional judicial investigation the court shall hear once against the judicial debates and shall offer the last word to the defendant.

#### **Article 384. The judicial sentence**

(1) The court shall decide on the accusation brought against the defendant by adopting a sentence of conviction, acquittal or dismissal of the criminal proceeding.

(2) The sentence shall be adopted in the name of the law.

(3) The sentence of the court has to be lawful, well founded and motivated.

(4) The court shall base its sentence only on the evidence that was examined during the hearing.

#### **Article 385. Matters the court has to solve in adopting the sentence**

(1) When adopting the sentence the court shall solve the following matters in the following consecutive order:

- 1) if the perpetration for which the defendant is accused took place;
- 2) if the perpetration was committed by the defendant;
- 3) if the perpetration is a crime according to the legislation and which particular legislation regulates this crime;
- 4) if the defendant is guilty of committing this crime;
- 5) if the defendant has to be punished for the committed crime;
- 6) if there are aggravating or mitigating circumstances for the liability of the defendant and which are they;
- 7) which measure of punishment has to be imposed to the defendant taking into account the recommendations of the resocialization service, if such an investigation was carried out indeed;
- 8) if the measure of punishment has to be executed by the defendant or not;
- 9) what kind of penitentiary the imprisonment punishment shall be executed in;
- 10) if the civil action has to be admitted, in whose interests and in what amount of money;
- 11) if the material damage has to be repaired, when the civil action has not been started;
- 12) if the property sequester has to be levied;
- 13) what to do with the corpus delicti;
- 14) who and in which proportion has to be obliged to cover the judicial expenses;
- 15) if the preventive measure against the defendant has to be revoked, replaced or applied regarding the defendant;
- 16) if forced treatment for alcoholism or drug addiction has to be applied against the defendant who is declared guilty;

(2) If the defendant is declared guilty of having committed several crimes, the court shall settle the matters indicated in par.(1) points 1) – 13) of this article for each crime separately.

(3) If the commission of crime is imputed to several defendants, the court shall settle the matters indicated in par.(1) regarding each defendant separately.

(4) If in the course of the criminal prosecution or trial of the case, violations of the defendant's rights are found, as well as the person responsible for their commission, the court shall examine the possibility of reducing the punishment imposed to the defendant, as a compensation for these violations.

#### **Article 386. Examining the matter regarding the state of responsibility of the defendant**

(1) If during the criminal prosecution or judicial investigation the matter of the state of responsibility of the defendant was raised, the court shall be obliged to solve this matter once again at the adoption of the sentence.

(2) In case it is established that at the moment when the crime was committed, the defendant was in a state of irresponsibility or after having committed the crime got sick of a mental illness that constitutes grounds for acknowledging him as irresponsible, the court shall adopt a sentence in accordance with the provisions of art.35 of the Criminal Code.

(3) In exceptional cases, when in order to establish exactly the amount of compensation owned to the civil party it is necessary to postpone the trial of the case, the court may admit in principle, the civil action, following that in regarding to the amount of the due compensation the decision to be taken by a civil court.

#### **Article 388. Securing the civil action and special confiscation**

(1) In case of admission of the civil action, the court may dispose, before the sentence becomes final, to take measures for securing the action, in case these measures have not been taken before.

(2) Upon the sentence delivery, which includes special confiscation of the goods belonging to the convict, the court shall take measures for securing their confiscation if such measures have not previously been taken.

#### **Article 389. Conviction sentence**

(1) The conviction sentence shall be adopted with the condition that as a result of the judicial investigation, the overall evidence examined by the court confirmed the guiltiness of the defendant in the crime commission.

(2) The conviction sentence may not be based on assumptions or exclusively or mainly on the depositions of the witnesses made during the criminal prosecution or read in the court in their absence.

(3) The conviction sentence shall be adopted:

- 1) with establishing the punishment that follows to be executed;
- 2) with establishing the punishment and releasing from its execution in case of amnesty granted according to art.107 of the Criminal Code and in cases provided in art.89 par.(2) letter a), b), c), e), f), and g) of the Criminal Code;
- 3) without establishing the punishment, with releasing from criminal liability in cases provided for by art.57 and 58 of the Criminal code, with liberation from the punishment in the case provided by art.93 of the Criminal Code or expiry of the term of limitation.

(4) When adopting the conviction sentence with establishing the punishment that follows to be executed, the court shall establish the category, amount and beginning of calculating the

term of punishment execution.

(5) Upon adoption of a conviction sentence with liberation from the punishment, or, if the case, conviction sentence without establishing the punishment, the court motivates on which bases provided by the Criminal Code the court adopts the respective sentence.

### **Article 390. Acquittal sentence**

(1) The acquittal sentence shall be adopted if:

- 1) the fact of existence of the crime has not been established;
- 2) the perpetration was not committed by the defendant;
- 3) the perpetration of the defendant does not meet the elements of the crime;
- 4) the perpetration is not regulated by a criminal law;
- 5) there exists one of the causes removing the criminal nature of the perpetration.

(2) The acquittal sentence shall lead to total rehabilitation of the defendant.

### **Article 391. Sentence of dismissal of the criminal proceeding**

(1) The sentence for the dismissal of the criminal proceeding shall be adopted if:

- 1) the complaint of the damaged party misses, the complaint was withdrawn or the parties have reconciled;
- 2) the defendant deceased;
- 3) the person has not reached the age of incurring criminal liability;
- 4) there is a final judicial sentence regarding the same person, in respect of the same perpetration;
- 5) there is a decision of the criminal prosecution body regarding the dismissal of the criminal prosecution versus the same person, in respect of the same perpetration, regarding the removal of the person from criminal prosecution or of stopping the criminal proceeding;
- 6) there are other circumstances excluding or conditioning the initiation of the criminal prosecution and holding criminally liable; as well as
- 7) in cases provided in art.54-56 of the Criminal Code.

(2) In the case provided by art.332 par.(2), the court shall dismiss the criminal proceeding and impose an administrative sanction provided by the Administrative Offences Code.

### **Article 392. Drawing up of the sentence**

(1) After having settled the matters indicated in articles 385-388, the court shall proceed to drawing up of the sentence. The sentence shall consist of an introductory part, descriptive part and resolution.

(2) The sentence shall be drawn up in the language of the trial, by one of the judges who participated in its adoption.

(3) All judges who participated at its adoption shall sign the sentence. The judge who has a dissenting opinion shall also sign the sentence.

### **Article 393. The introductory part of the sentence**

In the introductory part of the sentence it shall be indicated:

- 1) that the sentence was delivered in the name of law;

- 2) the date and place of the adoption of the sentence;
- 3) the name of the court that adopted the sentence, the name of the judge, or, if the case, of the judges of the panel, of the court clerk, interpreter, prosecutor, defense counsel;
- 4) whether the trial was secret or public;
- 5) the data regarding the identity of the defendant provided in paragraph (1) of the article 358;
- 6) the criminal law that provides for the crime of which the defendant is accused;

#### **Article 394. The descriptive part of the sentence**

(1) The descriptive part of the sentence has to include:

- 1) the description of the criminal act, considered to be proven, indicating the place, time, means of its commission, the form and degree of guilt, motives and consequences of the crime;
- 2) the evidence on which the court bases its conclusions and motives for which the court rejected other evidence;
- 3) indications of the circumstances that aggravate or mitigate the liability;
- 4) in case that a part of prosecution is considered unfounded – the grounds for that;
- 5) legal qualification of the defendant's actions, reasons for modifying the accusation if such a thing happened at the trial;
- 6) mentions regarding the recidivist situation;

(2) The court shall be also obliged to motivate:

- 1) establishing an imprisonment punishment, if the criminal legislation provides for other categories of punishment;
- 2) applying a less punishment than provided by the law;
- 3) applying a conviction with the conditioned suspension of the execution of punishment;
- 4) solving the issues related to conviction with a conditioned suspension of punishment execution or imposing of other categories of liberation from criminal punishment, provided by art.89 of the Criminal Code.

(3) The descriptive part of the acquittal sentence should include:

- 1) an indication of the accusation for which the defendant was sent to court;
- 2) the description of the circumstances of the case established by the court and a specification of the grounds for acquitting the defendant, with an indication of the grounds for which the court rejects the evidence brought in support of the accusation. It shall be inadmissible to introduce in the acquittal sentence expressions that may question the innocence of the acquitted person;

(4) The descriptive part of the sentence of ceasing the criminal proceeding has to include a description of the grounds for the dismissal of the criminal proceeding.

(5) Descriptive parts of the conviction or acquittal sentences or sentences for the dismissal of the criminal proceeding have to contain grounds on which the judgement of the court is based on regarding the civil action or compensation of the material damage caused through the crime.

#### **Article 395. Resolution of the conviction sentence**

(1) In the resolution of the conviction sentence there shall be indicated:

- 1) the last name, first name and patronymic of the defendant;
- 2) the finding that the defendant is guilty of the commission of the crime provided by the criminal law;
- 3) category and amount of punishment imposed to the defendant for each crime found as proven, final punishment that has to be executed; category of the penitentiary where the imprisonment punishment has to be executed; date since when the execution of the punishment starts; term for probation period in case of conviction with conditional suspension of the punishment execution and who has the duty of supervising the convict during the conditional suspension of the punishment. In case the court found the defendant guilty but liberates him from the punishment on the grounds of respective provision of the Criminal Code, the court shall be obliged to indicate that in the resolution of the sentence;
- 4) disposition regarding the computation of the arrest, preventive arrest or in home arrest, if the defendant was under arrest before the sentence delivery;
- 5) disposition regarding preventive measure that shall be imposed to the defendant until the sentence becomes final;
- 6) obligations that are put on the defendant in case of conditioned suspension of the execution of punishment;

(2) If the defendant is accused based on several articles of the criminal law, the resolution of the sentence shall indicate precisely on which articles the defendant was acquitted and based on which - convicted.

(3) In all cases the punishment shall be explained in such a way, that when the punishment is executed there are no doubts in regards to the category and amount of the punishment established by the court.

(4) In case provided by article 66 of the Criminal Code, the resolution of the sentence shall also contain the disposition regarding withdrawing of military ranks, special title, qualification (classification) grade or state distinctions of the defendant.

(5) In case of conviction of an alien citizen or stateless person with a permanent residence on the territory of another state, the resolution of the sentence shall include explanations regarding the right to ask the transfer of the convict to the country of residence.

#### **Article 396. Resolution of the acquittal sentence or sentence for the dismissal of the trial**

The resolution of the acquittal sentence or sentence for the dismissal of the trial shall contain:

- 1) the last name, first name and patronymic of the defendant;
- 2) the disposition of acquittal of the defendant or dismissal of the trial and the reason on which the acquittal or dismissal is based on;
- 3) the disposition for the revocation of the preventive measure, in case such measures was imposed;
- 4) the disposition for revoking measures of securing the civil action and the eventual special confiscation, in case such measures were taken.

#### **Article 397. Other matters that have to be settled in the resolution of the sentence**

The resolution of the conviction sentence, as well as of the acquittal or dismissal of the

criminal trial sentences, along with the items listed in articles 395 and 396, in necessary cases have to include also:

- 1) judgement regarding the instituted civil action or the ex officio delivered judgement by the court regarding the reparation of the damages;
- 2) judgement regarding special confiscation;
- 3) judgement regarding corpus delicti;
- 4) judgement regarding protection measures;
- 5) disposition regarding distribution of judicial expenses;
- 6) disposition regarding the procedure and term for declaring the appeal or, if the case, recourse against the sentence.

#### **Article 398. Releasing the arrested defendant**

(1) If the defendant has been acquitted or liberated of punishment, or liberated from executing the punishment, or has been convicted to a punishment that does not include imprisonment, or if regarding him the criminal trial was dismissed, the court, if the defendant is under arrest, shall release him immediately from the courtroom.

(2) In case of conviction to imprisonment with conditional suspension of punishment execution, the court shall release the convict from arrest.

#### **Article 399. Handing over a copy of the sentence**

(1) In up to 3 days since the moment when the sentence has been delivered, the arrested defendant shall be handed over a copy of the sentence or its resolution.

(2) In case of proofreading the sentence, a copy of the proofread sentence shall be given to the defendant immediately after it is signed and other parties shall be communicated in written form about the signing of the proofread sentence.

(3) If the sentence or its resolution were drawn up in a language that the defendant does not know, he shall be handed over a written translation of the sentence in his native language or in other language that he knows.

### **CHAPTER IV**

#### **ORDINARY REMEDIES**

##### **Section 1**

##### **Appeal**

#### **Article 400. Judgements subjected to appeal**

(1) Sentences may be challenged in order for a new consideration of the facts and law of the case, with the exception of:

- 1) sentences delivered by judges regarding crimes for the commission of which the law solely provides for non-custodial punishments;
- 2) sentences delivered by the military court for the commission of which the law solely provides for non-custodial punishments;
- 3) sentences delivered by the courts of appeals and Supreme Court of Justice;
- 4) other sentences for which the law does not provide for this remedy;

- (2) Court orders given in first instance may be challenged only together with the sentence;
- (3) The appeal declared against a sentence shall also be considered as against court orders even if the latter were issued after the delivery of the sentence.

#### **Article 401. Persons who may declare an appeal**

(1) The following persons may declare an appeal shall be:

- 1) the prosecutor in regards to the criminal and civil side;
- 2) defendant in regards to the criminal and civil side. Sentences of acquittal and dismissal of the criminal trial may be challenged in regards to the grounds for acquittal or criminal trial dismissal;
- 3) damaged party, in regards to the criminal side in case the criminal case is to be initiated based on the preliminary complaint of the damaged party, under the legal conditions;
- 4) civil party and civilly accountable party in regards to the civil side;
- 5) witness, expert, interpreter, translator and defense counsel, in regards to the judicial expenses due to them;
- 6) any person whose legitimate interests were damaged through a measure or act of the court;

(2) The appeal may be declared by persons provided for in par.(1) points 2)-4) of the present article by the defense counsel or their legal representative.

#### **Article 402. Term for declaring the appeal**

(1) Term for appeal shall be of 15 days the proofreading or integral delivery of the sentence, if the law does not provide otherwise.

(2) For the defendant who is under arrest, the term for declaring appeal shall start running from the moment he has been given the copy of the proofread sentence, and for the parties who were absent from the announcement of the sentence - from the date of written notification about the proofreading the sentence.

(3) For the cases provided for in article 401 paragraph (1) points 5) and 6) the appeal may be exercised immediately after the issuance of the court order, through which the court disposed on the judicial expenses or has taken another measure, but not later than 15 days from the delivery of the sentence through which the case was settled. Examination of the appeal shall be done only after the examination of the merits of the case, except for the case when the trial was suspended.

(4) If the prosecutor who participated at the trial or the damaged party declared the appeal in due term in the defendant's disadvantage, the hierarchic superior prosecutor, within a 15 days term from the registration of the case in the appeal instance may declare additional appeal, where he may include additional grounds for appeal.

(5) If the defendant declares appeal within the due term and changes the defense counsel, the new defense counsel within a term of 15 days from the registration of the case in the appeal instance may declare additional appeal for the defendant where he may include additional grounds for appeal.

(6) In case of declaring additional appeals under the conditions of paragraphs (4) and (5) of the present article, copies of the additional appeals shall be given to the parties and



necessary time is offered for preparing the examination of appeals.

#### **Article 403. Restoration in term of appeal**

(1) The appeal declared after the expiration of the term provided by the law shall be considered declared in due term if the appeal instance finds that the delay was determined by founded grounds, and the appeal was declared at most within 15 days since the beginning of the punishment execution or the execution of materials compensation.

(2) Before the settlement of the issue of the restoration in term, the appeal instance may suspend the execution of the decision.

#### **Article 404. Appeal after the term**

(1) The participant at the trial who was absent at the trial, as well as at the sentence delivery and was not informed about the adoption and proofreading of the sentence may declare appeal after the term, but not later than 15 days since the beginning of the punishment execution or the execution of materials compensation.

(2) The appeal declared after the term may not suspend the execution of the sentence.

(3) The appeal instance may suspend the execution of the challenged sentence.

#### **Article 405. Declaring the appeal**

(1) The appeal shall be declared in a written application.

(2) The request for appeal shall contain:

- 1) the name of the court where the appeal is submitted;
- 2) the last name and first name of the appeal applicant, procedural capacity and address;
- 3) the name of the court which delivered the sentence, the date of the sentence, the first and last name of the defendant regarding whom the sentence is challenged;
- 4) the content and motives of the appeal applicant's requirements;
- 5) an indication of evidence and means to administer them, if the need to administer new evidence is invoked. Only the prosecutor and the counsel who did not participate in the trial of the case in the first instance may invoke new evidence. Parties who participated in the examination of the case in first instance may invoke administration of new evidence, only if these were not known at the moment of the case examination in first instance or if the first instance court rejected the application of administering the evidence;
- 6) the date of declaring the appeal and the signature of the appeal applicant;
- 7) the list of documents that are attached to the application of appeal;

(3) For the person who cannot sign, the appeal application shall be attested by a judge from the court whose judgement is challenged. The appeal application may be attested as well by the mayor of the territory where the appeal applicant lives.

(4) The appeal application shall be submitted to the court the sentence of which is being challenged, accompanied by as many copies as the number of participants in the trial. The person who is under arrest may submit the appeal application to the administration of the detention place without attaching any copies.

(5) After the expiration of the term established for appeal, the court which delivered the

sentence shall send, within a 5 days term, the criminal file together with the appeal and its copies to the appeal instance, and informs the parties about this fact.

#### **Article 406. Waiver of the appeal**

(1) After the delivery of the sentence and before the expiration of the term for declaring the appeal, the parties may waive directly this remedy.

(2) It shall be possible to reconsider the waiver of appeal within the term provided for declaring it.

(3) The waiver of the appeal or the reconsideration of its waiver may be done personally by the party or by a special mandatory.

#### **Article 407. Withdrawal of the appeal**

(1) Before the beginning of the judicial investigation by the appeal instance, any of the parties may withdraw the declared appeal. The withdrawal shall be done by the appeal applicant.

(2) Only the hierarchic superior prosecutor may withdraw the appeal declared by the prosecutor.

(3) In case of withdrawal of the appeal, the appeal instance shall dismiss the appeal procedure

#### **Article 408. The suspension effect of the appeal**

The appeal declared within the appeal term shall suspend the exception in regards to the criminal side, as well as the civil side, with the exception of the cases when the law provides otherwise.

#### **Article 409. Devolution effect of the appeal and its limits**

(1) The appeal instance shall consider the appeal only in regards to the person who declared the appeal and the person that the declaration of appeal refers to and only in relation with the procedural capacity of the appeal applicant in the proceeding.

(2) Within the limits indicated in paragraph (1), the appeal instance shall be obliged, besides the grounds invoked and applications formulated by the appeal applicant, to consider aspects as to the facts and aspects as to the law of the case, but without worsening the situation of the appeal applicant.

#### **Article 410. Non-aggravation of the situation in one's own appeal**

(1) The appeal instance, while settling the case, may not aggravate the situation for the appeal applicant.

(2) In the appeal declared by the prosecutor in the favor of one party, the appeal instance may not aggravate the situation of this person.

#### **Article 411. Extensive effect of the appeal**

The appeal instance shall examine the case by extension to the parties who did not declare the appeal or to which it does not relate, having the right to decide also in regards to them

without creating an aggravated situation for these parties.

**Article 412. Allocation of the appeal cases, setting the term for examination of the appeal and the presence of the parties**

(1) The president of the appeal instance, upon reception shall allocate cases in the order provided in article 344.

(2) Within a term of up to 10 days from the date the case was allocated, the president of the panel which was allocated the case shall set the date for examining the appeal, and in cases of necessity, shall set the date for the preliminary hearing which shall be conducted in accordance with article 345.

(3) The examination of the appeal shall be done with the summoning of the parties and handing them over a copy of the appeal.

(4) The examination of the appeal shall be done in presence of the defendant, when the latter is under arrest, with the exception set forth in point 2)-paragraph (2) of the article 321.

(5) The absence of the parties lawfully summoned to the appeal instance shall not impede the examination of the case.

(6) In case of necessity, the appeal instance may acknowledge the presence of the parties as mandatory and shall take measures for securing their presence.

(7) The presence of the prosecutor and of the defense counsel, when the interests of justice so require shall be mandatory in the examination of appeal.

**Article 413. The procedure of appeal examination**

(1) The president of the hearing shall announce the case to be examined and shall verify the presence of the parties, then shall announce the last name and first name of the judges from the panel, of the prosecutor, court clerk, as well as of the interpreter and translator if the latter participate, of the defense counsel and shall clarify whether there have been formulated applications of challenges. Following that, the president of the hearing shall verify the fact whether the present parties have made applications and requests, regarding which the court shall issue an order.

(2) The president of the hearing shall give the floor to the appeal applicant, appeal respondent, defense counsels and their representatives and then to the prosecutor. If among the declared appeals there is the appeal of the prosecutor, he shall have the floor first.

(3) In case the parties invoke the need of administration of new evidence, they shall indicate these evidence are and means for their administration, as well as the reasons that did not allow examination of this evidence in first instance.

(4) The parties shall be entitled to reply in regards to new matters that come up during the debates.

(5) The defendant has the last word.

(6) During the trial, there shall drawn up the minutes in accordance with the provisions of article 336.

#### **Article 414. Consideration of the appeal**

(1) Upon consideration of the appeal, the appeal instance shall verify the legality and well-founding of the challenged judgement based on the evidence examined by the first instance according to the materials of the file and any new evidence presented to the appeal instance, or examines additionally the evidence administrated by the merits court.

(2) The appeal instance may give a new qualification to the evidence from the file and may administer, at the request of the parties, any new evidence that the court considers necessary.

(3) The appeal instance shall be obliged to deliver on all the issues presented in the appeal.

#### **Article 415. Decision of the court of appeal**

(1) The appeal instance, examining the case in appeal, shall adopt one of the following decisions:

- 1) rejects the appeal, maintaining the challenged judgement if;
  - a) the appeal was submitted after the due term, with the exception of cases set forth in article 402;
  - b) the appeal is inadmissible;
  - c) the appeal is unfounded;
- 2) admits the appeal, cassating partially or totally the sentence, including ex officio, based on paragraph (2) of article 409, re-judges the judgement and delivers a new judgement, according to the procedure applicable to the first instance;
- (2) The sentence may be cassated only in regards to certain perpetration or persons, or only in regards to the criminal side or civil side if this does not impede the fair settlement of the case.

(3) The decision of the appeal instance shall be enforceable since its adoption

#### **Article 416. Additional matters**

The appeal instance, while deliberating on the appeal, if necessary, may decide on resuming the judicial investigation, applying the provisions regarding compensation of damages, preventive measures, judicial expenses and any other issues on which the complete settlement of the appeal depends on.

#### **Article 417. Content of the decision of the appeal instance**

(1) The decision of the appeal instance shall contain:

- 1) the date and place of the decision delivery;
- 2) the name of the appeal instance;
- 3) the last name and first name of the members of the panel of judges, prosecutor and the court clerk, as well as of the defense counsel, interpreter and translator, if the latter participate in the hearing;
- 4) the last name and first name of the appeal applicant and an indication of his procedural capacity;
- 5) the information regarding the identity of the convicted or acquitted person by the first instance, provided in paragraph (1) of article 358;
- 6) the perpetration found by the first instance and the contents of the resolution of

- the sentence;
- 7) the merits of appeal;
- 8) the grounds as to the facts and as to the law that led to the rejection or admission of the appeal, as well as the grounds for taking such a solution;
- 9) one of the solutions set forth in article 415;
- 10) a mention that the decision is enforceable but may be subjected to recourse, as well as the term set for this remedy.

(2) In case the defendant is under arrest, the decision shall indicate the term that is included in the punishment term.

(3) If there are grounds set forth in article 218, the appeal instance shall deliver an interlocutory decision.

#### **Article 418. Adopting a decision by the appeal instance**

(1) The deliberation and delivery of the decision shall usually be done after the debates, but for certain founded reasons they may be postponed for up to 10 days.

(2) The deliberations shall be conducted according to provisions of articles 339.

(3) The result of the deliberation shall be consigned in the resolution of the decision and shall be signed by all judges in the panel, and then it shall be delivered in the public hearing by the president of the hearing or by a judge from the panel, assisted by the court clerk.

(4) The decision shall be proofread by one of the judges who participated in the examination of the appeal within 10 days the most after the sentence has been delivered and shall be signed by all the members of the panel.

(5) In case of proofreading the decision, the rules of decision handing over shall be applicable applied, under article 399.

(6) After the proofreading of the decision, the appeal instance shall forward in up to 5 days the criminal file to the merits instance for execution to be carried out, of which the parties shall be informed.

#### **Article 419. Re-judging procedure**

The re-judging of a case by the appeal instance shall unfold according to the general rules of examination of the cases in the first instance.

### **Section 2**

#### **Ordinary Recourse**

##### **§1. Recourse against the decisions of the appeal instances**

#### **Article 420. Decisions subject to recourse**

(1) The decisions delivered by the courts of appeals as appeal instances may be challenged in recourse.

(2) The orders issued by the appeal instance may be challenged in recourse only once, along with the decision challenged in recourse, except the cases in which, under the law, they may be challenged separately in recourse.

(3) The recourse declared against a decision of the appeal instance shall be considered as against its court orders as well, even if they were issued after the delivery of the decision challenged in recourse.

(4) Sentences, regarding which the persons listed in article 401 did not use the remedy of appeal or have withdrawn the appeal, may not be challenged in recourse, if the law provides this remedy. The person who did not use the appeal may challenge in recourse the decision of the appeal instance, by which his situation was worsened. The prosecutor who did not use the appeal may challenge in recourse the decision by which the appeal declared from the side of defense was admitted.

#### **Article 421. Persons who may declare the recourse**

The prosecutor, as well as persons specified in art.401, through a counsel, may declare recourse. If the recourse provided in the present article is declared by another person than the prosecutor or counsel, the recourse shall be returned to the person who declared it, together with an accompanying letter explaining the manner of its declaration.

#### **Article 422. The term for declaring the recourse**

The recourse term shall be of 2 months since the date of the decision delivery, if the law does not stipulate otherwise; and in cases of proofreading the decision – of 2 months after the written notification of the parties about the signing of the proofread decision by all members of the panel.

#### **Article 423. Withdrawal of the recourse**

The persons mentioned in art.421 may withdraw the recourse under the conditions provided in art.407, which shall be applied accordingly.

#### **Article 424. The devolution effect of the recourse and its limits**

(1) The recourse instance shall consider the recourse only regarding the person the recourse declaration is concerned with, and only regarding to his capacity in the trial.

(2) The recourse instance shall consider the case only within the limits of the grounds stipulated in article 427.

#### **Article 425. The non-aggravation of the situation in one's own recourse**

The recourse instance, when solving the case may not aggravate the situation of the person in whose favor the recourse was declared.

#### **Article 426. The extensive effect of the recourse and its limits**

The recourse instance shall consider the case by extension concerning the persons in respect of which the recourse was not declared or to whom the recourse does not refer, being able to decide, in their respect as well, without aggravating their situation, if the recourse was found admissible.

#### **Article 427. Grounds of recourse**

The judgements of the appeal instance may be subject to recourse in order to fix errors of justice committed by merits and appeal instances based on the following grounds:

- 1) the provisions concerning rationae materiae and rationae personae competence

were not observed;

- 2) the court has not been composed under the law or the provisions of article 30, 31, 33 were violated;
- 3) the court hearing was not public, except for the cases when the law does not stipulate otherwise;
- 4) the trial took place without the participation of the prosecutor, the defendant, as well as the defense counsel, interpreter and the translator, when their participation was mandatory under the law;
- 5) the case was tried in first instance or in appeal without the lawful summoning of a party or who, being lawfully summoned, was in the impossibility to show up or notify the court about this impossibility;
- 6) the challenged judgement does not contain the grounds on which the solution is based or the grounds for the solution contradicts the resolution of the judgement, or it is not clearly formulated, or the proofread judgement's resolution does not comply with the resolution delivered after the deliberation;
- 7) the court allowed a remedy, not provided by law or the appeal was overdue ;
- 8) the constituent elements of crime were not met or the court delivered a judgement of conviction for another perpetration than the one for which the convict was indicted, except for the cases of the legal re-qualification of his perpetrations under a milder law;
- 9) the defendant was convicted for a perpetration which is not provided by the criminal law;
- 10) the punishments were imposed within other limits than those provided by the law;
- 11) the convicted person had been finely tried before for the same perpetration or there is a reason for removing criminal liability or the imposed punishment was removed by a new law or canceled by an amnesty act, the decease of the defendant or the parties' reconciliation took place;
- 12) the committed perpetration received a wrong legal qualification;
- 13) another criminal law, which is more favorable to the convict, was passed;
- 14) the Constitutional Court has acknowledged as unconstitutional the provision of the law applied in the respective case;
- 15) an international court, in a judgement delivered on a different case, found a violation at the domestic level of the human rights and fundamental freedoms, which may be repaired in this case as well;
- 16) the legal provision applied in the challenged judgement contravenes a judgement concerned with the application of the same legal provision, previously delivered by the Supreme Court of Justice.

#### **Article 428. Courts competent to examine the recourse**

The recourses declared against the decisions of the courts of appeal shall be examined by the Criminal Chamber of the Supreme Court of Justice.

#### **Article 429. Filing the recourse**

(1) The recourse shall be filed in typed form by the persons mentioned in art.421 and shall be justified.

(2) The recourse application shall be filed with the recourse instance in a number of copies equal to the number of the participants at the trial.

#### **Article 430. Contents of the recourse application**

The recourse application shall include:

- 1) the name of the court the recourse is filed with;
- 2) the last name and first name of the recourse applicant, his procedural capacity or mention regarding the person the interests of which are represented and his address;
- 3) the name of the court which delivered the sentence, date of the sentence delivery, last name and first name of the defendant regarding whom the judgement is challenged, the perpetration found and the judgement's resolution, indication of the person who has declared the appeal and the grounds invoked in the appeal;
- 4) the name of the court which has adopted the decision in appeal, date of delivery of the decision in appeal, resolution of the decision in appeal and the arguments for admission or rejection of the appeal;
- 5) the content and grounds of recourse and the justification of the illegality of the challenged judgement and the requirements of the recourse applicant, with an indication of the grounds provided by art.427, invoked in recourse and what is the legal problem of general importance approached in that case;
- 6) the formulation of proposals regarding the required judgement. Although the formulation of these proposals is mandatory for the recourse applicant, although these may not influence the judgement of the Supreme Court of Justice;
- 7) the date of declaring the recourse and the signature of the recourse applicant.

#### **Article 431. Preparatory procedural acts of the recourse instance**

(1) After the reception of application, the recourse instance shall carry out the following preparatory procedural acts:

- 1) requests the case file from the respective instance;
- 2) appoints a judge or, if the case, an assistant judge in order to draw up a written report on the recourse;
- 3) sets the date for the report draw up. The term of the report draw up may not exceed 3 months for cases involving juvenile defendants or persons under arrest and may not exceed 6 months for other cases.

(2) The reporting judge shall verify whether the recourse meets the formal and substantive requirements for its filing, whether the grounds invoked are consistent with the legal provisions, shall indicate the case-law on the matters of legislation applicable at the settlement of the challenged judgement, and shall draw up the report.

(3) The report shall contain the merits of the case, the solutions given by the courts, the facts considered by the last instance to the extent to which they are necessary for the settlement of recourse, presentation of the recourse grounds and the observation on the conditions of the recourse admissibility. After the settlement of the recourse, the report shall be stored in the recourse procedure, in the chancellery of the recourse instance.

(4) The reporting judge shall be a member of the judicial panel and in case of impossibility, a new reporting judge shall be appointed with at least 48 hours before the trial.

#### **Article 432. Admissibility in principle of the recourse**

(1) The recourse instance shall examine the admissibility in principle of the recourse declared against the judgement of the appeal instance, without summoning the parties.

(2) A panel made of 3 judges shall decide in a decision, without specifying the grounds, on



the inadmissibility of the filed recourse, if it is found that:

- 1) the recourse does not meet the formal and substantive requirements provided by art.429 and 430;
- 2) the recourse is declared after its due term;
- 3) the grounds invoked by the recourse applicant are not consistent with the ones specified in art.427;
- 4) the recourse is unfounded;
- 5) the recourse do not approach legal issues of general importance for the case-law.

(3) The decision is not subjected to any remedy and shall be communicated to the recourse applicant.

(4) If the recourse meets the formal and substantive requirements, and the grounds invoked are consistent with the ones prescribed by the law, from which the severe violation the person's rights is outlined and the case presents a particular interest for the case-law, the panel made of 3 judges shall send the recourse for consideration the Grand Chamber of the Supreme Court of Justice, made of 5 judges.

(5) The president of the Grand Chamber shall set the term of the recourse consideration and shall dispose the notification of the parties in trial about this fact, as well as about the essence of the recourse. Together with the summoning of the prosecutor and defense counsel, these shall be sent the copy of the recourse.

#### **Article 433. The procedure of the recourse consideration**

(1) At the recourse consideration only the prosecutor and counsels admitted by the Supreme Court of Justice may participate, as provided by the law, for the practicing of such types of activity and which represent the participants in the given case, whose interests are affected by the justification invoked in the recourse.

(2) The president of the hearing shall announce the case in which the recourse was declared, than announces the name of the judges from the panel, of the prosecutor, counsels as well as of the interpreter, if the last participates at the hearing and shall verify whether there were formulated challenge applications.

(3) The recourse applicant shall have the floor first, followed by other participants at the hearing. If between the declared recourses there is also the prosecutor's recourse, he shall have the floor first. The speeches may not exceed 30 minutes for each of the participants and these may not overstep the framework of the recourse justification.

(4) The parties shall have the right to reply on issues appeared during the debates.

#### **Article 434. Recourse trial**

(1) When trying the recourse declared against the decision of the appeal instance, the court shall verify the legality of the challenged decision on the basis of case file materials and shall deliver on every ground invoked in the recourse.

(2) If during the trial of the recourse it is found that its settlement may lead to a contradiction with a previous judgement of the Supreme Court of Justice, the Grand Chamber shall, by decision and without specifying the reasons, refer the case to the Plenary of the Supreme Court of Justice, which shall try the respective recourse.

## **Article 435. The decision of the recourse instance**

(1) Judging the recourse, the court adopts one of the following decisions:

- 1) to reject the recourse as inadmissible, maintaining the challenged decision:
- 2) to admit the recourse, cassating totally or partially the challenged judgement and shall take one of the following solutions:
  - a) to maintain the judgement of the first instance court, when the appeal was wrongfully admitted;
  - b) to acquit the defendant or to dismiss the criminal proceeding in cases provided by the present Code;
  - c) to re-judge the case and to deliver a new judgement or, if the case, to dispose the re-judgement by the appeal instance, when the judicial error may not be fixed by the recourse instance.

(2) Considering the recourse, the court shall also solve complementary issues provided for in article 416, which shall apply appropriately.

## **Article 436. Re-judgement procedure**

(1) The re-judgement procedure of a case after the cassation of the judgement in recourse shall unfold under general rules of its examination.

(2) The indications of the recourse instance shall be binding for the re/judgement instance to the extent to which the factual situation remains the one that existed at the settlement of the recourse.

(3) When the judgement is cassated only in respect of certain facts or persons or only regarding the criminal side or the civil side, the re-judgement instance shall deliver within the limits in which the judgement was cassated.

(4) It shall be prohibited to impose a severer punishment or to apply a law on a severer crime during the re-judgement, unless the initial judgement was cassated based on the recourse declared by the prosecutor or in the interest of the damaged party on the ground that the established punishment was too mild, or based on the recourse of the prosecutor who requested the application of a law on a severe crime, as well as when the prosecutor at the re-judgement in the appeal instance formulates a new severer indictment according to art.326.

## **§2. Recourse against judgements for which the remedy of appeal is not provided**

### **Article 437. Judgements subjected to recourse**

(1) The following may be challenged in recourse:

- 1) sentences delivered by courts regarding minor crimes for the commission of which the law provides exclusively the non-custodial punishment;
- 2) sentences delivered by the courts of appeal;
- 3) sentences delivered by the Supreme Court of Justice;
- 4) other criminal judgements for which the law provides for such a remedy.

(2) The court orders may be challenged in recourse only together with the sentence, except

for the cases when, according to the law, these may be challenged separately in recourse.

(3) The recourse declared against the sentence shall be considered a made against the court orders as well, even if these were issued after the delivery of the judgement challenged in recourse.

#### **Article 438. Persons who may declare recourse**

The recourse against judgements for which the law does not provide the remedy of appeal may be declared by the persons specified in art.401.

#### **Article 439. Term of declaring the recourse**

(1) The term of recourse against judgements for which the law does not provide the remedy of appeal shall be of 15 days since the delivery of the judgement and in case of its proofreading – of 15 days since the written notification of the parties on the signing of the proofread judgement by all the judges of the panel.

(2) The date since when the term of recourse starts running, the restoration in term, declaring the recourse after the term and the withdrawal of recourse shall be regulated by the provisions of art.402-407, which shall apply accordingly.

#### **Article 440. Suspension effect of recourse**

The recourses declared in due term against the judgements for which the remedy of appeal is not provided shall suspend the enforcement, both regarding the criminal side, as well as the civil side, except for the cases when the law provides otherwise.

#### **Article 441. The devolution effect of the recourse and its limits**

(1) The recourse instance shall consider the recourse only regarding the person the recourse declaration is concerned with, and only regarding to his capacity in the trial.

(2) The recourse instance shall consider the case only within the limits of the grounds stipulated in article 444, except the grounds invoked and applications formulated by the recourse applicant, but it shall be obliged to consider the entire case in all its aspects, but without aggravating the situation of the party in whose favor the recourse was declared.

#### **Article 442. The non-aggravation of the situation in one's own recourse**

The recourse instance, when solving the case may not aggravate the situation of the person in whose favor the recourse was declared.

#### **Article 443. The extensive effect of the recourse and its limits**

The recourse instance shall consider the case by extension concerning the persons in respect of which the recourse was not declared or to whom the recourse does not refer, being able to decide, in their respect as well, without aggravating their situation.

#### **Article 444. Grounds of recourse**

The judgements may be subject to recourse in order to fix errors of justice committed by merits instances based on the following grounds:

- 1) the provisions concerning rationae materiae and rationae personae competence were not observed;

- 2) the court has not been composed under the law or the provisions of article 30, 31, 33 were violated;
- 3) the court hearing was not public, except for the cases when the law does not stipulate otherwise;
- 4) the trial took place without the participation of the prosecutor, the defendant, as well as the defense counsel, interpreter and the translator, when their participation was mandatory under the law;
- 5) the case was tried in first instance without the lawful summoning of a party or who, being lawfully summoned, was in the impossibility to show up or notify the court about this impossibility;
- 6) the challenged judgement does not contain the grounds on which the solution is based or the grounds for the solution contradicts the resolution of the judgement, or it is not clearly formulated, or the proofread judgement's resolution does not comply with the resolution delivered after the deliberation;
- 7) the constituent elements of crime were not met or the court delivered a judgement of conviction for another perpetration than the one for which the convict was indicted, except for the cases of the legal re-qualification of his perpetrations under a milder law;
- 8) the defendant was convicted for a perpetration which is not provided by the criminal law;
- 9) the punishments were imposed within other limits than those provided by the law or wrongfully determined in relation to the provisions of Chapter VII of the General Part of the Criminal Code;
- 10) the convicted person had been finely tried before for the same perpetration or there is a reason for removing criminal liability or the imposed punishment was removed by a new law or canceled by an amnesty act, the decease of the defendant or the parties' reconciliation took place;
- 11) the defendant was wrongfully acquitted because the perpetration committed by him is not provided by the criminal law or when the criminal proceeding was wrongfully dismissed because there was a final judgement regarding the same perpetration or there is a reason removing the criminal liability or the application of the punishment was removed by a new law or annulled by an amnesty act, or the defendant deceased;
- 12) the committed perpetration received a wrong legal qualification;
- 13) another criminal law, which is more favorable to the convict, was passed;
- 14) the Constitutional Court has acknowledged as unconstitutional the provision of the law applied in the respective case;
- 15) an international court, in a judgement delivered on a different case, found a violation at the domestic level of the human rights and fundamental freedoms, which may be repaired in this case as well.

(2) Cases stipulated in items 1),-4), 8), 9), 13)-15) shall always be considered ex officio as well, and cases provided in items 5)-7), 10), 12) shall be considered ex officio only when they influenced the judgement to the detriment of the defendant.

(3) When the court takes into consideration cassation reasons ex officio, it shall be bound to subject them to the parties' discussions.

#### **Article 445. Declaration of recourse**

(1) The recourse shall be declared in written by the persons mentioned in art.401 and shall be grounded.

(2) The recourse application shall include:

- 1) the name of the court the recourse is filed with;
- 2) the last name and first name of the recourse applicant, his procedural capacity or mention regarding the person the interests of which are represented and his address;
- 3) the name of the court which delivered the sentence, date of the sentence delivery, last name and first name of the defendant regarding whom the judgement is challenged, the perpetration found and the judgement's resolution, indication of the person who has declared the recourse;
- 4) the content and grounds of recourse and the justification of the illegality of the challenged judgement and the requirements of the recourse applicant, with an indication of the grounds provided by art.444, invoked in recourse and the formulation of proposals regarding the required judgement;
- 5) the date of declaring the recourse and the signature of the recourse applicant.

(3) The recourse application shall be filed with the court the judgement of which is challenged, in a number of copies equal to the number of the participants at the trial. The arrested person may file the recourse application with the administration of the detention place, without attaching copies.

(4) After the expiry of the term set for the declaration of recourse, the court which delivered the sentence shall send, within a 5-days term, the criminal case file together with the recourse to the recourse instance.

#### **Article 446. Preparatory procedural acts of the recourse instance**

(1) After the reception of recourse, there shall be taken the following preparatory procedural acts:

- 1) at the Supreme Court of Justice there shall be appointed a judge or an assistant judge in order to draw up a written report on the recourse, setting a term for the report draw up, which may not exceed 15 days;
- 2) the case shall be appointed for trial and the copies of recourse shall be handed over to the interested parties.

(2) The report shall contain the merits of the case, the delivered solutions, the facts considered by the merits instance to the extent to which they are necessary for the settlement of recourse. The report shall indicate the grounds for cassation specified in art. 444n par.(2), which shall be taken in consideration by the court ex officio.

(3) The reporting judge shall be a member of the judicial panel and in case of impossibility, a new reporting judge shall be appointed with at least 48 hours before the trial.

#### **Article 447. The procedure of the recourse consideration**

(1) The consideration of the recourse. Shall be done with the summoning of the prosecutor, counsel and the other party. The participation of the prosecutor and of the counsel in the recourse instance hearing shall be mandatory. The non-presentation of the defendant, damaged party, civil party of the civilly accountable party, as well as of their representatives shall not hinder the consideration of recourse, but if it is necessary, the recourse instance may acknowledge their presence as mandatory and shall inform them about it. The necessity of the defendant under arrest to be present shall be decided by the recourse instance.

(2) The president of the hearing shall announce the case in which the recourse was

declared, than announces the last name and first name of the judges from the panel, of the prosecutor, counsels as well as of the interpreter and translator, if these participate and shall verify whether there were formulated challenge applications.

(3) The recourse applicant shall have the floor first, followed by other participants at the hearing. If between the declared recourses there is also the prosecutor's recourse, he shall have the floor first. In case of considering the recourse by the Supreme Court of Justice, the speeches may not exceed 30 minutes for each of the participants and these may not overstep the framework of the recourse justification.

(4) If the parties invoke the need of administering new evidence, they shall indicate these evidence and the means by which they may be administered, as well as the reasons which hindered their presentation in first instance.

(5) The parties shall have the right to reply on issues appeared during the debates.

#### **Article 448. Recourse trial**

(1) When trying the recourse, the court shall verify the legality of the challenged decision on the basis of case file materials and of any new documents presented to the recourse instance.

(2) The recourse instance shall be bound to deliver on every ground invoked in the recourse.

#### **Article 449. The decision of the recourse instance**

Judging the recourse, the recourse instance shall adopt one of the following decisions:

1) to reject the recourse, maintaining the challenged judgement, if:

- a) the recourse is unfounded;
- b) the recourse was not filed in due time;
- c) the recourse is inadmissible;

2) to admit the recourse, cassating the judgement totally or partially, and shall take one of the following solutions:

- a) to dispose the acquittal of the person or the dismissal of the criminal proceeding in the cases provided by the present Code;
- b) to re-judge the case and to adopt a new judgement;
- c) to dispose the re-judgement of the case by the merits instance if the Supreme Court of Justice admits the recourse and it is necessary to administer new evidence

#### **Article 450. Complementary issues**

(1) The recourse instance, settling the recourse, shall also solve complementary issues provided for in article 416, applying them appropriately.

(2) When the recourse instance forwards the case to be re-judged, under article 449 item.2) letter c), it shall also deliver on the new evidence to be administered.

#### **Article 451. Re-judgement procedure and its limits**

The re-judgement procedure and its limits shall be regulated by the provisions of art.436, which shall apply accordingly.

**CHAPTER V**  
**EXTRAORDINARY REMEDIES**

**Section 1**

**Annulment recourse**

**Article 452. Annulment recourse**

(1) The Prosecutor general, as well as the persons mentioned in art.402 item.2)-4) through a counsel, may challenge with annulment recourse, at the Supreme Court of Justice, any irrevocable judgement after the exhaustion of the ordinary remedies.

(2) The Prosecutor general may declare a annulment recourse in favor of the defendant against the irrevocable judgements, even if the ordinary remedies were not used.

**Article 452. Grounds of the annulment recourse**

(1) The irrevocable judgements of conviction, acquittal, or of criminal trial dismissal may be challenged with annulment recourse in order to repair errors of law committed at the case trial, in the following cases:

1) when the recourse has effect on the situation of the parties in trial:

- a) when not all the constitutive elements of were met, or when the court has delivered a conviction judgement for another perpetration than the one the convict was charged with, except cases when the actions are legally re-qualified under a milder law;
- b) when the defendant was convicted for a perpetration that is not provided by the criminal law;
- c) when the convict has been previously finally tried for the same perpetration, or if there is a cause for removal of criminal liability, or the application of punishment was removed by a new law or canceled by an amnesty or pardoning act, or if the convict deceased;
- d) when an international court by its judgement has established a violation of the human rights and freedoms that may be repaired by a new trial
- e) when the Constitutional Court has acknowledged as unconstitutional the provision of the law applied in the respective case;

2) the recourse may be declared only in convict's favor:

- a) the panel of judges was not lawfully legally formed, or the provisions of articles 30, 31, 33 were violated;
- b) the case was tried in the absence of the prosecutor, defendant, as well as defense counsel, interpreter and translator, when this was mandatory under the law;
- c) the court has allowed a remedy that is not stipulated by law or the appeal or ordinary recourse were filed overdue;

(2) Other final judgements may be challenged by annulment recourse only if they are contrary to the law.

(3) The annulment recourse shall be inadmissible if it is not based on grounds stipulated in this article, or is declared repeatedly, invoking the same grounds.

#### **Article 454. The term of the annulment recourse**

(1) The annulment recourse in the favor of the convict or the person in the respect of whom the criminal proceeding was dismissed may be declared at any time, even after the decease, regarding the criminal side, while regarding the civil side – only if its settlement influences on the criminal side.

(2) In other cases, the annulment recourse may be declared only within a year since the judgement remained irrevocable, if a fundamental vice from the previous proceeding affected the challenged judgement

(3) In the case provided in art.453 par.(1) item.1) letter d), the annulment recourse may be declared in a 6-months term since the date the judgement adopted by the international court is communicated to the Government.

#### **Article 455. Declaration and withdrawal of the annulment recourse**

(1) The annulment recourse shall be declared, in typed form, with the Supreme Court of Justice.

(2) The annulment recourse application shall contain:

- 1) the name of the court where the recourse is brought;
- 2) the last name and first name of the recourse applicant, his procedural capacity, domicile or residence;
- 3) the name of court that delivered the sentence, the date of the sentence, the last name and first name of the defendant regarding whom the judgement is challenged, the perpetration and the resolution of the sentence, the person that has declared the appeal and the grounds invoked in appeal;
- 4) the name of the court that has adopted the decision in appeal, the date of the decision in appeal, the resolution of the decision in appeal and the justification for admission or rejection of the appeal, the person that has declared recourse and the grounds invoked in recourse;
- 5) the name of the court that has adopted the decision in recourse, the date of adoption of the decision in recourse and the justification for admission or rejection of the recourse;
- 6) a mention regarding the judgement against which the annulment recourse is declared;
- 7) the content and grounds of the annulment recourse and the mentioning of the cases provided under art.453 and the justification of the illegality of the challenged judgement, and in case of declaration annulment recourse in the detriment of the convict – which fundamental vice from the previous procedure affected the challenged judgement, and why the respective case presents a particular interest for the case-law;
- 8) a formulation of proposals regarding the requested judgement;
- 9) the date of the recourse declaration and the signature of the recourse applicant.

(3) In the case the annulment recourse is declared by another party than the prosecutor, the application of annulment recourse shall be drawn up by a counsel with special attributions in this field.

(4) The annulment recourse shall be attached the copies of the challenged judgements, as well as copies of the recourse for each party in trial.

(5) Before the beginning of the annulment recourse consideration, it may be retracted by



the person that declared it.

#### **Article 456. Preparatory procedural acts and admissibility of the annulment recourse**

The preparatory procedural acts of the annulment recourse instance and the procedure of the annulment recourse admissibility shall be carried out in compliance with the provisions of art.431 and 432, which shall apply accordingly.

#### **Article 457. Trial and settlement of the admitted annulment recourse**

(1) The admitted annulment recourse shall be tried by the Grand Chamber or, if the case, by the Plenary of the Supreme Court of Justice.

(2) At the trial of the annulment recourse there shall participate the Prosecutor General and the defense counsel of the party that has declared the recourse or in whose respect the recourse has been declared. In case the party in whose respect the recourse has been declared does not have a chosen defense counsel, the Supreme Court of Justice shall secure him an ex officio defense counsel, under the law.

(3) The settlement of the annulment recourse shall be done under the articles 434-436, which shall apply accordingly.

### **Section 2**

#### **Revision of the criminal trial**

#### **Article 458. Cases of criminal trial revision**

(1) Irrevocable court judgements shall be subject to revision, concerning both their criminal and civil sides.

(2) When a court judgement concerns several persons or several crimes, revision may be required for each of the perpetration or of the perpetrators.

(3) Revision may be required in cases where:

- 1) it was established, by an irrevocable judgement, that the witness willfully made false statements or the expert willfully submitted false conclusions, or that corpus delicti, minutes concerning criminal prosecution actions or court's actions or other documents are false, or that a wrong translation was willfully made, and, as a consequence, an ill-founded or illegal judgement was adopted;
- 2) it was established, by a final judgement, that during the trial of this case judges and prosecutors committed abuses qualified as crimes;
- 3) it was established, by a final judgement, that the persons that conducted the criminal prosecution committed abuses qualified as crimes and, as a consequence, an ill-founded or illegal judgement was adopted;
- 4) the circumstances were established of which the court was not aware when the judgement was delivered and which, by themselves or together with the previously established circumstances, prove the convict's innocence or that he committed a less severe or severer crime than the one he was convicted for, or prove the guilt of the acquitted person or of the person in the respect of whom the trial was dismissed;
- 5) two or more final judgements cannot be conciliated;

(4) If the sentence cannot be delivered because the term of limitation for the incrimination

is over or an amnesty act has been declared or because some persons were pardoned, as well as because of the decease of the defendant, circumstances provided in par.(3) items 1)-3) of this article shall be established by an investigation conducted under provisions of articles 443 and 444.

#### **Article 459. Criminal trial revision terms**

(1) The revision of a judgement of acquittal, criminal trial dismissal as well as the revision of a conviction judgement for the reason that the punishment is too light or that the convict shall be applied a law concerning severer crime, shall be made only within the term of limitation for incrimination, set in article 60 of the Criminal Code and within 1 year at most after the detection of circumstances provided in art.458 par.(3) are discovered.

(2) The revision in favor of the convict of a conviction judgement, in case of detection of circumstances provided for in art.458 par.(4), shall not limited by any terms.

(3) The decease of the convict shall not impede the criminal trial revision, if circumstances provided in art.458 par.(3) are discovered, in case this is about convict's rehabilitation.

#### **Article 460. The opening of revision procedures**

(1) The revision procedure shall be opened based on the application addressed to the prosecutor of the level of the court, which tried the case in first instance.

(2) Revision applications may be declared by:

- 1) any party in a trial, within the limits of his procedural capacity;
- 2) convict's spouse and close relatives, even after his decease.

(3) The revision application shall be made in written, with an indication of the ground for revision it is founded on and of the means of evidence proving it.

(4) Management bodies or managers of legal entities who are aware of any perpetration or circumstance that could motivate the revision, shall be bound to notify the prosecutor.

(5) The prosecutor may initiate ex officio the revision procedure.

(6) If any of the grounds stipulated in article 458 exist, the prosecutor, within his competence, shall issue an ordinance of opening the revision procedure and shall investigate the circumstances or shall charge the criminal prosecution officer to do this. During the investigation of newly discovered circumstances, there may be carried out, if necessary, hearings, field investigations, expert examinations, levy of objects and documents and other criminal prosecution actions, under the provisions of this Code

(7) While investigating newly discovered circumstances, the Prosecutor General shall be entitled to file a request for the suspension of judgement enforcement within the revision request's limits.

#### **Article 461. Sending to court the investigation material concerning the revision**

After finishing the investigation of new circumstances, the prosecutor shall submit all the materials, together with his conclusions, to the merits instance, and if the revision application grounds consists of existence of some judgements that cannot be conciliated, the materials shall be submitted to the competent court under provisions of article 42.

## **Article 462. Actions preliminary to the admission of revision**

(1) Upon reception of materials sent by the prosecutor, the president of the court shall allocate them for consideration under the provisions of article 344. The judge who was allocated the materials shall set a term for consideration of the revision application, provided that the revision was admitted, and shall summon the interested parties.

(2) When the person, in whose favor or detriment the revision was requested, is under arrest, even in another case, the president of the hearing shall dispose his bringing before the court and shall take measures to secure him with an ex officio defense counsel, if he does not have one.

(3) At the set term, the court, hearing the present parties, shall examine whether the revision application was drawn up under the law and whether the evidence administrated in the course of the investigation offer enough data for the admission of revision. The court may verify any of the evidence, on which the request is based, or may, if necessary, administrate new evidence upon parties' request. Persons listed in art.458 par.(3) items 1)-3) may not be heard as witnesses in the case to be revised.

(4) The court, on the grounds of the found facts, shall dispose by order the admission of the revision application or, by sentence, its rejection.

(5) Upon admission of the revision request, as well as during the entire re-judgement procedure, the court may maintain the suspension of enforcement or may reasonably suspend, totally or partly, the enforcement of the judgement subject to revision.

(6) In case of admission of the revision application, for the reason that there are several judgements that cannot be conciliated, the cases in which these judgements were delivered shall be joined for re-judgement.

## **Article 463. Re-judgement of a case after admission of the revision**

(1) In case revision was admitted, the case shall be re-judged under first instance court procedures.

(2) The court, if finds necessary, upon parties' request, shall investigate again the evidence administrated during previous trials or on the occasion of the revision request admission.

## **Article 464. Judgements after the re-judgment**

(1) The court, if finds the revision request as founded, shall annul the judgement to the extent to which the revision was admitted or the judgements that cannot be conciliated and shall deliver a new judgement under art.382-399 and 410, which shall apply accordingly, and if the revision application is considered as ill-founded, shall reject it.

(2) At the same time, the court shall, if necessary, dispose the reimbursement of paid fines and of confiscated goods, as well as of judicial expenses, that the person, in whose favor the revision was admitted, was not bound to pay, as well as the calculation of uninterrupted work experience for the duration of imprisonment penalty carried out.

## **Article 465. Remedy after the re-judgment**

The court sentences after revision, delivered under art.462 par.(4) and article 464, may be challenged with appeal and recourse, according to art.400 and 420.

## **CHAPTER VI**

### **ENFORCEMENT OF JUDGEMENTS**

#### **Article 466. The court judgement's becoming final and its enforcement**

(1) A court judgement in a criminal case shall become enforceable at the date when it becomes final.

(2) The judgement of a first instance shall stay final:

- 1) at the date of delivery, if the judgement is not subjected to appeal or recourse;
- 2) at the date of expiration of the appeal term:
  - a) when the appeal was not declared in due term;
  - b) when the declared appeal was withdrawn within the set term;
- 3) at the date of appeal's withdrawal and dismissal, if that has happened after the expiration of appeal term;
- 4) at the date of recourse term expiration, in the case of judgements that are not subject to appeal, or if the appeal has been rejected:
  - a) when the recourse was not declared in due term;
  - b) when the declared recourse was withdrawn within the set term;
- 5) at the date of withdrawal of the recourse declared against judgements mentioned in item 4) and dismissal of the recourse procedure, if this happened after the recourse term expiration;
- 6) at the date of the delivery of judgement by which the declared recourse against the decisions mentioned in item 4) has been rejected.

(3) The judgements of the appeal instance shall stay final at the date of the delivery of the decision in appeal.

(4) The judgement of the recourse instance against the judgements for which the law does not provide the remedy of appeal shall stay final at the date of its delivery if:

- 1) the recourse has been admitted and the trial has ended in the recourse instance, without re-judgement;
- 2) the case has been re-judged by the recourse instance, after the recourse was admitted;
- 3) it comprises the obligation of judicial expenses' payment, in case of recourse's rejection.

(5) The judgements mentioned in par.(2) and (4) shall stay irrevocable at the date when they became final. The judgement of the recourse instance, declared against the decision of the appeal instance, shall become irrevocable at the date of its delivery.

#### **Article 467. The mandatory nature of final court judgements**

(1) The court final judgements shall be mandatory for all natural persons and legal entities in the country and shall have enforceable force throughout the territory of the Republic of Moldova.

(2) The solicited co-operation in the enforcement of final court's judgements shall be mandatory for all natural persons and legal entities.

#### **Article 468. Sending the court judgement for enforcement**

(1) Sending the court judgement for enforcement shall be the responsibility of the court that has tried the case in first instance. The judgements delivered in first instance by the courts of appeal shall be executed by the body charged with enforcement of the judgements' execution, situated with the court in the territorial area of which the court of appeal is located. The final court judgements delivered in first instance by the Supreme Court of Justice shall be enforced by the body charged with the enforcement of the judgements' execution, situated with the court in the territorial area of which the Supreme Court of Justice is located. The disposition regarding the judgement's execution, shall be sent by the president of the court, accompanied with a copy of the final judgement to the body charged with the enforcement of the sentence execution within a 10 days-term since the date when the judgement became final, according to the provisions of the execution legislation. If the case was tried in appeal and/or recourse, the copy of the sentence shall be attached the copy of the decision of the appeal and/or recourse instance.

(2) The bodies charged with the enforcement of the judgement's execution, shall communicate immediately, but not later than after 5 days, about the enforcement of the judgement's execution to the court that has sent the judgement. The administration of the penitentiary shall communicate to the court that has sent the judgement the place where the convict is serving the punishment.

(3) The court that has delivered the sentence shall be obliged to oversee the execution of the judgement.

(4) The court that has delivered the sentence shall be obliged to communicate in a 10 days term to the local military administration body about the sentence that became final, concerning the convicted recruit.

(5) The military ID cards of the persons in military service and the special certificates of the recruits convicted to jail or life detention shall be sent by the court to the respective local military administration bodies.

#### **Article 469. Issues that are to be solved by the court at the execution of punishment**

(1) At the punishment execution the court shall solve the issues regarding changes in a judgement's enforcement, namely:

- 1) conditional liberation from the punishment before term (article 91 of the Criminal Code);
- 2) replacement of the unexecuted part of punishment with a milder punishment (article 92 of the Criminal Code);
- 3) liberation from the punishment execution of seriously ill persons (article 95 of the Criminal Code);
- 4) postponing of the punishment execution for pregnant women and woman that have children under the age of 8 years (article 96 of the Criminal Code), cancellation of postponing their punishment execution, liberation from the punishment, replacement of punishment or sending for execution of the unexecuted punishment;
- 5) judicial rehabilitation (article 112 of the Criminal Code);
- 6) changing of the type of penitentiary (article 72 of the Criminal Code);
- 7) replacement of the fine with arrest or imprisonment (article 74 of the Criminal Code);
- 8) replacement of the unpaid community work with arrest (article 67 of the Criminal Code);
- 9) cancellation of conviction with the conditional suspension of execution or of

the conditional liberation before term with the sending of the convict to execute the unexecuted punishment (articles 90, 91 of the Criminal Code);

10) search or the convicted persons that are absconding from the bodies that enforce the punishment;

11) sentence execution in case of an other unexecuted judgements, if this was not solved at the adoption of the last judgement;

12) computation of the preventive arrest or home arrest, if this was not solved upon the adoption of the judgement of conviction;

13) prolongation, changing or cessation of medical constraint measures to mentally alienated persons (article 101 of the Criminal Code);

14) liberation from punishment or lightening of punishment through the adoption of a law that has a retroactive effect;

15) liberation from punishment on the ground of an amnesty act;

16) liberation from punishment execution due to expiration of the term of limitation for the conviction sentence execution (article 97 of the Criminal Code);

17) explanation of any suspicions or unclearness that arise with the occasion of punishment execution;

18) other issues stipulated by law that arise during the punishment execution by the convicts.

(2) Issues concerning execution of the court judgements regarding the civil action or other patrimonial issues shall be settled under the provisions of the execution legislation regarding the execution of the civil documents.

#### **Article 470. Court that solves the issues concerning the execution of court judgements**

(1) Issues concerning the punishment execution, stipulated in art.469, par.(1), items 1)- 4), 6), 8)-15), and 18) shall be solved by the court from the territorial jurisdiction of the enforcement body or institution.

(2) Issues concerning the judicial rehabilitation shall be solved by the court from the place of residence of the person that is soliciting the rehabilitation.

(3) Issues concerning the explanation of any suspicions or unclearness that arise at the punishment execution shall be solved by the court that has delivered the final judgement.

#### **Article 471. Manner of solving the issues concerning the execution of court judgements**

(1) Issues concerning the execution of court judgements shall be solved by the instruction judge at the request of the body or the institution that is enforcing the execution of the punishment. In the court session the representative of the body or the institution that has declared the request shall be summoned.

(2) As grounds for the consideration of issues stipulated in art.469, par.(1), items 3), 5), 11), 12), 14)-16) and 18) may also be the convict's request.

(3) At the solving of issues stipulated in art.469, par(1), items 1), 2), 4)-9), 11), 14)-17) in the court session, the participation of the convict shall be mandatory. The convict shall be entitled to get acquainted with the materials presented to the court, to participate at their examination, to file applications, including challenging ones, to give explanations, to present evidence.

(4) The convict may defend his interests through a defense counsel. At the solving of issues

concerning sentence execution regarding juveniles, concerning persons with physical or psychical defects that are obstructing their possibility to defend themselves, persons that do not know the language of the procedure and other cases when the interest of justice so requires, the participation of the defense counsel shall be mandatory.

(5) At the solving of issues stipulated in art.469 par.(1), items 3) and 13) the participation of the representative of the medical commission that presented a conclusion shall be mandatory.

(6) At the solving of issues concerning the execution of court judgments concerning civil action in the court session there shall be summoned both the convict and the civil part or his representative. The non-appearance of the civil part or his representative shall not impede the solving of the case.

(7) The prosecutor's participation in the court session shall be mandatory.

(8) The case examination shall begin with the presentation of the report of the representative of the body that has filed the request or with the explanation of the person that has filed the application. After that the presented materials shall be examined, the explanations of the persons present at the session shall be heard, the prosecutor's opinion, afterwards the court shall adopt an order.

#### **Article 472. Challenging of the court orders concerning solving of issues dealing with the execution of court judgements**

The court order concerning solving of issues dealing with the execution of court judgements may be challenged by the interested persons in a 10 days term with recourse which shall be tried accordingly to provisions of the Title II Chapter IV Section 2 of the Special Part.

#### **Article 473. Complaints against acts of the body or institution that is enforcing the execution of the court judgement of convection**

(1) Against the acts of the body or institution that is enforcing the execution of the court judgement of conviction, the convict, as well as other persons whose legitimate rights and interests have been violated by these bodies or institutions, may file a complaint to the instruction judge from the institution from the territorial jurisdiction of which the respective body or institution are.

(2) The settlement of the complaint against the acts of the body or institution that is enforcing the execution of the court judgement of conviction shall be done according to the provisions of the article 471.

### **Title III**

## **SPECIAL PROCEDURES**

### **CHAPTER I**

#### **PROCEDURES IN CASES CONCERNING JUVENILE OFFENDERS**

#### **Article 474. General provisions**

(1) Criminal prosecution and trial of juvenile cases, as well as execution of court judgements in these cases shall be made under the common procedures, with completions and derogations of this chapter.

(2) The provisions of this chapter shall apply in cases concerning the juveniles, persons who, at the moment of the crime commission, have not reached the age of 18 years.

(3) The trial of a juvenile case, shall not be, as a rule, public.

#### **Article 475. Circumstances to be established in juvenile offender cases**

(1) During the criminal prosecution and the trial of juvenile cases, along with circumstances stipulated in article 96, there shall be established:

- 1) the age of the juvenile (day, month, year of birth)
- 2) juvenile's living and education conditions, his degree of intellectual, will and psychological development, character and temperament particularities, his interests and needs;
- 3) influence on the juvenile by adults or other juveniles;
- 4) reasons and conditions which have contributed to the commission of crime.

(2) If it is found that the juvenile suffers of a mental illness, which is not related to a psychic illness, there shall also be established whether he was fully aware of the commission of the perpetration. In order to establish these circumstances, the parents of the juvenile, teachers, educators and other persons who may provide the necessary information shall be heard, as well as a social investigation, submission of necessary documents and other criminal prosecution and judicial acts shall be required

#### **Article 476. Severance of juvenile cases**

(1) If the crime was committed, together with juveniles, by adults, the court shall use as much as possible severance for this juvenile offender case, creating a separate file.

(2) If severance is not possible, the provisions of this chapter shall be applied appropriately only to the juvenile.

#### **Article 477. Apprehension and use of preventive measures to juveniles**

(1) When solving the issues related to preventive measures concerning the juvenile, in each case there shall be discussed the possibility of his transmittal under supervision in accordance with provisions of article 184.

(2) Apprehension as well as pretrial arrest of the juvenile, based on the grounds stipulated in articles 166, 176, 185, 186, may only be applied in exceptional cases, when severe, very severe and extremely severe crimes were committed.

(3) Juvenile's parents or other legal representatives shall be immediately notified of his apprehension or pretrial arrest, of which mention shall be made in the minutes of apprehension.

#### **Article 478. Summoning of juvenile suspect, indicted or defendant**

The summoning of the juvenile suspect, indicted or defendant, who is not under arrest, to the criminal prosecution body or court shall be done through his parents or other legal representatives, and in case the juvenile is in a special juvenile institution, through the administration of this institution.



#### **Article 479. Hearing of juvenile suspect, indicted or defendant**

(1) The hearing of juvenile suspect, indicted or defendant shall be carried out under the conditions of article 104 and may not exceed 2 uninterrupted hours, and totally may not exceed 4 hours a day.

(2) The participation of the defense counsel, teacher or psychologist shall be mandatory in hearings of the juvenile suspect, indicted or defendant.

(3) The teacher or psychologist shall have the right, with the consent of the criminal prosecution body, to put questions to the juvenile, and at the end of the hearing, to take knowledge of the minutes or, upon case, written statements of the juvenile and to make written observations concerning their fullness and correctness. These rights shall be explained to the teacher or psychologist prior to juvenile's hearing, notice of which shall be made in the respective minutes.

#### **Article 480. Participation of the legal representative of the juvenile suspect, indicted or defendant the in criminal proceeding**

(1) Participation of the legal representative of the juvenile suspect, indicted or defendant in the criminal proceeding shall be is mandatory, with the exception stipulated in this article.

(2) The legal representative of the juvenile suspect, indicted or defendant shall be admitted in the criminal proceeding since the apprehension or pretrial arrest, or of the first hearing of the juvenile who is not apprehended or arrested, through an ordinance issued be the criminal prosecution body. Upon admission of the legal representative of the juvenile suspect, indicted or defendant in the trial, he shall be provided with a written information about rights and duties stipulated in articles 78, of which mention shall be made in the ordinance.

(3) The legal representative of the juvenile suspect, indicted or defendant may be removed from the criminal proceeding and replaced with another one, when possible, if there are grounds to consider that his actions are damaging the juvenile's interests. The criminal prosecution body or, if the case, the court, shall adopt a motivated decision/judgement about the removal and replacement of juvenile's legal representative.

#### **Article 481. Hearing of a juvenile witness**

(1) The manner of summoning and hearing a juvenile witness shall be carried out under the conditions provided in art.105, 109 and 478-480, which shall apply accordingly.

(2) The juvenile witness, before the start of the hearing, shall be explained his rights and obligations u8nder art.90, including the making of truthful statements. The juvenile witness shall not give the oath.

(3) The legal representative as well as, if the case, the representative according to provisions of art.91 and 92 shall participate at the hearing of the juvenile witness.

#### **Article 482. Termination of criminal prosecution of a juvenile**

Upon termination of the criminal prosecution concerning a juvenile, the criminal prosecution body, by an motivated ordinance, may avoid presenting to the juvenile indicted certain materials of the criminal prosecution, which, in its opinion, may influence the juvenile in a negative way, but these materials shall be presented to juvenile's legal

representative.

**Article 483. Dismissal of criminal proceeding with juvenile's liberation of criminal liability**

(1) If during the criminal prosecution in cases of insignificant or less severe crimes committed by a juvenile, it is found that the juvenile committed such a crime for the first time and his correction crime and his correction may be achieved without holding him criminally liable, the investigation body may propose to the prosecutor to dismiss the criminal prosecution against the juvenile and to file a request with the court in order to liberation the juvenile of criminal liability, under art.54 of the Criminal Code and the juvenile's placement in a special education and re-education institution or in a medical and re-education institution and the imposing of educational coercive measures in accordance with provisions of art.104 of the Criminal Code.

(2) The request of the prosecutor concerning juvenile's liberation of criminal liability shall be examined by the instruction judge under the provisions of art.308. If the instruction judge rejects the request to liberate the juvenile of criminal liability, the prosecutor shall annul the liberation ordinance and shall send the case to court, according to the common procedure, with the indictment.

(3) The control over enforcement by the juvenile of requirements provided by the educational measure, applied to him based on the court order issued by the instruction judge, shall be carried out by a specialized state body, which has to ensure the juvenile's correction. If the juvenile systematically does not fulfill the requirements provided by the educational measure, upon the request of the specialized body which ensures the juvenile's correction, the court shall annul the applied measure and shall send the materials to the prosecutor in order for him to annul the liberation ordinance and to send the case to court with the indictment

(4) Dismissal of the criminal proceeding on the grounds mentioned in par.(1) shall not be admissible if the juvenile or his legal representative are against it.

(5) Upon the trial of the merits of the criminal case the court shall be entitled to dismiss the criminal proceeding on the grounds stipulated in par.(1) and to apply the provisions of art.54 and 104 of the Criminal Code.

(6) If the educational measure was applied under par.(5), simultaneously with the annulment of the educational measure, the court shall determine juvenile's criminal penalty, according to the sanction of the law based on which he was convicted.

**Article 484. Removal of juvenile offender from the court session**

(1) Upon the request of the defense counsel or legal representative of the juvenile offender, the court, hearing the parties' opinions, shall have the right to remove the juvenile defendant from the courtroom during the investigation of circumstances that may have negative influence on the juvenile.

(2) Upon the juvenile's return to the courtroom, the presiding judge shall inform the juvenile, in an accessible manner for him, of the content of investigations which took place in his absence and shall provide him the opportunity to ask questions to the persons heard in his absence.

(3) When in one case there are several defendants, some of which are under the age of 16 years, the court, after having heard those who have not reached the age of 16, may order

their removal from the courtroom, if it considers that the further judicial investigation and debates may negatively affect the juveniles.

**Article 485. Issues to be solved by the court upon the adoption of the sentence in a juvenile trial**

(1) Upon adoption of the sentence in a juvenile case, besides issues listed in art.385, the court shall examine the possibility of juvenile's liberation of criminal liability under the provisions of article 93 of the Criminal Code or the conditional suspension of the punishment execution by the juvenile under art.90 of the Criminal Code.

(2) If the juvenile is liberated of criminal penalty with placement in a special education and re-education instruction or in a medical and re-education institution, as well as with the imposing of educational coercive measures, provided under article 104 of the Criminal Code, the court shall inform about this the specialized state body and shall charge it to exercise control over convicted juvenile's behavior.

**Article 486. Juvenile's liberation of criminal penalty with application of educational measures by the court**

If the court finds the conditions stipulated in art.93 of the Criminal Code, by delivering a conviction sentence, it may order the juvenile defendant's liberation of criminal penalty and shall apply educational measures provided in article 104 of the Criminal Code.

**Article 487. Juvenile's liberation of the penalty and his placement in a special education and re-education institution or in a medical and re-education institution**

(1) If the court finds the existence of circumstances stipulated in article 93 of the Criminal Code, by delivering a conviction sentence, it may order the liberation of criminal penalty and his placement in a special education and re-education institution or in a medical and re-education institution until the juvenile reaches the full age, but for no longer than the maximum penalty duration under the provisions of the Criminal Code concerning juvenile offenders.

(2) Juvenile's placement in a special education and re-education institution or in a medical and re-education institution may be ceased before he reaches full age, if the juvenile, due to the correction, does not need any other influence through this measure. Juvenile's placement in a special education and re-education institution or in a medical and re-education institution may be prolonged after the reaching of the full age only until the person graduates the secondary or vocational school. The issue of cessation or prolongation of the person's stay in the above-mentioned institutions shall be solved based on the request of the specialized state body ensuring the juvenile's correction, by the judge of the court that delivered the sentence or of the court on the territory of which the juvenile resides, within a 10 days term since the request was received.

(3) For the examination of this request, the convicted juvenile, his legal representative, defense counsel, prosecutor and the specialized state body's representative shall be summoned. The non-presentation of these persons, except for the prosecutor, shall not prevent the request examination if the case may be examined in their absence.

(4) During the court session, there shall be examined the conclusion of the specialized state body which declared the request, the opinions heard of persons participating in the session, afterwards the court shall make issue an order on the admission or the rejection of the

request. The court order may be challenged with recourse by the interested persons.

## **CHAPTER II**

### **PROCEDURES OF IMPOSING MEDICAL COERCIVE MEASURES**

#### **Article 488. Grounds for imposing medical coercive measures**

(1) Medical coercive measures, included in article 99 of the Criminal Code, shall be applied by the court to persons who committed crimes, regulated by the criminal law, in the state of irresponsibility, as well as to persons who became psychically ill after having committed the crime, and for these reasons they are not able to realize and control their actions, if these persons are socially dangerous by the nature of the committed perpetration or because of their illness.

(2) Medical coercive measures shall be applied under the general provisions of this Code, with the exceptions and completions of this chapter.

#### **Article 489. Criminal prosecution**

(1) In proceedings concerning crimes committed by irresponsible persons, as well as crimes committed by persons, who became psychically ill after having committed the perpetration, criminal prosecution shall be conducted.

(2) In conducting criminal prosecution under the conditions of par.(1), the following issues shall be clarified:

- 1) time, place, manner and other circumstances in which the crime was committed;
- 2) whether the crime was committed by that person;
- 3) whether the person who committed the crime was mentally ill in the past; the degree and the nature of his illness at the moment of crime commission or during the case investigation;
- 4) the behavior of the person both before and after crime commission;
- 5) the nature and amount of the damage caused by the crime.

(3) This individual shall be subject to judicial psychiatric expert evaluation only if there are enough data showing that this person committed the crime, which is the object of the criminal prosecution.

#### **Article 490. Hospitalization in a psychiatric institution**

(1) Upon finding the illness of the person who is subjected to criminal prosecution and who is under arrest on the grounds of the prosecutor's request, the instruction judge shall order his hospitalization in a psychiatric institution adjusted for imprisonment of arrested persons.

(2) Hospitalization in a psychiatric institution of persons who are not under arrest shall be made under the provisions of article 152.

#### **Article 491. Severance of cases concerning a person who committed a damaging act prohibited by the criminal law in the state of irresponsibility or**

### **who became psychically ill after the crime commission**

If during the criminal prosecution of crimes committed in participation, it is found that one of the participants committed the crime irresponsibly or became psychically ill after the crime commission, their cases shall be severed in a separate file

### **Article 492. The rights of the person to whom medical coercive procedures are applied**

(1) The person to whom medical coercive procedures are applied shall enjoy, if by the conclusion of psychiatric expert evaluation the nature and the degree of his illness do not prevent him from doing this, the rights stipulated in article 66, appropriately applied.

(2) The person mentioned in par.(1) shall be given written information concerning his rights, and this fact shall be mentioned in the minutes.

### **Article 493. Participation of the legal representative**

(1) The legal representative of the person, against whom the medical coercive measure application is considered, shall mandatory participate in the procedure.

(2) The legal representative of the person subject to procedure medical coercive measure shall be recognized from among one of his close relatives, and in their absence, another person, through criminal prosecution body ordinance or court order.

(3) The legal representative shall have the rights and duties stipulated in article 78, accordingly applied. The respective minutes shall refer to written notification of the legal representative of his rights and duties as well as to necessary explanations provided to him.

### **Article 494. Participation of the defense counsel**

(1) In medical coercive enforcement procedures defense counsel's participation shall be mandatory from the moment of the issuance of the ordinance that disposes the expert evaluation in a psychiatric institution of the person regarding whom the procedure is carried out, if the defense counsel was not admitted previously in this proceeding.

(2) From the moment the defense counsel participates in the proceeding, he shall have the right to meet with the person whose interests he is defending without any limits concerning the number or duration of these meetings, if the state of health of the first is not an obstacle. The defense counsel shall also enjoy other rights stipulated in article 68, appropriately applied.

### **Article 495. Termination of the criminal prosecution**

(1) Upon termination of the criminal prosecution, the prosecutor shall decide through an ordinance:

- 1) to dismiss the criminal proceeding, in cases stipulated in art.294, or if the nature of the act and the mental state of the person who committed it is not a danger for the society;
- 2) to send the case to court, if there are grounds for applying medical coercive measures to the person who committed the crime.

(2) The ordinance concerning the sending of the case to court, except for the provisions of art.255, shall contain all the circumstances of the case, found during the criminal prosecution, the grounds for applying medical coercive measures, as well as defense

counsel's and other people's arguments rejecting grounds for applying medical coercive measures, if these were stated.

(3) The criminal prosecution body shall notify the person regarding whom the procedure is carried out, if the nature and degree of his illness do not prevent him from participating in procedural actions, his legal representative or counsel and the damaged party about the criminal prosecution's termination or about the sending of the case to court. The persons listed before shall be given explanations about their right to know the case file materials, as well as when and where they may fulfill this right. The manner of presenting the file materials, of filing applications and their settlement shall be regulated by art.294-295.

(4) The ordinance concerning the termination of the criminal proceeding shall be issued under the rules stipulated in art.285. In case of termination of the proceeding, if the respective person, by the nature of his actions or psychic state is not dangerous for the society, but is recognized as being mentally alienated, the criminal prosecution body shall notify about this the local health protection bodies.

(5) The legal representative of the person to whom these procedures are applied shall be given a copy of the ordinance concerning the sending of the case to court.

#### **Article 496. Preparatory measures for the court hearing**

(1) The judge who was allocated the case shall set the date of its examination in the court session, and notify the prosecutor, the defense counsel and the legal representative of the person, whose case will be tried and shall order the summoning of witnesses, injured party, and, if necessary, of the expert.

(2) The court shall have the right to order the summoning of the person, whose case will be tried, if the character and the degree of his illness do not prevent him from appearing in court.

#### **Article 497. Trial of the case**

(1) Cases sent to court on the grounds of art.495 shall be in a court session, under the provisions of the Special Part Title II Chapters I and III, with the mandatory participation of the prosecutor and the defense counsel.

(2) During the court session the evidence that prove that the particular person has committed or not a crime, provided in the criminal law, shall be verified, the experts' conclusions on the psychic state of the defendant shall be heard and other circumstances essentially important in solving the issue concerning the application of medical coercive measures shall be checked.

(3) Upon completion of the judicial investigation, the court shall hear the opinions of the prosecutor, damaged party, defense counsel and legal representative.

#### **Article 498. Settlement of the case by the court**

(1) The court shall settle the case through a sentence.

(2) Upon adoption of the sentence, the court shall settle the following issues:

- 1) if a damaging act, provided by the criminal law occurred;
- 2) if this act has been committed by the person who is tried;
- 3) if this person has perpetrated the damaging act in a state of irresponsibility;

- 4) if, after committing the offence, this person became psychically ill, and does not realize or control his actions, and if this illness is not a temporary nervous disturbance that requires only the suspension of the trial;
- 5) if it is necessary to apply any medical coercive measure, and which is it specifically.

(3) Upon adoption of the sentence, the court also settle the issues stipulated in art.385, pae.(1), points 10) – 13).

#### **Article 499. The sentence concerning the application of medical coercive measures**

(1) If it is proven that this particular person has committed a crime, provided in the criminal law, being irresponsible, or this person, after committing the crime, became chronically psychically ill, which makes him not realize or control his actions, the court shall, under article 23 of Criminal Code, adopt either a sentence about his acquittal of penalty or, if the case, of criminal liability, or liberation from punishment and use of medical coercive measures, stating which of them shall be applied, or a sentence concerning the termination of the proceeding and non-application of such measures, in cases when, by the nature of the committed perpetration and his state of health, the person is not socially dangerous and does not require coercive treatment. In such cases, the court shall notify health protection bodies of the mentally ill person.

(2) In case the irresponsibility of the individual, who is being tried, has not been proved or the illness of the person that committed the crime does not prevent his punishment, the court shall dismiss the procedure concerning the application of medical coercive measures, returning the case to the prosecutor for criminal prosecution according to general procedure.

(3) In case it is not proven that the person participated in the crime commission, as well as in cases when circumstances listed in art.285 are found, the court adopt a sentence of dismissal of the criminal proceeding on the grounds established by it, regardless the existence and nature of illness of the person and shall notify the health protection bodies of the mentally ill person.

(4) The court shall also settle the issues stipulated in art.397 through its sentence.

#### **Article 500. Challenging the sentence concerning the application of medical coercive measures**

The court sentence concerning the application of medical coercive measures may be challenged in appeal or, if the case, in recourse before the hierarchically superior court, by the prosecutor, defense counsel, damaged party or his representative, the representative of the person tried.

#### **Article 501. Checking the necessity to continue, revoke or change the medical coercive measures**

(1) The court shall verify periodically, at least once in 6 month, the necessity to continue the application of medical coercive measures.

(2) If after the recovery of the person that was found irresponsible or after his health improvement it is no longer necessary to apply the medical coercive measure previously ordered, the court, following the proposal of the senior psychiatrist of the health protection body, to whom the medical institution where the given person is detained is subordinated,

proposal based on the advisory opinion of a medical commission, shall examine, under art. 469-471 the issue of the medical coercive measure's revocation or modification.

(3) The provisions of par.(1) and (2) shall apply to the person who became chronically psychically ill after the crime commission, if this person, after his health improvement, does not require medical coercive measures, even if he remains mentally alienated.

(4) The application for the verification, revocation or modification of the medical coercive measure may be filed by the person found irresponsible, his close relatives, as well as other interested persons. In these cases, the court shall require from the respective health protection bodies a motivated advisory note concerning the state of health of the person, in whose regard the application was filed.

(5) The issues mentioned in this article shall be settled by the court that has issued the order of application of the medical coercive measures, or by the court in whose jurisdiction the measures have been applied under articles 470-471.

#### **Article 502. Re-opening of the proceeding concerning the person to whom a medical coercive measure has been applied**

(1) If the person, to whom a medical coercive measure has been applied, on the grounds that after the crime commission he became psychically ill, recovers, fact ascertained by a medical commission, the court, on the grounds of the medical institution's advisory opinion, shall order, according to the provisions of the articles 469-471, a revocation of the medical coercive measure and shall solve the issues concerning sending of the file to the prosecutor for the continuation of the criminal prosecution or, if the case, to the respective court for the case trial.

(2) The time spent in the medical institution shall be included in the term of punishment.

#### **Article 503. Coercive treatment of persons suffering from chronic alcoholism or drug addiction**

(1) If the defendant suffers from chronic alcoholism or drug addiction and the crime committed by him is connected to this circumstance, the court, besides the punishment for the committed crime, may, under article 103 of the Criminal Code order a coercive treatment.

(2) The coercive treatment cessation shall be ordered, following the proposal of the respective medical institution, by the court that has delivered the sentence concerning the coercive treatment or the court in whose territorial jurisdiction the measure is applied.

### **CHAPTER III**

#### **PLEA BARGAIN PROCEDURE**

##### **Article 504. General notions**

(1) Plea bargain is a transaction concluded between the prosecutor and the indicted or, upon the case, defendant who had consented to plead guilty for a reduced sentence.

(2) Plea bargain shall be drawn up in written with the obligatory participation of the defense counsel, indicted or defendant in case of insignificant, less severe and severe crimes.

(3) The court shall be prohibited to participate in the discussions of plea bargain.



(4) The court shall be obliged to establish whether the plea bargain has been lawfully concluded, in a voluntary manner, with the participation of the defense counsel and whether there is enough evidence to confirm the conviction. Depending on these circumstances the court may accept or refuse the plea bargain.

(5) The plea bargain may be initiated by the prosecutor or by the indicted, defendant and his defense counsel.

(6) The plea bargain may be concluded at any time from the moment of bringing forward the charges until the beginning of the judicial investigation.

#### Article 505. Conditions of initiation and conclusion of the plea bargain procedure

(1) Upon initiation of the plea bargain, the prosecutor shall take into consideration one or more of the following circumstances:

1) the will of the indicted to cooperate at the conduction of the criminal prosecution or at the charging of other persons;

2) the attitude of the indicted towards his criminal activity and criminal antecedents;

3) nature and severity of the charges;

4) sincere regrets of the indicted and his readiness to assume responsibility for the committed acts;

5) free and benevolent will of the indicted to plead guilty as promptly as possible and to accept an abbreviated procedure;

6) probability of obtaining the conviction in the respective case;

7) the public interest of obtaining a faster trial with reduced expenses.

(2) If the prosecutor initiates the plea bargain procedure, he shall address to the defense counsel of and the indicted with this initiative. The defense counsel, shall discuss in confidentiality with the indicted, defendant:

1) all his procedural rights, including:

a) the right to a complete, fast and public hearing and that during this hearing he shall benefit of the presumption of innocence unless his guilt is legally proven, securing him all the necessary guaranties for his defense;

b) the right to bring evidence in his favor;

c) the right to require the hearing of the prosecution's witnesses in the same conditions as the defense's witnesses;

d) the right to preserve silence and the right against self-incrimination;

e) the right to make depositions, to conclude such a plea bargain and to waive his statement of guilt acknowledgement;

2) all the aspects of the case, including the ordinance of pressing criminal charges or, upon the case, indictment;

3) all the possibilities of defense, which he should benefit from in the respective case;

4) the maximal and minimal punishment which can be applied in case of plea bargain;

5) in case of concluding a plea bargain, the indicted, defendant's obligation to swear in front of the court that he will make truthful statements regarding the prosecuted crime and that this statements can be used against him in case of his giving false statements;

6) that the plea bargain is not a result of some violent acts and threats.

(3) The conditions of the plea bargain shall be signed by the prosecutor, indicted or defendant and defense counsel so that their signatures are present on each page of the plea bargain document.

(4) The plea bargain concluded by the prosecutor has to be approved by the hierarchically superior prosecutor who is verifying the observance of law at its conclusion.

(5) The defense counsel shall separately certify in written that the plea bargain by the indicted or defendant has been personally examined and that the procedure of its conclusion provided by the present article has been respected and that the plea bargain made by the defendant results from their previous confidential agreement.

(6) Before submitting the case with a plea bargain to trial, the indicted and his defense counsel shall be presented the materials of the file in order for them to take knowledge of it, according to the provisions of the articles 293 and 294, as well as they shall be handed the indictment act.

#### **Article 506. Examination made by the court of the plea bargain**

(1) The examination made by the court of the plea bargain shall be made in a public hearing, except for the cases when the law provides for the possibility of having a closed hearing.

(2) The court's hearing shall start with the observance of the provisions of the articles 354, 356 and 361.

(3) The court shall establish and register in the minutes of the hearing, besides the data provided in art.336 which shall be applied accordingly, also, the following:

1) whether there exists the statement given by the defense counsel on the willingness of the indicted to conclude the plea bargain;

2) whether the position of the defense counsel is in compliance with the position of the indicted;

3) the fact that the court requires the defendant to give the to give the oath in written, under the conditions of art.108, as well as to make statements, whether the indicted accepts the oath;

4) the indicted is questioned in the following respects:

a) whether he is aware of being under oath and that whether he will make false statements these could be used against him in another trial for giving false statements;

b) last name, first name, date, month, year of birth, domicile, family condition and other investigation data provided in the article 358;

c) whether he has been recently subjected to medical treatment due to mental disorder or drug addiction, or alcoholism. In case of an affirmative answer to this question, it shall be clarified by asking the defense counsel and the indicted whether the indicted is capable of expressing and adopting his own position;

d) whether he is not under the influence of drugs, medicines or alcoholic beverages of any kind at present. In case of an affirmative answer to this question, it shall be proceeded similarly to as it is provided in letter c);

e) whether he has received the ordinance of bringing criminal charges and the indictment and whether he had discussed them with his defense counsel;

f) whether he is satisfied with the quality of the legal assistance granted by his defense counsel;

g) whether the indicted wishes to adopt the plea bargain after the discussions held with his defense counsel.

5) while examining the agreement the court shall also establish:

a) whether the indicted has had the possibility to read and discuss with his defense counsel the bargain regarding his position signing it;

b) whether this bargain fully represents the agreement between the indicted and the state;

c) whether the indicted understands the conditions of the agreement referring to his position;

d) whether nobody else had made promises and given guaranties of any other kind to the indicted to influence him to adopt the position of pleading guilty in the respective case;

e) whether anybody had tried to force somehow the indicted to make him adopt the position of pleading guilty in the respective case;

f) whether the indicted pleads guilty on his own wish, because he is guilty;

g) if the plea bargain addresses to a severe crime, whether the indicted is aware that he is pleading guilty for the committing of a severe offence;

h) whether he had taken knowledge of the respective materials and gathered evidence of the case;

6) the court shall inform the indicted on the following:

a) maximal possible sanction prescribed by law and any minimal obligatory sanction prescribed for the respective crime;

b) if a conditional punishment is applied and if he violates these conditions, then the real punishment will be executed;

c) the court is entitled to decide that the indicted has to compensate the

caused damage to the damaged party and the judicial expenses;

d) if the bargain is accepted, the indicted will be able to challenge the sentence only regarding the established punishment and the procedural violations;

e) the fact that, by concluding the plea bargain the indicted deprives himself of the right to a trial according to the complete procedure with the observance of the presumption of innocence principle - rights provided by the art.66.

(4) After the fulfillment of this article's provisions, the court shall ask the defendant whether he supports the position of pleading guilty or not. If the answer of the indicted is in favor of supporting to plead guilty, he shall state in the court what he had committed related to the brought charges and his attitude about the evidence attached to the file. If the defendant does not support the plea bargain, he shall be entitled to waive his statement regarding the prosecuted crime. In this case the court shall order the trying of the case according to the complete procedure.

(5) The minutes of the court's hearing held according to the conditions of the present article shall be counter-signed by the defendant on all the pages, and his statement regarding the committed perpetration by him and regarding the evidence attached to the file shall be counter-signed according to the provisions of the article 337.

#### **Article 507. Solution of the court at the examination of the plea bargain**

(1) If the court is convinced of the truthfulness of the answers given by the defendant in the court hearing and it reaches the conclusion that the defendant decided to plead guilty in a free, benevolent manner, being aware, without pressure or fear, the court shall accept the plea bargain and admit the facts of the crime recognized by the defendant as being guilty of.

(2) The solution of the court shall be consigned in the minutes by an order.

(3) If the court does not accept the plea bargain, the court order regarding the refusal to accept the plea bargain may be challenged by the prosecutor in recourse within 24 hours, of which he shall declare immediately after the delivery of the court order. If the prosecutor, after the delivery of the court order, declares that he will not challenge the respective court order, the court shall dispose the trial of the case according to the complete procedure, based on the provisions of this Code. If the witnesses have shown up in court according to the summoning and if the trial may take place, the court shall proceed to the trial of the case immediately.

#### **Article 508. Judicial debates in case of acceptance of the plea bargain**

If the court adopts an order through which it accepts the plea bargain, the court shall proceed to the judicial debates on the punishment measure. The judicial debates shall be composed of the speeches of the prosecutor, defense counsel and defendant and, being entitled to take the floor once more to give their reply.

#### **Article 509. The sentence delivered in case of plea bargain**

(1) The sentence in case of plea bargain shall be adopted under the conditions of the present Code, considering the exceptions provided by this article.

(2) The introductory part of the sentence shall include, besides the data provided in the article 393, the mention about the trial of the case taking place through the plea bargain

procedure.

(3) The descriptive part of the sentence shall include:

1) the description of the criminal perpetration recognized by the defendant, considered as proven, indicating the means of its commission, the type and degree of guilt, the motives and the consequences of the crime;

2) the evidence presented by the prosecutor and accepted by the defendant, on which the sentence is founded;

3) indications on the circumstances mitigating and aggravating liability;

4) legal qualification of the perpetration for which the defendant is convicted;

5) motivation of the established punishment;

6) settlement of the issues related to conviction with conditional suspension of the execution of punishment, if it be the case;

7) reasons on which the judgement of the court is founded regarding the civil action or to the compensation of the material damages caused by the crime, as well as regarding the judicial expenses.

(4) The resolution of the sentence shall include the mentions provided in the art.395 which shall be applied accordingly.

(5) At the adoption of the sentence, the court has to solve the issues mentioned in the art. 397 and 398.

(6) The sentence adopted under the conditions of this article may be appealed in recourse procedure, where only the procedural errors and the severity of the established punishment may be invoked.

## **CHAPTER IV**

### **PROCEDURE OF CONDITIONAL SUSPENSION OF THE CRIMINAL PROSECUTION AND LIBERATION OF CRIMINAL LIABILITY**

#### **Article 510. General provisions**

(1) The conditional suspension of the criminal prosecution and the further liberation of criminal liability, according to art.59 of the Criminal Code, may be applied to the person indicted for an insignificant or less severe crime, who pleads guilty and who does not represent a social danger himself and who may be re-educated without applying to this person a criminal punishment.

(2) The provisions of par.(1) shall not apply to the following persons:

1) who have criminal antecedents;

2) who are alcoholics and drug addicts;

3) persons running offices with functions of responsibility who had committed the offence by making abuse of their function;

4) who had committed crimes against the security of the state;

5) who didn't repair the damages caused by their crime.

#### **Article 511. Procedure of conditional suspension of the criminal prosecution**

(1) If the prosecutor finds that the provisions of the art.510 are applicable to the indicted, he shall issue an ordinance of conditional suspension of criminal prosecution for 1 year, establishing one or more of the following obligations:

1) not to leave the locality where he lives, but under the conditions established by the prosecutor;

2) to communicate to the criminal prosecution body any changes of his domicile;

3) not to commit crimes or contraventions;

4) to continue his work or studies;

(2) The ordinance adopted under the conditions of the par.(1) shall be confirmed by the hierarchic superior prosecutor.

#### **Article 512. Solutions after the expiration of the conditional suspension term**

(1) If within the term of criminal prosecution suspension the indicted had respected the conditions established by the prosecutor, the latter shall submit a request to the instruction judge with the proposal of liberating the person from criminal liability.

(2) The instruction judge shall examine the request of the prosecutor, following the provisions of the art.305 and may apply one of the following solutions:

1) to accept the request, liberating the person of criminal liability and dismissing the trial;

2) to reject the request.

(3) If the person did not respect the conditions established by the prosecutor, as well as in the case of rejection of the prosecutor's request on the liberation from criminal liability, the prosecutor shall send the case to trial with the indictment, following the general procedure.

### **CHAPTER V**

#### **CRIMINAL PROSECUTION AND TRIAL OF SOME FLAGRANT CRIMES**

##### **Article 513. Flagrant crime**

(1) A crime shall be considered as flagrant if it had been discovered in the moment of its commission.

(2) A crime shall also be considered as flagrant if the perpetrator is tracked by the damaged person, by the eye-witnesses or by other persons immediately after its commission, or if he is caught close to the place of the crime scene, with arms, instruments or any other objects that may give reasons to suppose that he is participant to the crime.

##### **Article 514. Cases of application**

(1) The procedure provided by this chapter and which is completed by the general provisions of the present Code shall be applicable to flagrant crimes, which are insignificant, less severe and severe.

(2) The procedure provided by this article shall not be applicable in the cases of crimes committed by minors, as well as in the case of concurrence of several crimes in one action if one or several crimes committed by the same person are not flagrant.

#### **Article 515. Finding of the crime**

(1) In case of a flagrant crime the criminal prosecution body shall draw up the minutes in which it shall consign the found facts related to the committed perpetration, the statements of the suspect if he accepts to make them and the statements of other persons which have been heard. Upon necessity, other evidence may be administrated as well which shall be mentioned in the minutes.

(2) The minutes shall be drawn up and brought to the knowledge of the persons heard according to the provisions of the articles 260 and 261 and is presented immediately to the prosecutor, together with other materials, but not later than 12 hours after it had been drawn up.

#### **Article 516. Verification of the criminal prosecution materials**

(1) When the prosecutor receives the criminal prosecution materials he shall verify their conformity with the legal provisions and whether there is enough evidence, he shall charge the perpetrator according to the provisions of the articles 285-286, shall draw up the indictment and shall order the sending of the case to trial.

(2) If the prosecutor considers that the evidence is not enough to charge the person, he shall order the continuation of the criminal prosecution, indicating the actions to be taken and shall establish necessary reduced terms for that.

(3) If the prosecutor has ordered the continuation of the criminal prosecution and the perpetrator is apprehended, the prosecutor shall also decide on the application of the preventive measure under the conditions of the present Code.

#### **Article 517. Trial of the case on flagrant crimes**

(1) Placing on the roll of the cases on flagrant crimes shall not have to exceed the term of 5 days from the date of receiving the file. The presence of the defendant, damaged party and of the witnesses in courtroom shall be secured by the prosecutor.

(2) The trial of the case shall be made following the general procedure provided by the present Code, and if a plea bargain is concluded, the respective procedure shall be applied. If the parties, during the court's hearing, require a term to present supplementary evidence in conformity with the provisions of the art.327, this term shall not exceed 10 days.

(3) If the case was sent to trial with the apprehended person to whom a preventive measure had not been applied, the court to try this case will decide, at the prosecutor's request, on the application of the preventive measure as well.

#### **Article 518. Judgement of the court**

(1) In case of a flagrant crime trial, the court shall adopts its judgement in the day when the judicial investigation is concluded or not later then the next 3 days.

(2) The judgement shall be proofread within 24 hours.

#### **Article 519. Appeal and recourse**

(1) The term for appeal and recourse against the Judgements adopted in the cases of flagrant crimes shall be of 3 days since their delivery of proofreading.

(2) The file of the case shall be submitted to the appeal or recourse instance within 24 hours since the expiration of the term for the declaration of the appeal or recourse.

(3) Trial of appeal shall be made in emergency order.

(4) The recourse against judgements adopted under the conditions of art.517 and 518 shall be declared and tried in general conditions.

### **CHAPTER VI**

#### **PROCEDURES OF CRIMINAL PROSECUTION AND TRIAL OF CASES CONCERNING CRIMES COMMITTED BY LEGAL ENTITIES**

#### **Article 520. General provisions**

The criminal prosecution and trial of the cases on crimes committed by legal entities shall be made according to the general procedure with the exceptions and completions provided by the present chapter.

#### **Article 521. Criminal prosecution of the legal entities**

(1) Criminal prosecution, in case of holding criminally liable a legal entity, shall be conducted with its legal representative participation.

(2) If the criminal prosecution started against a legal entity is conducted for the same perpetration or for other connected ones against its legal representative as well, the criminal prosecution body shall appoint a person to represent the legal entity as an indicted.

(3) The legal representative or, upon the case, the appointed representative of the legal entity shall represent it in the taking of the procedural actions provided by the present Code.

(4) Against the legal representative or, upon the case, the appointed representative of the prosecuted legal entity, in this capacity, only coercive measures applicable to a witness may be imposed.

#### **Article 522. Territorial competence**

(1) In case of committing crimes by the legal entities the territorial competence shall be determined by the:

- 1) place where the crime was committed;
- 2) place where the perpetrator was caught;
- 3) place where the perpetrator – natural person – lives;
- 4) place where the premises of the legal entity is;



5) place where the victim lives or where it has its premises;

(2) At the trial of case referring to crimes committed by legal entities, the provisions of the art.40 and 42 shall be applied accordingly.

### **Article 523. Judicial control exercised over the legal entity**

(1) To secure a good development of the criminal trial, upon the prosecutor's request, the instruction judge or, upon the case, the court, if considers so necessary, may order placing of the legal entity under judicial control.

(2) Upon disposal of this measure provided under par.(1), the legal entity may be imposed to respect one or several of the following obligations:

1) to deposit a bail established by the instruction judge or by the court, the amount of which may not be lower than one thousand conventional units;

2) prohibition to exercise certain activities, if the crime had been committed during the exercise or due to the exercise of these activities;

3) prohibition to issue certain checks or to use payment cards.

(3) The order issued by the instruction judge or, if the case, of the court, on the placing the legal entity under judicial control may be challenged within the term and manner provided by art.308-311.

## **CHAPTER VII**

### **PROCEDURE OF REPAIRING THE DAMAGE CAUSED BY**

### **THE ILLEGAL ACTION OF THE CRIMINAL PROSECUTION BODIES AND OF THE COURTS**

#### **Article 524. General provisions**

Persons who have been materially or morally damaged during the criminal trial by illegal actions of the criminal prosecution bodies or of the courts shall be entitled to fair reparation of these damages under the conditions of the Law on the means of reparation of the damages caused by illegal actions of the criminal prosecution bodies or of the courts.

#### **Article 525. Action for the reparation of damage**

(1) The action for the reparation of the damage may be initiated within one year from the date of staying final of the court's judgement or of the ordinance issued by the criminal prosecution body through which the illegal character of the respective procedural actions was established, of the prosecution or of the conviction which has led to a damage.

(2) The action for the reparation of the damage may be initiated in the court in the territorial jurisdiction of which the person who had been caused damages lives or, upon the case, his successors, following the civil procedure, suing in court the state which is represented by the Ministry of Finance.

(3) The action for the reparation of the damage shall be exempted from the payment of the state fee.

## **CHAPTER VIII**

### **PROCEDURE OF THE DISAPPEARED JUDICIAL DOCUMENTS'**

#### **RESTORATION**

##### **Article 526. Finding of the judicial documents' disappearance**

(1) In case of disappearance of a file or of some documents belonging to a file, the criminal prosecution body or the president of the court where the respective file was, shall draw up a minutes through which he finds the disappearance, the circumstances of disappearance and indicates the measures which have been taken for their detection.

(2) On the basis of the minutes of findings the disappearance of a file or of some documents belonging to a file it shall be proceeded to the replacement or, upon the case, restoration of the file or of the disappeared document.

(3) By disappearance of a file or of some documents belonging to a file it shall be meant the loss, annihilation, deterioration or abstraction of the respective documents.

##### **Article 527. Object of the restoration procedure of a disappeared criminal file or of disappeared documents from a file**

(1) If the restoration of disappeared criminal file or of disappeared documents from a file is needed and if these may not be restored according to the common procedure, the prosecutor, through an ordinance or the court through a court order, shall dispose the replacement or restoration of the disappeared file or of disappeared documents from a file.

(2) The competence to dispose the replacement or restoration of a disappeared file or of disappeared documents from a file shall lie with the prosecutor or, upon the case, to the court in the procedure of which the respective case is, and in case of disappearance from a case which had been finally solved - to the instance in which the respective file is stored in the archives.

(3) The court order shall be adopted without summoning the parties, except for the case when the court considers this as necessary. The court order shall not be subjected to ordinary remedies.

##### **Article 528. Conduction of the procedure of restoring a disappeared file or of documents from a file**

(1) Replacement or restoration of a disappeared criminal file or of documents from a file shall be made by the criminal prosecution body or, upon the case, by the court which had disposed the replacement or restoration.

(2) If the disappearance have been found by a different criminal prosecution body or court than the ones which had disposed the replacement or restoration, the criminal prosecution body or court which have found the disappearance shall send all the necessary materials for the replacement or restoration of the file or of the disappeared documents to the competent criminal prosecution body or court.

##### **Article 529. Replacement of the disappeared document**

(1) Replacement of the disappeared document shall take place if there are official copies of this document. The criminal prosecution body or the court shall take measures for

obtaining of the respective copy.

(2) The obtained copy shall keep the place of the document's original until the last one is found.

(3) The person who submits the official copy shall be handed a certified copy of it.

### **Article 530. Restoration of the disappeared documents**

(1) If there is no official copy of the disappeared document, it shall be proceeded to its restoration. Restoration of a criminal file shall be made through the restoration of the documents included in it.

(2) Any means of proof may be used at the restoration of the file.

(3) In case of necessity to use means of proof for the restoration of the file which may not be administrated by the court, it shall require from the prosecutor the taking of the necessary measures for the restoration of the file.

(4) The result of the file's of disappeared document's restoration shall be found through a prosecutor's ordinance or through the order of the respective court, and upon the case, with the summoning of the parties.

(5) The judgement of restoration may be challenged in recourse.

## **CHAPTER IX**

### **INTERNATIONAL LEGAL ASSISTANCE IN THE CRIMINAL MATTERS**

#### **Section 1**

#### **General provisions and the rogatory commission**

### **Article 531. Legal regulation of international legal assistance**

(1) The relationships with foreign countries or international courts regarding the legal assistance in criminal matters shall be regulated by the present Chapter. The provisions of international treaties to which the Republic of Moldova is a party to as well other international commitments of the Republic of Moldova shall have priority in relation with the provisions of this Chapter.

(2) If the Republic of Moldova is a party to several international acts of legal assistance and the foreign state from which legal assistance is solicited or which solicits it, and if there are divergences or incompatibilities between the provisions of these acts, than the provisions of the treaty which ensures a better protection of the human rights and freedoms shall be applied.

(3) The admissibility of granting international legal assistance shall be decided by the competent court. The Ministry of Justice may decide the non-execution of a judgement regarding the admission of granting international legal assistance when the fundamental national interests are at stake.

### **Article 532. Manner of transmission of the legal assistance' addressing**

Addressing concerning international legal assistance in the criminal matters shall be made through the mediation of the Ministry of Justice, of the General Prosecutor's Office directly

and/or through the mediation of the Ministry of External Affairs of the Republic of Moldova, except for the cases when on the basis of mutuality another manner of addressing is provided.

### **Article 533. Extent of legal assistance**

(1) International legal assistance may be solicited or granted at the execution of certain procedural activities provided by the criminal procedure law of the Republic of Moldova and of the respective foreign state, namely in:

1) transmission of acts to natural persons or legal entities which are abroad the borders of the country;

2) hearing of persons as witnesses or experts;

3) execution of the investigation, search, seizure of objects and documents and their transmission abroad, conduction of expert examination;

4) summoning of the persons from abroad to present voluntarily in front of the criminal prosecution or of the court for hearing or confrontation, as well as forced bringing of the persons in detention at that moment;

5) conduction of criminal prosecution upon the denunciation made by a foreign state;

6) search and extradition of the persons who had committed crimes or for the execution of the imprisonment sentence;

7) recognition and execution of the foreign sentences;

8) transfer of the convicted persons;

9) other actions which do not contravene to the present Code.

(2) Taking of the preventive measures shall not be an object of the international legal assistance.

### **Article 534. Refusal of international legal assistance**

(1) International legal assistance may be refused, if:

1) the request refers to crimes considered in the Republic of Moldova as being political or connected crimes to such political crimes. The refusal shall be inadmissible if the person is suspected, accused or convicted for the commission of perpetration provided in art.5-8 of the Rome Statute of the International Court of Criminal Justice;

2) the request refers to a perpetration which constitutes exclusively a violation of the military discipline;

3) the criminal prosecution body or court which is solicited to grant legal assistance considers that its execution may violate the sovereignty, security or public order of the country;

4) there are founded grounds to believe that the suspect is prosecuted or punished for reasons of race, religion, nationality, membership of a certain group or for sharing certain

political beliefs, or if his situation is even more aggravated due to the listed reasons;

5) the respective perpetration is punished with death according to the legislation of the soliciting state and the soliciting state offers no guarantee of non-application of the capital punishment

6) according to the Criminal code of the Republic of Moldova the perpetration invoked in the request does not represent a criminal offence;

7) according to the domestic legislation the person can not be held criminally liable.

(2) Refusal of international legal assistance shall be motivated if this obligation flows from the treaty the Republic of Moldova is a party to.

### **Article 535. Expenses related to granting legal assistance**

Expenses related to granting legal assistance shall be covered by the soliciting party from the territory of its country if another way of covering the expenses in the conditions of mutuality or in an international treaty is not established.

### **Article 536. Addressing with a rogatory commission**

(1) If the criminal prosecution body or the court considers necessary taking a procedural action on the territory of a foreign state it shall address with a rogatory commission to the respective criminal prosecution body or court from the respective state or to an international criminal court, according to the provisions of the international treaty to which the Republic of Moldova is a party to or under mutuality conditions.

(2) Mutuality conditions shall be confirmed by a letter through which the Minister of Justice or the General Prosecutor of the Republic of Moldova undertakes in the name of the Republic of Moldova to grant legal assistance to the foreign state or to the international criminal court in taking some procedural actions with securing of procedural rights provided by the domestic law concerning whom the assistance is granted..

(3) The rogatory commission in the Republic of Moldova shall be submitted by the criminal prosecution body to the Prosecutor General, and by the court - to the Minister of Justice in order to be transmitted for execution to the respective foreign state.

(4) The rogatory commission request and the documents attached to it shall be translated in the official language of that state or of that international criminal court to which it addresses.

### **Article 537. Content and form of request on rogatory commission**

(1) Request on the rogatory commission shall be made in written and shall include the following data:

1) name of the body to which addresses the request;

2) name and address, if known, of the institution to which the request is sent;

3) international treaty or agreement of mutuality based on which assistance is requested;

4) indication of the criminal case in which it is solicited granting of legal assistance, information on the circumstances of the facts in which the actions had been committed and

their legal qualification, the text of the respective article from the Criminal Code of the Republic of Moldova and data on the caused damage by the respective crime;

5) data on the persons regarding whom the rogatory commission is requested, including information on their procedural capacity, their date and place of birth, nationality, domicile, occupation, for the legal entities - name and premises, as well as the names and addresses of the representatives of this person when it is the case;

6) object of the request and necessary data for its fulfillment with the statement of the circumstances to be found, the list of the documents, corpus delicti and of other proofs requested, the circumstances in relation to which the evidence has to be administrated, as well as the questions to be asked the persons to be heard.

(2) Request on the rogatory commission and the documents attached to it shall be signed and authenticated with the official stamp of the competent soliciting institution.

### **Article 538. Validity of the procedural act**

The procedural act drawn up in a foreign country according to the legal provisions of that country shall be valid before the criminal prosecution bodies and courts from the Republic of Moldova, when its execution is performed according to the procedure provided by the present Code.

### **Article 539. Summoning of the witness or expert who is outside the borders of the Republic of Moldova**

(1) The witness or the expert may be summoned by the body conducting the criminal prosecution for the execution of certain procedural actions on the territory of the Republic of Moldova in case of their acceptance to show up in front of the soliciting body.

(2) Summoning of the witness or expert shall be made under the conditions provided by art. 536, par.(3) and (4).

(3) Procedural actions with the participation of the persons summoned according to the provisions of this article shall be taken in compliance with the present Code.

(4) The witness or the expert, regardless nationality, who has presented himself after being summoned as provided by this article in front of the soliciting body, may not be prosecuted, detained or subjected to any individual freedom limitation on the territory of the Republic of Moldova for perpetrations or convictions prior to crossing the Republic of Moldova's borders.

(5) The immunity provided by par.(4) ends if the witness or expert has not left the territory of the Republic of Moldova within 15 days from the date when he was called and communicated by the respective body that his presence is not necessary any more, or when he came back later on in the Republic of Moldova. This term does not include the period of time when the witness or expert was not able to leave the territory of the Republic of Moldova because on reasons independent from his will.

(6) The summoning of the detained person in a foreign state shall be made according to the provisions of this article with the condition that the person temporarily transferred on the territory of the Republic of Moldova by the respective body from the foreign state in order to take the actions indicated in the request on his transfer shall be returned in the time indicated in the request. The transfer conditions or its refusal shall be regulated by the international treaties to which the Republic of Moldova and the solicited state are parties to

or on the grounds of written obligations in mutuality conditions.

**Article 540. Execution of the rogatory commission requested by foreign bodies in the Republic of Moldova**

(1) Criminal prosecution body or the court shall perform rogatory commissions requested by the respective foreign bodies on the basis of the international treaties to which the Republic of Moldova and the foreign soliciting state are parties to or in mutuality conditions confirmed according to the provisions of art.536, par.(2).

(2) The request for the performance of the rogatory commission shall be sent by the Prosecutor General to the criminal prosecution body or, upon the case, by the Minister of Justice to the court at the place where the solicited procedural action will be taken.

(3) The request on hearing the witness or the expert shall be executed in all the cases by the instruction judge.

(4) At the execution of the rogatory commission the provisions of the present Code shall be applicable, but, upon the request of the soliciting party a special procedure provided by the legislation of the foreign state may be applied, in compliance with the respective international treaty or with the observance of the mutuality conditions if this complies with the domestic legislation and with the international obligations undertaken by the Republic of Moldova.

(5) Representatives of the foreign state or of the international instance may assist at the execution of the rogatory commission, if this is provided by the respective international treaty or by an obligation provided in written by the mutuality conditions. In such a case, upon the request of the soliciting party, the body which has to execute the rogatory commission shall inform the soliciting party on the time, place and term of the rogatory commission's execution in order for the interested party to be able to assist.

(6) If the address of the person, with respect to whom the rogatory commission is solicited, is indicated mistakenly, the body charged with execution shall take the respective measures for finding the address. If the finding of the address is not possible, the soliciting party shall be announced.

(7) If the rogatory commission may not be performed, the received documents shall be restituted to the soliciting party through the mediation of the institution from which the documents have been received, with the indication of the reasons which have impeded the execution. The request on the rogatory commission and the attached documents shall be restituted in the refusal cases as well, on the grounds provided by the article 534.

## **Section 2**

### **Extradition**

**Article 541. Addressing of an extradition request**

(1) The Republic of Moldova may address to a foreign state with a request on extradition of a person who is being prosecuted for crimes for which the criminal law provides the minimal punishment of 1 year of imprisonment or another severer punishment or the person regarding whom there was adopted a sentence of conviction to an imprisonment punishment for the duration of at least 6 months in case of extradition for execution, if the international treaties do not provide otherwise.

(2) Extradition request shall be made on the basis of the international treaty to which the Republic of Moldova and the solicited state are parties to or on the grounds of written obligations undertaken in mutuality conditions.

(3) In case of necessity to request the extradition of the non-convicted person in the conditions provided by par.(1) and (2), all the necessary materials shall be submitted to the Prosecutor General for settling the issues related to submission of the extradition request to the respective institution of the foreign state. The issue of submission of the extradition request of the convicted persons shall be handled by the Ministry of Justice.

(4) The extradition request shall include:

- 1) the name and address of the soliciting institution;
  - 2) the name of the solicited institution;
  - 3) the international treaty or agreement of mutuality based on which extradition is requested;
  - 4) the last name, first name and patronymic of the person whose extradition is requested, date and place of birth, information on the nationality, domicile, place to be found as well as other data on the person, as well as, to the extent it is possible, the description of the exterior aspect, picture and other materials which may help identify the person;
  - 5) a description of the perpetration committed by the person whose extradition is being requested, the legal qualification of the committed perpetration, information on the damage caused by the crime, as well as the text of the national law which provides the criminal liability for this perpetration and the obligatory indication of the sanction;
  - 6) an information on the place and date of adoption of the sentence into force or of the ordinance on bringing forward charges with the attached authenticated copies from the originals of these documents.
- (5) The conclusion of the instruction judge or, upon the case, of the court regarding the authorization of the pretrial arrest shall be attached to the extradition request. Also, data on the unexecuted part of the punishment, besides the copy of the sentence into force, shall be attached to the request on extradition of the convicted person.

#### **Article 542. Extradition documents**

(1) Extradition shall be granted only if, as a result of the perpetration commission, the arrest warrant or another document of an appropriate legal force, or the enforceable decision of the competent authority of the soliciting state which orders the detention, as well as the description of the applicable legislation are provided. If extradition is requested for the prosecution of several crimes, instead of the arrest warrant or another document of an appropriate legal force, another document, issued by the competent authorities of the soliciting state, characterizing the charges brought to the person whose extradition is requested shall be sufficient.

(2) If there are special circumstances justifying the verification of the existence of reasonable grounds to believe that the accused has committed the crime he is charged with, the extradition shall be granted only upon the presentation of evidence confirming the probability of the crime commission.



(3) Extradition for the purpose of executing a sentence or another punishment established by a third state, shall be granted only upon the provision of:

1) the enforceable decision of imprisonment and a document from the third state containing the consent of the state that has taken over the execution [1] to execute it;

2) a document from the behalf of the competent authority of the state which has taken over the execution, confirming that the sentence or another sanction is enforceable on the territory of that state.

3) applicable legal provisions.

#### **Article 543. Specialty rule**

(1) The person who was extradited by a foreign state may not be held criminally liable and convicted, as well as transmitted to a third state for to be punished for the crime committed by him before the extradition, for which he was not extradited, if regarding this case the consent of the foreign state that extradited him is missing.

(2) Extradition shall be granted only if the following guarantees are secured:

1) the person will not be punished in the soliciting state without the consent of the Republic of Moldova for a reason that appeared before his handing, except for the crimes for which extradition is granted, and his personal liberty will not be limited, and he will not be persecuted through measures which can be taken in his absence;

2) the person will not be handed, transferred or deported to a third state without the consent of the Republic of Moldova; as well as

3) the person will be able to leave the territory of the soliciting state after the closure of the procedure for which his extradition was granted.

(3) The soliciting state may waive the observance of the specialty rule only if:

1) the Republic of Moldova expressed its approval to carry out the criminal prosecution or to enforce the sentence execution or another sanction regarding a facultative crime or to hand, transfer or deport to another state;

2) the person did not leave the territory of the soliciting state for 45 days since the closure of the procedure for which his extradition was granted, although he had the possibility to do so;

3) the person, after leaving the territory of the soliciting state, returned or was sent back by a third state;

4) simplified extradition is granted.

(4) The provisions of this article shall not apply to cases of crimes committed by the extradited person after his extradition.

#### **Article 544. Execution of the extradition request of the persons who are on the territory of the Republic of Moldova**

(1) The foreign citizen or stateless person who is criminally prosecuted or who was convicted in a foreign state for the commission of a perpetration which is criminally punishable in that state may be extradited to this foreign state at the request of the

competent authorities, for the purpose of prosecution or execution of a sentence delivered for a committed perpetration or for the purpose of delivering a new sentence.

(2) The foreign citizen or stateless person who was convicted in a foreign state for the commission of a criminally punishable perpetration in that state may be extradited to the foreign state, that has taken over the execution, at the request of the competent authorities of the state, for the purpose of execution of a sentence delivered for a committed perpetration or for the purpose of delivering a new sentence.

(3) Extradition for the purpose of criminal prosecution shall be granted only if the perpetration is punishable under the legislation of the Republic of Moldova and the maximum punishment is of at least one year imprisonment or if, after a similar inversion of things, the perpetration would be, under the legislation of the Republic of Moldova, punishable in such a way.

(4) Extradition for the purpose of execution of the sentence shall be granted only if the extradition under par.(3) were admissible and if an imprisonment punishment is to be executed. Extradition shall be granted if the term of detention which is to be executed or the cumulating of the detention terms which are to be executed, is of at least 6 months, if the international treaty does not provide otherwise.

(5) If the extradition of a person is requested in concurrence by several states, either for the same perpetration or even for different ones, the Republic of Moldova shall decide the extradition, taking into account all the circumstances, including the seriousness and place of commission of crimes, the nationality of the solicited person and the possibility of a further extradition to another state.

(6) If the General Prosecutor or, upon the case, the Minister of Justice considers that the solicited person by the foreign state or international instance may not be extradited, he refuses extradition through a motivated decision and if he considers that the person may be extradited he makes submits a request to the court from the territorial jurisdiction where the Ministry of Justice is located, to which he attaches the request and the documents of the soliciting state.

(7) The court shall solve the request on extradition with the participation of the prosecutor, of the person whose extradition is requested and his counsel. If the person who is solicited for extradition does not have his chosen counsel, he shall be provided with an ex officio counsel. The request on extradition of an arrested person shall be solved in emergency and priority order. Examination of the request on extradition shall be made according to the provisions of the articles 471-472, which shall be applied accordingly. The court order, which has become final, shall be sent to the Prosecutor General or to the Minister of Justice for execution or for the information of the soliciting state.

#### **Article 545. Simplified extradition procedure**

(1) At the request of the competent authority of the foreign state regarding the extradition or provisional arrest of a person for extradition, there may be granted the extradition of a foreign citizen or stateless person, in whose respect an arrest warrant was issued for extradition, without following the formal extradition procedure, if the person agrees to such a simplified extradition and his consent is confirmed by a court.

(2) The requirements of art.543 shall not be invoked if the foreign citizen or stateless person, after he was informed of his rights, expressly waives his right to application of the specialty rule and this fact is confirmed by a court.

(3) The instruction judge from the competent court shall inform the foreign citizen or the stateless person of the possibility to apply the simplified extradition procedure and its legal consequences and that he shall consign his statement.

(4) The consent given under par.(1) or (2) may not be invoked if it was confirmed by the court.

(5) The consent of the solicited person, provided under par.(1), shall be given in the presence of the counsel after the instruction judge has examined the identification data of this person, informing him of his right to a complete procedure provided by the present section.

#### **Article 546. Refusal of extradition**

(1) The Republic of Moldova shall not extradite its own citizens and the persons it has granted the right to asylum.

(2) Extradition will be also refused, if:

1) the crime had been committed on the territory of the Republic of Moldova;

2) regarding the respective person a domestic court or a court of a third state had already delivered a sentence of conviction, acquittal or dismissal of the criminal trial for the crime for which extradition is requested, or if the criminal prosecution body had issued an ordinance on the dismissal of the criminal proceeding or if the national bodies are prosecuting the commission of this perpetration;

3) the term of limitations for holding criminally liable for that kind of crime has expired, according to the national legislation or, in case of amnesty act's intervention;

4) according to the law, criminal prosecution may be started only on the basis of the preliminary complaint of the victim and such a complaint is missing;

5) the crime for which extradition of the person is solicited is considered by the domestic law as a political or connected to it;

6) The Prosecutor General, the Minister of Justice or the court examining the extradition case have well-founded reasons to believe that:

a) the request on extradition has been lodged with the aim to prosecute or punish a person for race, religion, sex, nationality, ethnical origins or political opinions considerations;

b) the situation of this person risks to worsen for one of the reasons mentioned at the letter a);

c) in case that the person will be extradited he will be subjected to torture, inhuman or degrading treatment in the soliciting state.

7) the requested person was granted the status of political refugee;

8) the state soliciting extradition does ensure mutuality in the field of extradition.

(3) If the deed for which extradition is requested is punished by the legislation of the soliciting state with capital punishment, extradition of the person may be refused, unless the soliciting party gives enough guaranties that the capital punishment will not be

executed regarding the extradited person.

#### **Article 547. Arrest of the person for extradition**

(1) After receiving the request on extradition the Prosecutor General or, upon the case, the Minister of Justice will take immediately measures under the conditions of the present Code for the arrest of the person whose extradition is requested.

(2) In case of emergency, the person whose arrest is requested may be arrested based on an arrest warrant issued for a term of 18 days, but this term in any case shall not exceed 45 days, and before reception of the extradition request if the foreign state or the international court have solicited the arrest and if the solicitation contains data on the arrest warrant or on the adopted final judgement regarding this person and a the assurance of the fact that the extradition request will be sent afterwards. In the solicitation there shall be indicated the crime for which extradition will be requested, the date and place where it had been committed and, as much as possible, the distinctive features of the searched person. Solicitation of arrest may be done through mail, telegraph, telex, fax or through any mean which conveys written messages. The soliciting authority shall be briefed in the shortest time possible about the course given to its solicitation.

(3) The person arrested under the conditions of the par.(2) shall be released if within 18 days from his arrest the court which has to decide on the admissibility of the person's arrest does not receive the extradition request and the necessary respective documents. This term may be prolonged upon the solicitation of the foreign state or international court, unless it is not going beyond 40 days from the moment of arrest. Given all this, the provisional release is possible at anytime, under the condition that other measures for avoiding the person's absconding from prosecution may be applied with respect to the solicited person.

(4) The decision regarding the extradition admissibility shall be motivated. The Prosecutor General, the person whose extradition is requested and his counsel shall be sent a copy of the respective decision.

(5) The release of the arrested person under the conditions of this article shall not obstacle a new arrest and extradition, if a request on extradition is received later.

#### **Article 548. Postponing of extradition and conditional extradition**

(1) If the person, whose extradition is asked in the Republic of Moldova is charged during a criminal prosecution, trial or if this person had been convicted for another crime than the one for which extradition is requested, the execution of extradition may be postponed until the termination of the criminal proceeding or until the complete execution of the punishment established by the national court, or until the final release before the expiration of the punishment term.

(2) If postponing of extradition may entail the expiration of the criminal action's term of limitation or may cause considerable damage for the finding of the facts, the person may be extradited temporarily on the basis of a motivated request, under the conditions agreed on in common with the soliciting party.

(3) The temporarily extradited person has to be retroceded immediately after the procedural actions for which he was extradited were taken.

#### **Article 549. Handing of the extradited person**

(1) If the extradition of a person is accepted by the court, after its judgement comes into

force, the Prosecutor General or, upon the case, the Minister of Justice shall brief the soliciting state or the international court on the date and place of the extradited person's handing, as well as on the duration of the executed detention in view of his extradition.

(2) If the soliciting party does not receive the extradited person at the established date for his handing and if postponing was not solicited, the person may be set free at the expiration of the 15 days term from this date and shall be anyway set free after the expiration of the 30 days term calculated from the established date of handing, if the bilateral treaty does not provide for more favorable conditions for this person.

(3) Extradition of the person for the same perpetration after the expiration of the terms mentioned in this article may be refused.

### **Article 550. Transmission of objects**

(1) At the request of the soliciting party, according to the provisions of this chapter, there may be apprehended and transmitted, as far as the national legislation allows:

1) objects which may be relevant as evidence in the criminal case for which extradition was requested; as well as

2) proceeds, resulted from the crime for which extradition is requested and the objects in the possession of the person at the moment of arrest or which had been discovered afterwards.

(2) Objects and proceeds provided by the par.(1) may be transmitted even if extradition of the person may not take place due to his decease or absconding from trial.

(3) If the claimed objects are necessary as evidence in another national criminal case, their transmission may be postponed until the termination of the respective trial or these may be handed temporarily under the condition of being later restituted.

(4) The rights over these objects or valuables shall be reserved to the Republic of Moldova and they will be transmitted to the soliciting party, under the condition of termination of the criminal trial as soon as possible and without expenses, being restituted afterwards.

## **Section 3**

### **Transfer of the convicted persons**

#### **Article 551. Grounds for transfer of the convicted person**

(1) The transfer of the convicted persons shall be made on the basis of an international treaty to which the Republic of Moldova and the respective state are parties to or on the basis of mutuality conditions fixed in a written agreement between the Minister of Justice of the Republic of Moldova and the respective institution from the foreign state.

(2) The grounds for the transfer of the convicted persons may be:

1) the application of the person convicted to imprisonment by a court from the Republic of Moldova to be transferred for the execution of his sentence in another state;

2) the application of the person convicted to imprisonment by a court from another state to be transferred for the execution of his sentence in the Republic of Moldova;

3) the application of transfer lodged either by the state of conviction or by the state

of execution.

## **Article 552. Conditions of transfer**

(1) The transfer may take place in the following conditions:

1) the convicted has to be the citizen of the state of execution or with permanent domicile on its territory;

2) the conviction sentence has to be final;

3) the duration of the liberty deprivation punishment which the convicted has still to execute has to be of at least 6 months from the date when the transfer application was received or to be undetermined;

4) the transfer is made with the consent of the convict, and if due to his age, physical or mental condition of the convict, one of the two states considers the transfer necessary – by the convict's legal representative;

5) the perpetration for which the person was convicted represents a crime according to the Criminal Code of the country of nationality of the convicted;

6) both states - parties have agreed on the transfer;

(2) The consent of the person concerning whom the sentence was delivered is not required for the transfer of the sentence execution if the person concerning whom the sentence was delivered:

- 1) has fled from the state where the sentence was delivered;
- 2) is the subject of an expulsion or deportation order.

(3) In exceptional cases the parties may agree on transfer even if the duration of punishment which has still to be executed is less than 6 months.

## **Article 553. Communication of information**

(1) Each convict to whom the provisions of the present chapter are applicable shall be informed by the competent authority of the state of conviction about his right to obtain his transfer for the execution of punishment in the state of his nationality.

(2) If the convicted has expressed to the state of conviction his wish of being transferred, this state shall inform the state of nationality of the convicted about this as soon as possible after the court's decision has become final.

(3) The information shall contain:

1) the name, date and place of birth of the convict and, if possible, the address from his state of nationality;

2) the description of the committed perpetration which had led to conviction;

3) the nature, duration and date when the execution of the sentence has started.

(4) The convicted shall be briefed in written about any decision on the application of transfer taken by one of the two states.

**Article 554. Application of transfer, additional documents and the answer to them**

(1) The application on transfer shall be lodged in written.

(2) The application shall be attached:

- 1) an act which confirms that the convict is the citizen of the state of execution or has his domicile there;
- 2) the written statement of the convict regarding his consent for transfer;
- 3) a certified copy of the conviction sentence with the mention that it is final, as well the copy of the texts from the law which were applied in the respective case;
- 4) the certificate indicating the duration of the already executed punishment and of the pretrial arrest, as well as the duration of the punishment which still has to be executed.

(3) The application shall be addressed by the Minister of Justice of the soliciting state to the Minister of Justice of the solicited state.

(4) The state of execution, by a court judgement adopted in conditions of art.551, shall mention in its answer whether it accepts or not the transfer of the convicted person and in case of acceptance it shall to attach to the answer a copy of its lawful dispositions from which it is clear that the perpetration which led to the person's conviction constitute a criminal offence, if it had happened on its territory.

(5) If one of the two states considers necessary, additional documents or information may be requested.

**Article 555. Consent for transfer**

(1) The convict has to give his consent for voluntary transfer, being fully aware of the legal consequences resulting from this according to the procedural law of the state of conviction.

(2) The state of conviction shall give to the state of execution the possibility to check whether the consent for transfer was given with the observance of the conditions provided by the par.(1) of this article.

**Article 556. Solution of the transfer application**

(1) If the transfer is accepted, the transfer application of the citizens of the Republic of Moldova convicted in another country shall be transmitted by the Minister of Justice together with his request for solution to the court of the same level as the court from the state of conviction, the judgement of which is to be executed. If the judgement of the state of conviction is adopted by a court of the same level, the request of the Minister of Justice and the transfer application shall be addressed to the court from the territorial jurisdiction of the Ministry of Justice, and if the court of the state of conviction is of the court of appeal's level - the respective application and request shall be addressed to the court of appeal of Chisinau municipality.

(2) The request of the Minister of Justice shall be solved by a judge in a court hearing in absentia of the convicted person according to the provisions of the present Code for the solution of the issues related to the execution of punishment, but with the participation of the representative of the Minister of Justice and of the convict's defense counsel. If the convicted does not have a chosen defense counsel, his defense counsel shall be appointed

ex officio.

(3) While solving the request on the transfer, the court shall verify whether the conditions for transfer provided by this chapter, as well as the ones provided by the international treaty or mutuality agreement on the basis of which the transfer is requested are observed.

(4) After having solved the request, the court shall adopt an order, in which it mentions:

- 1) the name of the foreign state's court, date and place of the sentence adoption;
- 2) information on the last domicile in the Republic of Moldova of the convict and on his occupation;
- 3) the legal qualification of the crime for which the person had been convicted;
- 4) the criminal law of the Republic of Moldova which provides liability for a similar crime to that one committed by the convict;
- 5) its judgement regarding the acceptance or, if the case, rejection of the requested transfer;
- 6) in case of acceptance of the requested transfer, the court shall indicate which execution procedure it will choose: continuation of the sentence execution or the amendment of the conviction.

(5) The copy of the court's judgement shall be transmitted to Ministry of Justice in order to be forwarded to the state of conviction and to the convict.

#### **Article 557. Continuation of the punishment execution and the amendment of the conviction**

(1) If the state of conviction accepts the transfer of the convict, the court shall decide on the following:

- 1) if by the decision taken under the conditions of art.551, the procedure of the continuation of the sentence execution was indicated, the court shall set the term of the unexecuted punishment which is to be executed, the type of the penitentiary where the punishment shall be executed;
- 2) if by the decision taken under the conditions of art.551, the procedure of the amendment of the conviction was indicated, the court shall indicate:

a) the legal qualification of the crime for which the person was convicted;

b) the criminal law of the Republic of Moldova which provides liability for a similar crime to one committed by the convict;

c) the category and term of the main and complementary punishments established, the term of the punishment to be executed in the Republic of Moldova, the type of the penitentiary and the manner of compensation of the damage in case of a civil action.

(2) In case that the type or duration of the delivered punishment in the state of conviction does not comply with the criminal law of the Republic of Moldova, the court, by its judgement, may adapt it to the punishment provided by the domestic law by crimes of the same type. This punishment shall be as adequate as possible to the imposed punishment by the judgement of the state of conviction. By its nature or duration, this punishment may neither be severer than the one delivered in the state of conviction, nor to exceed the maximum limit provided by the domestic law.

(3) The part of the punishment that was executed in the state of conviction shall be deduced from the duration of the punishment established by the national court, if the punishments



are of the same type. If the national court establishes another type of punishment than the imposed by the judgement of the state of conviction, upon the determination of its type and duration, consideration shall be given to part of the executed punishment.

(4) The complementary punishment delivered by the judgement delivered by the state of conviction shall be executed to the extent it is provided by the law of the republic of Moldova and was not executed in the state of conviction.

(5) The court order regarding the enforcement of the sentence execution may be challenged under the conditions of art.472.

(6) The copy of the court order regarding the enforcement of the sentence execution that came into force shall be transmitted by the Minister of Justice of the Republic of Moldova to the Minister of Justice of the state of conviction.

(7) In case of cassation or amendment of conviction of the state of conviction, as well as in case of application of an amnesty or pardon act, adopted by the state of conviction regarding the person executing the punishment in the Republic of Moldova, the issue of execution of the revised sentence, as well as of the application of an amnesty or pardon act, shall be settled in the conditions of the present article.

## **Section 4**

### **Acknowledgement of criminal judgements of the foreign courts**

#### **Article 558. Cases and conditions of acknowledgement of criminal judgements**

(1) Final judgements delivered by foreign courts as well as those, which, by their nature may produce, according to the criminal law of the Republic of Moldova, legal effects, may be acknowledged by the national court upon the request of the Minister of Justice or of the Prosecutor General, based on the international treaty of mutuality agreement.

(2) A criminal judgement delivered by a foreign state's court may be acknowledged only if the following conditions are respected:

- 1) the decision was delivered by a competent court;
- 2) the decision does not contravene the public order of the Republic of Moldova;
- 3) the decision may produce legal effects in the country according to the domestic criminal law.

#### **Article 559. Procedure of acknowledgement of judgements delivered by foreign courts**

(1) The request of the Minister of Justice or of the Prosecutor General on the acknowledgement of the foreign court's judgement shall be motivated and solved by the court of the same level with the court from the state of conviction, the judgement of which shall be acknowledged. If the judgement of the state of conviction is adopted by a court of the same level, the request of the Minister of Justice or of the Prosecutor General shall be solved by the court from the territorial jurisdiction of the Ministry of Justice, and if the court of the state of conviction is of the court of appeal's level - the request shall be solved by the court of appeals from the Chisinau municipality.

(2) The representative of the Minister of Justice or, upon the case, of the Prosecutor General, the convict and his defense counsel shall participate in the solution of the request.

(3) The decision of the foreign state together with its accompanying documents translated in the state official language and in a language understood by the convict shall be communicated to the convict.

(4) The court shall hear the opinions of those present and, on the basis of the materials attached to the request, if it finds that the requirements of the law are met, shall acknowledge the judgement given by a foreign court. In case the punishment requested by the foreign court was not executed or was executed only partly, the court shall substitute the non-executed punishment or the rest of the punishment with a respective punishment according to the provisions of the art.557, par.(1), item.1).

(5) The execution of the civil dispositions from a foreign judgement given in a criminal cases shall be made according to the rules provided for the execution of the foreign civil judgements.

## **CHAPTER X**

### **FINAL AND TRANSITORY PROVISIONS**

#### **Article 560**

The present Code shall come into effect on the 12 of June 2003.

#### **Article 561**

On the date of coming into effect of the present Code:

- 1) the Criminal Procedure Code, approved by the Law of the S.S.R. of Moldova of 24 March 1964 (News of the Supreme Soviet of the S.S.R. of Moldova, 1961, no.10, art. 42), with its further amendments, shall be abrogated.
- 2) the normative acts, adopted before its enforcement shall apply to the extent to which they do not contravene its provisions.

#### **Article 562**

The Government, within a month term shall:

- 1) submit to the Parliament proposals for bringing the current legislation in compliance with the provisions of the present Code;
- 2) bring its normative acts in compliance with the provisions of the present Code;
- 3) ensure the revision and abrogation by the ministries and departments of their normative acts in conflict with the provisions of the present Code;
- 4) ensure the drafting of normative acts regulating the application of the present Code.

PRESIDENT OF THE PARLIAMENT

EUGENIA OSTAPCIUC

Chisinau, 14 of March 2003

No.122-XV.