

# Code of Criminal Procedure

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19.05.2004	RT I 2004, 46, 329	01.07.2004, partially 01.01.2005 and 01.09.2005
28.06.2004	RT I 2004, 54, 387	01.07.2004
28.06.2004	RT I 2004, 56, 403	01.03.2005
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15.06.2005	RT I 2005, 39, 307	21.07.2005
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07.12.2005	RT I 2005, 68, 529	01.01.2006
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15.03.2006	RT I 2006, 15, 118	14.04.2006
19.04.2006	RT I 2006, 21, 160	25.05.2006
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27.09.2006	RT I 2006, 46, 333	01.01.2007
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13.12.2006	RT I 2006, 63, 466	01.02.2007
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06.12.2006	RT I 2007, 1, 2	30.03.2007
13.12.2006	RT I 2007, 2, 7	01.02.2007
17.01.2007	RT I 2007, 11, 51	18.02.2007
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19.06.2008	RT I 2008, 32, 198	01.01.2009
19.06.2008	RT I 2008, 32, 198	01.01.2010
19.06.2008	RT I 2008, 33, 200	28.07.2008
19.06.2008	RT I 2008, 33, 201	28.07.2008
19.06.2008	RT I 2008, 35, 212	01.01.2009
19.11.2008	RT I 2008, 52, 288	22.12.2008
03.12.2008	RT I 2009, 1, 1	01.01.2010
06.05.2009	RT I 2009, 27, 165	01.01.2010
15.06.2009	RT I 2009, 39, 260	24.07.2009
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09.12.2009	RT I 2009, 68, 463	01.01.2010
20.01.2010	RT I 2010, 8, 34	27.02.2010
20.01.2010	RT I 2010, 8, 35	01.03.2010
22.04.2010	RT I 2010, 19, 101	01.06.2010
		01.01.2011, enters into force on the date which has been determined in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the basis provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, p. 24-26).
22.04.2010	RT I 2010, 22, 108	
		18.06.2010 - The decision of the Constitutional Review Chamber of the Supreme Court declares the summary proceedings regulation to be in conflict with the Constitution to the extent that this does not efficiently ensure the right of defence.
18.06.2010	RT I 2010, 40, 239	
16.06.2010	RT I 2010, 44, 258	01.01.2011
25.11.2010	RT I, 21.12.2010, 1	31.12.2010
27.01.2011	RT I, 23.02.2011, 1	01.09.2011
27.01.2011	RT I, 23.02.2011, 2	05.04.2011
27.01.2011	RT I, 23.02.2011, 3	01.01.2012
17.02.2011	RT I, 14.03.2011, 3	01.09.2011
17.02.2011	RT I, 21.03.2011, 2	01.01.2012 Repealed [RT I, 29.06.2012, 2]
08.12.2011	RT I, 22.12.2011, 3	23.12.2011 Repealed [RT I, 29.06.2012, 2]

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07.12.2011	RT I, 28.12.2011, 1	01.01.2012, partially on the tenth day after publication in the Riigi Teataja.
08.12.2011	RT I, 29.12.2011, 1	01.01.2012
10.04.2012	RT I, 17.04.2012, 4	10.04.2012 - The decision of the Supreme Court en banc declares § 366 of the Code of Criminal Procedure to be in conflict with the Constitution to the extent that this does not prescribe the entry into force of a court judgment made pursuant to general procedure, which establishes the absence of a criminal act, as grounds for review if a punishment of imprisonment was imposed for participation in such criminal act to a person by a court judgment made pursuant to general procedure in the criminal matter subject to review.
30.05.2012	RT I, 15.06.2012, 2	01.06.2013
06.06.2012	RT I, 29.06.2012, 1	01.04.2013
06.06.2012	RT I, 29.06.2012, 2	09.07.2012, partially 01.01.2013 and 01.01.2015
06.06.2012	RT I, 29.06.2012, 3	01.01.2013, partially 01.07.2012 and 09.07.2012
14.06.2012	RT I, 04.07.2012, 1	01.08.2012
03.07.2012	RT I, 09.07.2012, 2	03.07.2012 - The judgment of the Supreme Court en banc declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which a sentence suspended on probation is enforced pursuant subsection 74 (4) of the Penal Code.
13.11.2012	RT I, 16.11.2012, 6	13.11.2012 - The judgment of the Supreme Court en banc declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which the part of the punishment which was not served due to release on parole is enforced pursuant subsection 76 (5) of the Penal Code.
05.12.2012	RT I, 21.12.2012, 1	01.03.2013, partially 01.01.2013
11.12.2012	RT I, 28.05.2013, 6	11.12.2012 - The decision of the Constitutional Review Chamber of the Supreme Court declares § 407 of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent this precludes the right of a minor to file an appeal against a ruling whereby the court

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		authorises placement of the minor in a school for students who need special treatment.
13.03.2013	RT I, 22.03.2013, 9	01.04.2013, partially 01.01.2014
27.03.2013	RT I, 16.04.2013, 1	26.04.2013
		30.04.2013 - The decision of the Supreme Court en banc declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 428 (2) of the Code of Criminal Procedure by which the sentence of imprisonment substituted by community service is enforced pursuant to subsection 69 (6) of the Penal Code.
30.04.2013	RT I, 03.05.2013, 12	
		10.05.2013 - The ruling the Constitutional Review Chamber of the Supreme Court declares that clause 385 26) of the Code of Criminal Procedure was in conflict with the Constitution at the time of making the ruling of the Tallinn Circuit Court dated 7 January 2013 to the extent this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 428 (2) of the Code of Criminal Procedure by which the sentence of imprisonment substituted by community service is enforced pursuant to subsection 69 (6) of the Penal Code.
10.05.2013	RT I, 15.05.2013, 3	
20.06.2013	RT I, 05.07.2013, 2	15.07.2013
20.06.2013	RT I, 11.07.2013, 1	01.09.2013
26.09.2013	RT I, 04.10.2013, 3	27.10.2013
12.02.2014	RT I, 26.02.2014, 1	08.03.2014

## **Chapter 1 GENERAL PROVISIONS**

### **§ 1. Scope of application of Code**

This Code provides the rules for pre-trial procedure and court procedure for criminal offences and the procedure for enforcement of the decisions made in criminal matters.

(2) This Code also provides the bases and procedure for conduct of surveillance activities.  
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 2. Sources of criminal procedural law**

The sources of criminal procedural law are:

- 1) the Constitution of the Republic of Estonia;
- 2) the generally recognised principles and provisions of international law and international agreements binding on Estonia;
- 3) this Code and other legislation which provides for criminal procedure;
- 4) decisions of the Supreme Court in the issues which are not regulated by other sources of criminal procedural law but which arise in the application of law.

### **§ 3. Territorial and temporal applicability of criminal procedural law**

(1) Criminal procedural law applies in the territory of the Republic Estonia. Criminal procedural law also applies outside the territory of the Republic Estonia if this arises from an international agreement or if the object of the criminal proceeding is an act of a person serving in the Defence Forces of Estonia.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) In criminal proceedings, the criminal procedural law in force at the time of performance of a procedural act shall be applied.

(3) The requirements for using the evidence taken abroad in criminal proceedings in Estonia are provided for in § 65 of this Code.

(4) In the event of a state of emergency, this Act applies, taking account of the specifications provided for in the State of Emergency Act.

[RT I 2009, 39, 260 - entry into force 24.07.2009]

### **§ 4. Applicability of criminal procedural law by reason of person concerned**

Criminal procedural law applies equally to all persons with the following exceptions:

- 1) the specifications concerning preparation of a statement of charges and the performance of certain procedural acts with regard to members of the *Riigikogu*, the President of the Republic, members of the Government of the Republic, the Auditor General, the Chancellor of Justice and the Chief Justice and justices of the Supreme Court are provided for in Chapter 14 of this Code;
- 2) Estonian criminal procedural law may be applied to a person enjoying diplomatic immunity

or other privileges prescribed by an international agreement at the request of a foreign state, taking into account the specifications provided for in an international agreement.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 5. Principle of state jurisdiction**

Criminal proceedings shall be commenced and conducted on behalf of the Republic of Estonia.

## **§ 6. Principle of mandatory criminal proceedings**

Investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings when facts referring to a criminal offence become evident, unless the circumstances provided for in § 199 of this Code which preclude criminal procedure or unless the basis to terminate criminal proceedings in accordance with subsection 201 (2), § 202, 203, 203<sup>1</sup>, 204, 205 or 205<sup>1</sup> of this Code exists.

[RT I 2010, 8, 34 - entry into force 27.02.2010]

## **§ 7. Presumption of innocence**

(1) No one shall be presumed guilty of a criminal offence before a judgment of conviction has entered into force with regard to him or her.

(2) No one is required to prove his or her innocence in a criminal proceeding.

(3) A suspicion of guilt regarding a suspect or accused which has not been eliminated in a criminal proceeding shall be interpreted to the benefit of the suspect or accused.

## **§ 8. Safeguarding of rights of participants in proceedings**

Investigative bodies, Prosecutors' Offices and courts shall:

1) in the performance of a procedural act in the cases provided by law, explain to the participants in the proceeding the objective of the act and the rights and obligations of the participants;

2) provide the suspect and the accused with a real opportunity to defend themselves;

3) ensure the assistance of a counsel to the suspect and the accused in the cases provided for in subsection 45 (2) of this Code or if such assistance is requested by the suspect or the accused;

4) in the cases of urgency, provide a suspect or accused held in custody with other legal assistance at his or her request;

5) deposit the unsupervised property of a suspect or accused held in custody with the person or local government specified by him or her;

6) ensure that the minor children of a person held in custody be supervised or the persons close to him or her who need assistance be cared for.

## **§ 9. Safeguarding of personal liberty and respect for human dignity**

(1) A suspect may be detained for up to forty-eight hours without an arrest warrant issued by a court.

(2) A person taken into custody shall be immediately notified of the court's decision on taking into custody in a language and manner which he or she understands.

(3) Investigative bodies, Prosecutors' Offices and courts shall treat the participants in a proceeding without defamation or degradation of their dignity. No one shall be subjected to torture or other cruel or inhuman treatment.

(4) In a criminal proceeding, it is permitted to interfere with the private and family life of a person only in the cases and pursuant to the procedure provided for in this Code in order to prevent a criminal offence, apprehend a criminal offender, ascertain the truth in a criminal matter or secure the execution of a court judgment.

## **§ 10. Language of criminal proceedings**

(1) The language of criminal proceedings is Estonian. With the consent of the body conducting criminal proceedings, participants in the proceeding and parties to the court proceeding, the criminal proceedings may be conducted in another language if the body, participants and parties are proficient in such language.

(2) The assistance of an interpreter or translator shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in Estonian. In the case of doubt, the body conducting the proceedings shall determine the proficiency in Estonian of both the participants in the proceedings as well as parties to the court proceeding. If it is impossible to determine the proficiency in Estonian or it proves to be insufficient, the assistance of an interpreter or translator shall be ensured.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(2<sup>1</sup>) If a suspect or accused is not proficient in Estonian, he or she shall be ensured the assistance of an interpreter or translator at his or her request or the request of his or her counsel at the meeting with the counsel which is directly related to the procedural act performed with respect to the suspect or accused, the application or complaint submitted. If the body conducting the proceedings finds that the assistance of an interpreter or translator is not necessary, such body shall formalise the refusal by a ruling.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(3) All documents which are requested to be included in a criminal and court file shall be in Estonian or translated into Estonian. Documents in other languages prepared by investigative bodies and Prosecutors' Offices in terminated criminal proceedings shall be translated into Estonian by the order of the Prosecutor's Office or at the request of a participant in the proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A text in a language other than Estonian may be entered in the minutes of a court session at the request of a party to a court proceeding. In such case, a translation of the text into Estonian shall be appended to the minutes.

(5) If a suspect or accused is not proficient in Estonian, the text of the report on the detention of a suspected, arrest warrant, European arrest warrant, statement of charges and judgment translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(6) If a suspect or accused is not proficient in Estonian, he or she or his or her counsel may submit a reasoned application for translating a document which is significant from the point of view of understanding the content of the suspicion or charges in the criminal matter or for ensuring the fairness of the proceedings into his or her native tongue or into another language in which he or she is proficient. If the body conducting the proceedings finds that the application for translating the documents is not justified, such body shall formalise the refusal by a ruling.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(7) The text of a statement of charges and judgment shall be translated in writing. Instead of the written translation of the remaining documents listed in subsections (5) and (6) of this section, such documents may be translated orally or an oral summary may be made thereof, unless this affects the fairness of the proceedings.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(8) An oral translation shall be ensured to a suspect and accused immediately, a written translation of the documents shall be ensured to a suspect and accused within a reasonable period of time so that this does not impair the exercise of their rights of defence.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(9) A suspect or accused or his or her counsel may file an appeal against the ruling on refusal specified in subsections (2<sup>1</sup>) and (6) of this section pursuant to the procedure provided for in § 228 of this Code.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

## **§ 11. Public access to court sessions**

(1) Every person has the opportunity to observe and record court sessions pursuant to the procedure provided for in § 13 of this Code.

(2) The principle of public access applies to the pronouncement of decisions without restrictions unless the interests of a minor, spouse or victim require pronouncement of a decision in a court session held in camera.

(3) The principle of public access applies as of the opening of a court session until pronouncement of a decision, taking into account the restrictions provided for in §§ 12 and 13 of this Code.



(4) A court may remove a minor from a public court session if this is necessary for the protection of the interests of the minor.

## **§ 12. Restrictions on public access to court sessions**

(1) A court may declare that a session or a part thereof be held in camera:

1) in order to protect a state or business secret or classified information of foreign states;

[RT I 2007, 16, 77 - entry into force 01.01.2008]

2) in order to protect morals or the private and family life of a person;

3) in the interests of a minor;

4) in the interests of justice, including in the cases where public access to the court session may endanger the security of the court, a party to the court proceeding or a witness.

(2) A court shall adjudicate restrictions on public access to a court session on the basis provided for in subsection (1) of this section by a ruling made on its own initiative or at the request of a party to the court proceeding.

(3) With the permission of a court, an official of an investigative body, a court official, witness, qualified person, expert, interpreter or translator and a person close to the accused for the purposes of subsection 71 (1) of this Code may observe a court session held in camera.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If a court session is held in camera, the court shall warn the parties to the court proceeding and other persons present in the courtroom that disclosure of the information relating to the proceeding is prohibited.

## **§ 13. Restrictions on recording of court sessions**

(1) As of the opening of a court session until the pronouncement of the decision, the persons present in the courtroom may take written notes.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Other means for recording a court session may be used only with the permission of the court.

(3) If a court session is held in camera, the court may decide that only written notes may be taken.

## **§ 14. Adversarial court procedure**

(1) In a court proceeding, the functions of accusation, defence and adjudication of the criminal matter shall be performed by different persons subject to the proceeding.

(2) Withdrawal of the charges pursuant to the procedure provided for in § 301 of this Code releases the court from the obligation to continue the proceedings. If charges are withdrawn for the reason that the act of the accused comprises the necessary elements of a misdemeanour, withdrawal of the charges is the basis for termination of the criminal proceedings. Withdrawal of

the charges in other cases is the basis for a judgment of acquittal.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 15. Direct and oral court hearing**

(1) A decision of a county court may be based only on evidence which has been presented and directly examined in the court hearing and recorded in the minutes.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A decision of a circuit court may be based on:  
1) evidence which has been orally presented and directly examined in a court hearing by the circuit court and recorded in the minutes;  
2) evidence which has been directly examined in the county court and disclosed in appeal proceedings.

(3) A decision shall not be based solely or predominantly on the testimony of a person declared anonymous in accordance with § 67 of this Code, evidence which direct source the accused or counsel was unable to question, or the testimony of the person specified in subsection 66 (2<sup>1</sup>).  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 15<sup>1</sup>. Uninterrupted and immediate court hearing**

A court shall hear a matter as an integral whole and shall ensure that a decision is made as quickly as possible.  
[RT I 2008, 32, 198 - entry into force 15.07.2008]

## **Chapter 2 PERSONS SUBJECT TO CRIMINAL PROCEEDING**

### **§ 16. Bodies conducting proceedings and participants in proceedings**

(1) Proceedings shall be conducted by courts, Prosecutors' Offices and investigative bodies.

(2) A suspect or accused, his or her counsel, victim, civil defendant and third parties are the participants in a proceeding.  
[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 17. Parties to court proceeding**

(1) A Prosecutor's Office, accused and his or her counsel and victim, civil defendant and third parties are the parties to a court proceeding.  
[RT I 2007, 2, 7 - entry into force 01.02.2007]

(2) The parties to a court proceeding have all the rights of participants in the proceedings provided for in this Code.

## **Division 1 Court**

### **§ 18. Panels of county courts**

(1) In county courts, criminal matters concerning criminal offences in the first degree shall be heard by a court panel consisting of the presiding judge and two lay judges. Lay judges have all the rights of a judge in a court hearing.

(2) Matters concerning criminal offences in the second degree and criminal matters in which simplified proceedings are applied shall be heard by a judge sitting alone.

(3) [Repealed - RT I, 29.06.2012, 3 - entry into force 09.07.2012]

(4) If the court hearing of a criminal matter is time-consuming, a reserve judge or reserve lay judge may, by a court ruling, be involved in a court session who shall be present in the courtroom during the court hearing. If a judge or lay judge cannot continue as a member of a court panel, he or she shall be replaced by a reserve judge or reserve lay judge.

(5) Pre-trial proceedings shall be conducted by a judge sitting alone.

(6) The composition of a court panel adjudicating a criminal matter by way of international cooperation is provided for in Chapter 19.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 19. Panels of circuit court**

(1) In circuit courts, criminal matters shall be heard by a court panel consisting of at least three circuit court judges. Pre-trial proceedings in criminal matters shall be conducted by a circuit court judge sitting alone.

(2) The chairman of a circuit court may involve a judge of a county court of the same circuit in the panel of the circuit court with the consent of the judge.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 20. Panels of Supreme Court**

(1) In the Supreme Court, criminal matters shall be heard by a court panel consisting of at least three justices of the Supreme Court.

(2) [Repealed - RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 21. Preliminary investigation judge**

(1) A preliminary investigation judge is a county court judge who, sitting alone, shall perform the duties assigned to him or her by this Code in pre-trial proceedings.

(2) In the cases provided for in this Code, permission for surveillance activities is granted by a preliminary investigation judge.

[RT I, 29.06.2012, 2 - entry into force 09.07.2012]

## **§ 22. Judge in charge of execution of court judgments**

A judge in charge of the execution of court judgments is a county court judge who, sitting alone, shall perform the duties assigned to him or her by this Code in the execution of decisions.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

## **§ 23. Voting in collegial court panel and dissenting opinion of judge**

(1) A collegial court panel shall adjudicate the issues relating to a criminal matter by voting.

(2) In county courts, the presiding judge shall be the last to present his or her opinion.

(3) In circuit courts and the Supreme Court, the judge who prepares a matter for court proceeding shall be the first to present his or her opinion unless he or she is the presiding judge. Voting is continued according to seniority in office, starting with the most junior judge. The presiding judge shall vote last.

(4) Upon an equal division of votes, the presiding judge has the casting vote.

(5) A member of a court panel has no right to abstain from voting or remain undecided. In the event of voting on a series of issues, a member of the court panel who has maintained a minority position does not have the right to abstain from voting on a subsequent issue.

(6) A judge who maintains a minority position in voting may present his or her dissenting opinion to the court judgment. The dissenting opinions appended to the judgments of the Supreme Court shall be published together with the judgments.

[RT I 2010, 19, 101 - entry into force 01.06.2010]

## **§ 24. General jurisdiction in hearing of criminal matters in county courts**

(1) A criminal matter shall be heard by the county court in whose territorial jurisdiction the criminal offence was committed.

(2) As an exception, a criminal matter may be heard according to the location of occurrence of the consequences contained in the statutory definition of the criminal offence or the location of the majority of the accused persons or victims or witnesses. Exceptional transfer of a criminal matter within the territorial jurisdiction of one circuit court shall be decided by the chairman of the circuit court; in other cases, the transfer shall be decided by the Chief Justice of the Supreme Court.

(3) If the place of commission of a criminal offence cannot be ascertained, the criminal matter shall be heard by the court in whose territorial jurisdiction the pre-trial proceedings are completed.

(4) A preliminary investigation judge of a county court in whose territorial jurisdiction the criminal offence was committed shall perform the duties of a preliminary investigation judge. Where it is impossible to clearly determine the place of commission of the criminal offence, a preliminary investigation judge of a county court of the place of performance of the procedural act shall perform the duties of a preliminary investigation judge. Permission for surveillance activities is granted by a judge designated by the division of tasks plan who is not the chairman of the court. For granting of permission for surveillance activities, up to three judges shall be designated by the division of tasks plan in the Harju County Court and two judges in all other county courts.

[RT I, 29.06.2012, 2 - entry into force 09.07.2012]

(5) The jurisdiction of criminal matters heard by way of international co-operation is provided for in Chapter 19.

## **§ 25. Exclusive jurisdiction in hearing of criminal matters in county courts**

(1) A criminal matter concerning a criminal offence committed by means of printed matter shall be heard by the court of the place of publication of the printed matter unless the victim requests that the criminal matter be heard by the court of his or her residence or the court in whose territorial jurisdiction the printed matter has been disseminated.

(2) If a criminal offence is committed abroad, the criminal matter shall be heard by the court of the residence of the suspect or accused in Estonia. If the suspect or accused does not have a residence in Estonia, the criminal matter shall be heard by Harju County Court.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

## **§ 26. Jurisdiction over joined criminal matter**

If several courts are competent to hear a joined criminal matter, the matter shall be heard by one of such courts. The Prosecutor's Office which sends the statement of charges to the court shall decide on the jurisdiction pursuant to the interests of justice.

## **§ 27. Jurisdiction over criminal matters concerning judges**

(1) A criminal matter in which a judge is a participant in the proceeding and which according to general jurisdiction is to be heard by a county court within the territorial jurisdiction of the circuit court of the place of employment of the judge shall be referred for hearing by a county court within the territorial jurisdiction of another circuit court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If, according to general jurisdiction, the granting of permission for conducting of surveillance activities with regard to a judge falls within the competence of the county court

within the territorial jurisdiction of the circuit court of the place of employment of the judge, permission for surveillance activities is granted, at the request of the Public Prosecutor's Office, by the chairman of the county court within the territorial jurisdiction of another circuit court or a judge designated by him or her acting as a preliminary investigation judge.

[RT I 2007, 1, 2 - entry into force 30.03.2007]

### **§ 27<sup>1</sup>. Jurisdiction of charge proceedings**

(1) Adjudication of an appeal against an order of the Public Prosecutor's Office specified in subsection 208 (1) of this Code falls within the jurisdiction of the circuit court in whose jurisdiction the Prosecutor's Office or investigative body who sent the notice on refusal to commence criminal proceedings or the order on termination of the criminal proceedings to the victim is located.

(2) If the notice on refusal to commence criminal proceedings or the order on termination of the criminal proceedings has been sent to the victim by the Public Prosecutor's Office, the adjudication of the appeal specified in subsection 208 (1) of this Code falls within the jurisdiction of the Tallinn Circuit Court.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

### **§ 28. Verification of jurisdiction and resolution of jurisdictional disputes**

(1) A court shall verify the jurisdiction over a criminal matter during preparation for the court hearing and, in the event of contestation of the jurisdiction, make a ruling on referral of the criminal matter to the court with appropriate jurisdiction.

(2) Before a criminal matter is referred to a court with appropriate jurisdiction, only urgent procedural acts are permitted.

(3) If a court contests the jurisdiction over a criminal matter received from another court, the jurisdiction shall be determined by the Chief Justice of the Supreme Court.

### **§ 29. Procedural assistance between courts**

A court may request procedural assistance from another court if performance of a procedural act in such other court would facilitate the hearing of a criminal matter, save the time of the participants in the proceedings and the court and reduce procedure expenses. A court from whom assistance is requested shall not refuse assistance unless otherwise provided by law.

## **Division 2 Prosecutor's Office**

### **§ 30. Prosecutor's Office in criminal procedure**

(1) A Prosecutor's Office shall direct pre-trial proceedings and ensure the legality and efficiency thereof and represent public prosecution in court.

(2) The authority of a Prosecutor's Office in criminal proceedings shall be exercised independently by the prosecutor in the name of the Prosecutor's Office and the prosecutor is governed only by law.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **Division 3 Investigative Bodies**

#### **§ 31. Definition of investigative body**

(1) The Police and Border Guard Board, the Security Police Board, the Tax and Customs Board, the Competition Board, the Military Police, the Environmental Inspectorate and the Prisons Department of the Ministry of Justice and the prison that perform the functions of an investigative body directly or through the institutions administrated by them or through their regional offices are investigative bodies within the limits of their competence.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(2) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) A list of the positions in which the officials have the right to participate in criminal proceedings within the limits of competence of an investigative body shall be approved by the heads of the bodies specified in subsection (1) of this section.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 32. Investigative bodies in criminal procedure**

(1) An investigative body shall perform the procedural acts provided for in this Code independently unless the permission of a court or the permission or order of a Prosecutor's Office is necessary for the performance of the act.

(2) An investigative body has the right to demand submission of a document necessary for the adjudication of a criminal matter.

### **Division 4 Suspect and Accused**

#### **§ 33. Suspect**

(1) A suspect is a person who has been detained on suspicion of a criminal offence, or a person whom there is sufficient basis to suspect of the commission of a criminal offence and who is subject to a procedural act.

(2) The rights and obligations of a suspect shall be immediately explained to him or her and he or she shall be interrogated with regard to the content of the suspicion. Interrogation may be

postponed if immediate interrogation is impossible due to the state of health of the suspect, or if postponing is necessary in order to ensure the participation of a counsel and interpreter or translator.

### **§ 34. Rights and obligations of suspects**

(1) A suspect has the right to:

- 1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion;
- 2) know that his or her testimony may be used in order to bring charges against him or her;
- 2<sup>1</sup>) the assistance of an interpreter or translator;  
[RT I, 04.10.2013, 3 - entry into force 27.10.2013]
- 3) the assistance of a counsel;
- 4) confer with the counsel without the presence of other persons;
- 5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel;
- 6) participate in the hearing of an application for an arrest warrant in court;
- 7) submit evidence;
- 8) submit requests and complaints;
- 9) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes;
- 10) give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings.

(2) A conference specified in clause (1) 4) of this section may be interrupted for the performance of a procedural act if the conference has lasted for more than one hour.

(3) A suspect is required to:

- 1) appear when summoned by an investigative body, Prosecutor's Office or court;
- 2) participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

### **§ 35. Accused**

(1) The accused is a person with regard to whom a Prosecutor's Office has prepared a statement of charges in accordance with § 226 of this Code or a person against whom a statement of charges has been brought pursuant to expedited procedure or a person with whom an agreement has been entered into in settlement proceedings.

(2) The accused has the rights and obligations of a suspect. The accused has the right to examine the criminal file through his or her counsel and participate in the court hearing.

(3) The accused with regard to whom a judgment of conviction has entered into force is a convicted offender.



(4) The accused with regard to whom a judgment of acquittal has entered into force is an acquitted person.

[RT I 2006, 15, 118 - entry into force 14.04.2006]

### **§ 36. Participation of suspect or accused who is legal person in criminal proceedings**

A suspect or accused who is a legal person shall participate in the criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights and obligations of a suspect or accused, including the right to give testimony in the name of the legal person.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **Division 5 Victim, Civil Defendant and Third Party**

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 37. Victim**

(1) A victim is a natural or legal person to whom physical, proprietary or moral damage has been directly caused by a criminal offence or by an unlawful act committed by a person not capable of guilt.

(2) A victim who is a legal person shall participate in the criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights and obligations of a victim, including the right to give testimony in the name of the legal person.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The provisions applicable to witnesses apply to victims in the performance of procedural acts unless otherwise prescribed by this Code.

### **§ 38. Rights and obligations of victims**

(1) A victim has the right to:

1) contest a refusal to commence or termination of criminal proceedings pursuant to the procedure provided for in §§ 207 and 208 of this Code;

2) file a civil action through an investigative body or the Prosecutor's Office not later than by the date provided for in subsection 225 (1) of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

3) give or refuse to give testimony on the bases provided for in §§ 71-73 of this Code;

4) submit evidence;

5) submit requests and complaints;

6) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes;

7) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;

8) participate in the court hearing;

9) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the charges and punishment and the damage set out in the charges and the civil action;

10) give consent to the application of temporary restraining order and request application of restraining order pursuant to the procedure provided for in § 310<sup>1</sup> of this Code.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(2) A victim is required to:

1) appear when summoned by an investigative body, Prosecutor's Office or court;

2) participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

(3) The filing of a civil action for compensation for proprietary damage in a criminal proceeding is exempt from state fees.

(4) An investigative body or a Prosecutor's Office shall explain to the victim his or her's rights, the procedure for filing a civil action, essential requirements for a civil action, term for filing a civil action and the consequences of allowing such term to expire, and the conditions and procedure for receipt of legal aid ensured by the state.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 39. Civil defendant**

(1) A person bearing proprietary liability pursuant to law for damage which has been caused directly by a criminal offence or which a person not capable of guilt has caused by an unlawful act shall be declared a civil defendant by an order or ruling of the body conducting the proceedings.

(2) A civil defendant who is a legal person shall participate in a criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights and obligations of a civil defendant.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The provisions applicable to witnesses apply to civil defendants in the performance of procedural acts unless otherwise prescribed by this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 40. Rights and obligations of civil defendants**

(1) A civil defendant has the right to:

1) contest a civil action or file a counterclaim;

2) submit evidence;

3) submit requests and complaints;

4) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes;

5) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of

this Code;

- 6) participate in the court hearing;
- 7) give consent to the application of settlement proceedings or to refuse to give such consent, to present an opinion concerning the damage set out in the charges and the civil action.

(2) A civil defendant is required to:

- 1) appear when summoned by an investigative body, Prosecutor's Office or court;
- 2) participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

### **§ 40<sup>1</sup>. Third party**

(1) The body conducting the proceedings may involve a third party in the criminal proceeding if the rights or freedoms of the person which are protected by law may be adjudicated in the adjudication of the criminal matter or in special proceedings.

(2) A third party who is a legal person shall participate in a criminal proceeding through a member of the management board or the body substituting for the management board of the legal person and such member has all the rights and obligations of a third party.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The provisions concerning civil defendant apply to third parties on participation in procedural acts, examination of criminal file and failure to appear when summoned by body conducting proceedings unless otherwise provided for in this Code.  
[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 40<sup>2</sup>. Rights and obligations of third parties**

(1) Third parties have the right to:

- 1) submit evidence;
- 2) submit requests and complaints;
- 3) examine the minutes of procedural acts and give statements on the conditions, course and results of the procedural acts, whereas such statements are recorded in the minutes;
- 4) examine the materials of the criminal file pursuant to the procedure provided for in § 224 of this Code;
- 5) participate in the court hearing;

(2) If confiscation of the property of the third party is decided in criminal proceedings, the third party has the rights of suspect provided for in clauses 34 (1) 1), 2) and 5) of this Code, taking account of the specifications of confiscation.

(3) Third parties are required to:

- 1) appear when summoned by an investigative body, Prosecutor's Office or court;
- 2) participate in procedural acts and obey the orders of investigative bodies, Prosecutors' Offices and courts.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

**§ 41. Representative of victim, representative of civil defendant and representative of third party**

**[RT I 2007, 2, 7 - entry into force 01.02.2007]**

(1) A victim, civil defendant or third party who is a natural person may participate in the criminal proceeding personally or through a representative. Personal participation in a criminal proceeding does not deprive the person of the right to have a representative.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(2) A victim, civil defendant or third party who is a legal person may have a contractual representative in a criminal proceeding in addition to the legal representatives specified in subsections 37 (2), 39 (2) and 40<sup>1</sup> (2) of this Code.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(3) In criminal proceedings, state legal aid shall be provided to victims, civil defendants and third parties on the bases and pursuant to the procedure prescribed in the State Legal Aid Act. If a court finds that the essential interests of a victim, civil defendant or third party may be insufficiently protected without an advocate, the court may decide to grant state legal aid to the person on its own initiative and on the bases and pursuant to the procedure prescribed in the State Legal Aid Act.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(4) A victim, civil defendant and third party may have up to three representatives. A representative may have several principals if the interests of the principals are not in conflict. An advocate or any other person who has acquired at least officially recognised Master's degree in the field of study of law or a qualification equal thereto for the purposes of subsection 28 (2<sup>2</sup>) of the Republic of Estonia Education Act or a foreign qualification equal thereto may be a contractual representative in court proceeding.

[RT I 2008, 29, 189 - entry into force 01.07.2008]

(5) A representative has all the rights of the principal. A representative of a natural person or the contractual representative of a legal person does not have the right to give testimony in the name of the principal.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(6) A representative is required to maintain the confidentiality of all the information which becomes know to him or her upon grant of state legal aid in the course of the criminal proceeding. The representative is allowed to disclose to the principal the information which becomes know to him or her upon grant of state legal aid. The representative may disclose information concerning pre-trial proceedings about the principal only with the consent of the principal and under the conditions prescribed in § 214 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Division 6 Counsel**

### **§ 42. Counsel**

(1) In a criminal proceeding, the counsel is:

1) an advocate or, with the permission of the body conducting the proceedings, any other person who meets the educational requirements established for contractual representatives by this Act and whose competence in the criminal proceeding is based on an agreement with the person being defended (contractual counsel), or

2) an advocate whose competence in the criminal proceeding is based on an appointment by the Estonian Bar Association at the request of an investigative body, Prosecutor's Office or court (appointed counsel).

[RT I 2009, 1, 1 - entry into force 01.01.2010]

(2) In a court proceeding, a person being defended may, upon agreement, have up to three counsels.

(3) A counsel may defend several persons if the interests of the persons are not in conflict.

[RT I 2005, 71, 549 - entry into force 01.01.2006]

### **§ 43. Choice and appointment of counsel**

(1) In a criminal proceeding, a suspect, accused and convicted offender may choose a counsel personally or through another person.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A counsel shall be appointed by the Estonian Bar Association at the request of an investigative body, Prosecutor's Office or court if:

[RT I 2009, 1, 1 - entry into force 01.01.2010]

1) a suspect or the accused has not chosen a counsel but has requested the appointment of a counsel;

2) a suspect or the accused has not requested a counsel but the participation of a counsel is mandatory according to § 45 of this Code;

3) a counsel chosen by a person cannot assume the duties of defence within 12 hours as of the detention of the person as a suspect or, in other cases, within 24 four hours as of entry into an agreement to defend the suspect or accused or summoning to the body conducting the proceedings and the counsel has not appointed a substitute counsel for himself or herself;

4) a counsel cannot appear at a court session in a matter pursuant to the general procedure in which he or she has assumed the duties of defence, and the counsel has not appointed a substitute counsel for himself or herself,

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The body conducting proceedings shall notify a suspect or accused immediately of appointment of a counsel to him or her and communicate to him or her the contact details of an advocate who provides state legal aid appointed by the Estonian Bar Association.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If there is no suspect or accused in a criminal matter but the Prosecutor's Office has applied for deposition of the testimony of a witness, the Estonian Bar Association shall appoint a counsel at the request of a preliminary investigation judge to represent the interests of a potential suspect in the hearing of a witness.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 44. Substitute counsel**

(1) A counsel may appoint a substitute counsel to participate in a criminal proceeding instead of the counsel during the period of time when the counsel is prevented from participating in the criminal proceeding.

(2) A substitute counsel has the rights and obligations of a counsel.

#### **§ 45. Participation of counsel in criminal proceedings**

(1) A counsel may participate in a criminal proceeding as of the moment when a person acquires the status of a suspect in the proceedings or in the case provided for in subsection 43 (4) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The participation of a counsel throughout a criminal proceeding is mandatory if:

- 1) the person was a minor at the time of commission of the criminal offence;
- 2) due to his or her mental or physical disability, the person is unable to defend himself or herself or if defence is complicated due to such disability;
- 3) the person is suspected or accused of a criminal offence for which life imprisonment may be imposed;
- 4) the interests of the person are in conflict with the interests of another person who has a counsel;
- 5) the person has been held in custody for at least six months;
- 6) proceedings are conducted in the criminal matter pursuant to expedited procedure.

[RT I 2006, 15, 118 - entry into force 14.04.2006]

(3) The participation of a counsel in a pre-trial proceeding is mandatory as of the presentation of the criminal file for examination pursuant to the procedure provided for in subsection 223 (3) of this Code.

(4) The participation of a counsel in a pre-trial proceeding is mandatory, except in the case an accused does not request a counsel, in the opinion of the court he or she is able to represent his or her own interests and wishes to waive the participation of a counsel:

- 1) in a court hearing of criminal offence in the second degree in settlement proceedings;
- 2) upon pronouncement of a court judgment in simplified proceedings;
- 3) in proceedings in criminal matters sent to court in alternative procedure, if the accused complies with the requirements established by this Act to contractual counsel and submits a reasoned written application to the court for a permission to defend himself or herself.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4<sup>1</sup>) Requirements for the form of the waiver specified in subsection (4) of this section shall be established by a regulation of the Minister of Justice.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4<sup>2</sup>) If the counsel does not participate in a court hearing at the request of the accused, the accused shall have the same procedural rights and obligations that the counsel would have in the course of a court hearing.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4<sup>3</sup>) [Repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

(5) An appointed counsel is required to participate in a criminal proceeding until the end of the hearing of the criminal matter by way of cassation proceedings and he or she may refuse to assume the duties of defence on his or her own initiative or waive the duties of defence assumed by him or her on own initiative only on the bases provided for in subsection 46 (1) of this Code.

(6) The performance of duties of defence by a contractual counsel in pre-trial proceedings includes participating in the completion of pre-trial proceedings.

(7) The performance of duties of defence by a contractual counsel in a county court includes drawing up an appeal against the decision or ruling of the county or city court if the person being defended so wishes.

(8) The performance of duties of defence by a contractual counsel in a circuit court includes drawing up an appeal in cassation or appeal against the decision of the circuit court and pre-trial proceedings in the Supreme Court if the person being defended so wishes.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(9) A contractual counsel may refuse to assume the duties of defence on his or her own initiative or waive the duties of defence assumed by him or her on own initiative only on the bases provided for in subsection 46 (1) of this Code.

#### **§ 46. Refusal to assume duties of defence and waiver of assumed duties of defence**

(1) A counsel may, on his or her own initiative and with the consent of the management of the law office, refuse to assume the duties of defence or waive the duties of defence assumed by him or her if:

1) the counsel has been exempted from the obligation to maintain a professional secret pursuant to the procedure provided for in subsection 45 (5) of the Bar Association Act or if the suspect or accused has requested the performance of an act which is in violation of law or the requirements for professional ethics;

2) performance of the duties of defence by such counsel would be in violation of the right of defence;

3) the person being defended violates any of the essential conditions of the client contract.

(1<sup>1</sup>) A counsel shall refuse to assume the duties of defence in a matter pursuant to general procedure and waive the assumed duties of defence not later than at the preliminary hearing if he or she is unable to participate in the court hearing of the matter within three months as of the preliminary hearing.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A body conducting proceedings shall be immediately notified of a refusal to assume the duties of defence or waiver of assumed duties of defence.

(3) A refusal to assume the duties of defence or waiver of assumed duties of defence shall have legal effect as of the moment when a new counsel assumes the duties of defence.

(4) If a counsel has refused to assume the duties of defence or has waived the duties of defence previously assumed by him or her, the new counsel who assumed the duties of defence thereafter may request that investigative activities requiring the participation of the person being defended and the counsel be postponed by three days in order to be able to examine materials of the criminal matter.

#### **§ 47. Rights and obligations of counsel**

(1) A counsel has the right to:

- 1) receive from natural and legal persons documents necessary for the provision of legal assistance to the person being defended;
- 2) submit evidence;
- 3) submit requests and complaints;
- 4) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes;
- 5) with the knowledge of the body conducting the proceedings, use technical equipment in the performance of the duties of defence if this does not obstruct the performance of procedural acts;
- 6) participate in the investigative activities carried out in the presence of the person being defended during the pre-trial proceeding and pose questions through the body conducting the proceedings;
- 7) after he or she has been involved in a criminal proceeding, examine the record of interrogation of the person being defended and the record of detention of the suspect and, upon the completion of pre-trial investigation, all materials in the criminal file;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

8) confer with the person being defended without the presence of other persons for an unlimited number of times with unlimited duration unless a different duration of the conference is provided for in this Code.

(2) A counsel is required to use all the means and methods of defence which are not prohibited by law in order to ascertain the facts which vindicate the person being defended, prove his or her innocence or mitigate his or her punishment, and to provide other legal assistance necessary in a criminal matter to the person being defended.



(3) A counsel is required to maintain the confidentiality of all the information which becomes known to him or her upon grant of state legal aid in the course of the criminal proceeding. The counsel is allowed to disclose to the person being defended the information which becomes known to him or her upon grant of state legal aid. The counsel may disclose information concerning pre-trial proceedings about the person being defended only with the consent of the person being defended and where the legitimate interests of justice so require.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 48. Waiver of counsel**

A suspect and accused may waive counsel in writing during pre-trial proceedings unless participation of a counsel is mandatory.

### **Division 7 Circumstances Precluding Participation in Proceedings**

#### **§ 49. Bases for judge to remove himself or herself**

(1) A judge is required to remove himself or herself from a criminal proceeding if he or she:  
1) has previously made a decision or a judicial decision of a lower court in the same criminal matter which was annulled by a higher court in part or in full, except in the case the higher court referred the criminal matter in the annulment of the decision for a new hearing by the same court panel;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) has made a court ruling specified in §§ 132, 134, 135 or 137 of this Code as a preliminary investigation judge in the same criminal matter, except in the hearing of the criminal matter in settlement and summary proceedings.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

3) has previously been subject to criminal proceedings on another basis in the same criminal matter;

4) is or has been a person close to the accused, victim or civil defendant pursuant to subsection 71 (1) of this Code;

5) [repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The participation of a judge in the Criminal Chamber of the Supreme Court does not constitute a basis for the judge to remove himself or herself from further hearing of the same criminal matter by the Supreme Court.

(3) Adjudication of an appeal against a ruling of a preliminary investigation judge or an order of a Prosecutor's Office does not constitute a basis for a judge to remove himself or herself.

(4) Persons who are or have been close to each other pursuant to subsection 71 (1) of this Code shall not be members of the same court panel.

(5) The removal of a judge by himself or herself shall be formalised by a reasoned petition for removal which shall be included in the court file.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) If a judge finds that he or she cannot be impartial for a reason not specified in subsection (1) of this section, the judge shall submit a petition of challenge pursuant to the procedure prescribed in § 49<sup>1</sup> of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 49<sup>1</sup>. Adjudication of petition of challenge submitted by judge**

(1) A judge or court panel shall submit the petition of challenge specified in subsection 49 (6) of this Code to the chairman of the court or a judge appointed by the chairman.

(2) Before the adjudication of the petition of challenge, the judge or the court panel having received the petition of challenge may perform only urgent procedural acts.

(3) The chairman of a court or a judge appointed by the chairman shall adjudicate the petition of challenge by a ruling in written proceedings within three working days as of receipt of the petition.

(4) The petition of challenge of the chairman of a county court shall be adjudicated the chairman of a circuit court or a judge appointed by the chairman. (4) The petition of challenge of the chairman of a circuit court shall be adjudicated the Chief Justice of the Supreme Court or a justice appointed by the Chief Justice. The petition of challenge of a justice of the Supreme Court shall be adjudicated by the court panel hearing the matter.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 50. Removal of judge**

(1) If a judge does not remove himself or herself on the basis provided for in § 49 of this Code, a party to the court proceeding may submit a petition of challenge against the judge.

(2) Petitions of challenge shall be submitted at the opening of a court session. If the basis for a judge to remove himself or herself becomes evident later and the court is immediately notified thereof, petitions of challenge may be submitted before the final rebuttal of the accused.

(3) In the event of submission of a petition challenge, the judge may perform only urgent procedural acts before the adjudication of the petition.

(4) Before the adjudication of a petition of challenge, the court shall hear the explanation of the judge to be removed and the opinions of the parties.

(5) Petitions of challenge shall be adjudicated by a ruling made in chambers. A petition of challenge regarding a judge shall be adjudicated by the rest of the panel of the court in the absence of the judge to be removed. In the event of an equal division of votes, the judge is removed. A petition of challenge against several judges or the full panel of the court shall be adjudicated by the same panel of the court by a simple majority. If a court panel finds that the petition of challenge has to be satisfied for a reason not specified in subsection 49 (1) of this Code, no ruling shall be made but the petition of challenge shall be referred to adjudication

pursuant to the procedure prescribed in § 49<sup>1</sup> of this Code.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) If a criminal matter is heard by a judge sitting alone, the judge shall adjudicate petitions of challenge himself or herself. If a judge finds that the petition of challenge has to be satisfied for a reason not specified in subsection 49 (1) of this Code, the judge shall refer the petition of challenge to adjudication pursuant to the procedure prescribed in § 49<sup>1</sup> of this Code.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) An appeal against a decision may contain a reference to the basis for the removal of a judge if the petition of challenge was submitted with the lower court on time but was dismissed or if the basis for removal becomes evident after the adjudication of the criminal matter.

### **§ 51. Replacement of removed judge**

If a judge who has removed himself or herself or who has been removed cannot be replaced in the same court, the chairman of the circuit court shall refer the criminal matter for hearing by another county court within the territorial jurisdiction of the circuit court. Referral of a criminal matter for hearing by a county court within the territorial jurisdiction of another circuit court shall be decided by the Chief Justice of the Supreme Court.  
[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 52. Bases for prosecutor to remove himself or herself**

(1) A prosecutor is required to remove himself or herself from a criminal proceeding on the bases provided for in subsections 49 (1) and (6) of this Code.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The fact that a prosecutor has previously participated in the same criminal proceeding as the prosecutor does not constitute a basis for his or her removal.

### **§ 53. Removal of prosecutor**

(1) If a prosecutor does not remove himself or herself on a bases provided for in subsections 49 (1) and (6) of this Code, the suspect, accused, victim, civil defendant, third party or counsel may submit a petition of challenge against the prosecutor.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A petition of challenge submitted against a prosecutor in a pre-trial proceeding shall be adjudicated by an order of the Public Prosecutor's Office within five days as of the submission of the petition.

(3) Petitions of challenge filed in a court proceeding shall be adjudicated by a court.

#### **§ 54. Bases for counsel to remove himself or herself**

A person shall not act as counsel if he or she:

- 1) is or has been subject to criminal proceedings on another basis in the same criminal matter;
- 2) in the same or related criminal matter, has previously defended or represented another person whose interests are in conflict with the interests of the person to be defended.

#### **§ 55. Bases for removal of counsel**

(1) If the bases provided for in subsection 20 (3<sup>1</sup>) of the State Legal Aid Act exist or if a counsel does not remove himself or herself on the bases provided for in § 54 of this Code, the court shall remove the counsel by a ruling on its own initiative or at the request of a party to the court proceeding.

[RT I 2009, 1, 1 - entry into force 01.01.2010]

(2) The court shall remove a counsel if it becomes evident in a proceeding for removal provided for in §§ 56 and 57 of this Code that the counsel has abused his or her status in the proceedings by communicating with the person being defended, after the person has been detained as a suspect or taken into custody, in a manner which may promote the commission of another criminal offence or violation of the internal procedure rules of the custodial institution.

(3) The court shall remove a counsel if the counsel has violated the provisions of subsection 46 (1<sup>1</sup>) of this Code, the violation hinders the counsel from correct performance of his or her duties of defence and the counsel has not appointed a substitute counsel.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 56. Request for initiation of proceedings for removal of counsel**

(1) A proceeding for the removal of a counsel shall be conducted:

- 1) in a pre-trial proceeding, by the preliminary investigation judge;
- 2) in a county court, by the judge sitting alone or one of the judges of the panel of the court;
- 3) in a circuit court or the Supreme Court, by one of the judges of the panel of the court.

(2) Submission of a request for initiation of a proceeding for the removal of a counsel shall not hinder the pre-trial proceeding.

(3) If a request for initiation of a proceeding for the removal of a counsel is submitted in a court proceeding, the court session shall be adjourned for up to one month.

(4) On the first working day following the date of receipt of a request for initiation of a proceeding for the removal of a counsel, the judge shall schedule the time for a court session for the conduct of the proceeding and notify the Prosecutor's Office which submitted the request, the counsel to be removed, the person being defended by the counsel and, if the counsel to be removed is a member of the Bar Association, the leadership of the Bar Association of the scheduled time.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

## **§ 57. Proceeding for removal of counsel**

(1) A proceeding for the removal of a counsel shall be conducted within five days as of receipt of the request for the initiation of the proceeding.

(2) If the person who submitted a request fails to appear in a court session where a proceeding for the removal of a counsel is to be conducted, the counsel shall not be removed.

(3) If a counsel fails to appear, with good reason as referred to in § 170 of this Code, in a court session where a proceeding for the removal of the counsel is to be conducted, the proceeding shall be adjourned for up to three days.

(4) If a counsel who has received a summons fails, without good reason, to appear in a court session where a proceeding for the removal of the counsel is conducted or if the reason for his or her failure to appear is unknown or if he or she fails to appear in a court session which has been adjourned, the proceeding for the removal of the counsel shall be conducted in his or her absence.

(5) In a proceeding for the removal of a counsel, the court shall hear the person who submitted the request for the removal, and the counsel, and the person and counsel may submit evidence and pose questions to each other with the permission of the court.

(6) The decision made in a proceeding for removal shall be formalised by a court ruling.

(7) A counsel who has been removed pursuant to the procedure provided for in this section and § 55 has the right to re-enter the criminal proceeding after the basis for removal provided for in subsection 55 (2) of this Code has ceased to exist.

## **§ 58. Replacement of removed counsel**

If a counsel removes himself or herself or is removed on a bases provided for in § 55 of this Code, the person being defended may choose a new counsel within the term granted by the court or, in the cases provided for in § 43 or 45 of this Code, a new counsel is appointed for him or her.

## **§ 59. Removal of other persons participating in proceeding**

(1) An official of an investigative body who is conducting proceedings in a criminal matter is required to remove himself or herself on the bases provided for in subsections 49 (1) and (6) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) An expert, clerk of a court session and interpreter or translator are required to remove themselves or they shall be removed on the bases and pursuant to the procedure provided by §§ 96, 97, 157 and 162 of this Code.

(4) The representative of a victim, civil defendant, third party and witness is required to remove himself or herself on the bases provided for in § 54 of this Code. Upon removal of the representative of a victim, civil defendant, third party and witness, the provisions prescribed for removal of a counsel in this Code shall be applied.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) Petitions of challenge submitted in a pre-trial proceeding shall be adjudicated by an order of the Prosecutor's Office within three days as of the submission of the petition.

(6) Petitions of challenge filed in a court proceeding shall be adjudicated by a court.

## **Chapter 3 PROOF**

### **Division 1 General Conditions for Proof and Taking of Evidence**

#### **§ 60. Proof and matter of common knowledge**

(1) In the adjudication of a criminal matter, a court shall rely on facts which it has declared to be proved or a matter of common knowledge.

(2) A fact is deemed to be proved if, as a result of the proof submitted, a court is convinced that the facts relating to the subject of proof exist or do not exist.

(3) A fact concerning which reliable information is available from sources not subject to criminal proceedings may be declared a matter of common knowledge by a court.

#### **§ 61. Evaluation of evidence**

(1) No evidence has predetermined weight.

(2) A court shall evaluate all evidence in the aggregate according to the conscience of the judges.

#### **§ 62. Subject of proof**

The facts relating to a subject of proof are:

1) the time, place and manner of commission of the criminal offence and other facts relating to the criminal offence;

2) the necessary elements of the criminal offence;

3) the guilt of the person who committed the criminal offence;

4) information describing the person who committed the criminal offence, and other circumstances affecting the liability of the person.

## **§ 63. Evidence**

(1) Evidence means the statements of a suspect, accused, victim, the testimony of a witness, an expert's report, the statements given by an expert upon provision of explanations concerning the expert's report, physical evidence, reports on investigative activities, minutes of court sessions and reports on surveillance activities, and other documents, photographs, films or other data recordings.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

(1<sup>1</sup>) Submission of information collected pursuant to the Security Authorities Act as evidence in criminal proceedings shall be decided by the Chief Public Prosecutor taking into account the restrictions specified in subsections 126<sup>1</sup> (2) and 126<sup>7</sup> (2) of this Code.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

(2) Evidence not listed in subsection (1) of this section may also be used in order to prove the facts relating to a criminal proceeding, except in the case the evidence has been obtained by a criminal offence or violation of a fundamental right.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 64. General conditions for taking of evidence**

(1) Evidence shall be taken in a manner which is not prejudicial to the honour and dignity of the persons participating in the taking of the evidence, does not endanger their life or health or cause unjustified proprietary damage. Evidence shall not be taken by torturing a person or using violence against him or her in any other manner or by means affecting a person's memory capacity or degrading his or her human dignity.

(2) If it is necessary to undress a person in the course of a search, physical examination or taking of comparative samples, the official of the investigative body, the prosecutor and the participants in the procedural act, except health care professionals and forensic pathologists shall be of the same sex as the person.

(3) If technical equipment is used in the course of taking of evidence, the participants in the procedural act shall be notified thereof in advance and the objective of using the technical equipment shall be explained to them.

(4) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If necessary, participants in a procedural act shall be warned that disclosure of information relating to pre-trial proceedings is prohibited in accordance with § 214 of this Code.

(6) The taking of evidence by surveillance activities is regulated by Chapter 3<sup>1</sup> of this Code.  
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

## **§ 65. Evidence obtained from ships during voyages and from foreign states**

(1) Evidence taken in a foreign state pursuant to the legislation of such state may be used in a criminal proceeding conducted in Estonia unless the procedural acts performed in order to obtain the evidence are in conflict with the principles of Estonian criminal procedure taking into account the specifications provided for in subsection (2) of this section.

(2) If the object of the criminal proceeding is an act of a person serving in the Defence Force committed outside the Republic of Estonia, evidence taken in a foreign state may be used in a criminal proceeding unless the procedural acts performed in order to obtain the evidence are in conflict with the principles of the Estonian criminal procedure regardless of the fact of whether the procedural act was conducted on the basis of a request for assistance or not.

(3) If an act to which the Estonian Penal Code applies is committed on board of a ship during a voyage, the documents prepared by the master of the ship pursuant to § 73 of the Merchant Shipping Code are the evidence in the criminal proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Division 2 Hearing of Witnesses**

### **§ 66. Witness**

(1) A witness is a natural person who may know facts relating to a subject of proof.

(2) A suspect or accused or the official of the investigative body, prosecutor or judge conducting the proceedings in the criminal matter shall not participate in the same criminal matter as witnesses. An official of an investigative body, prosecutor or judge who has been conducting proceedings in the criminal matter may be a witness in the court proceeding in the case specified in subsection 289 (4) of this Code for verifying the reliability of evidence.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) The testimony of a witness concerning such facts relating to a subject of proof of which the witness has become aware through another person shall not be evidence unless:

1) the direct source of the evidence cannot be heard for the reason specified in subsection 291 (1) of this Code;

2) the content of the testimony of the witness is what he or she heard from another person about the circumstances perceived by him or her immediately before speaking in the case the specified person was, during speaking, still under the influence of what he or she had perceived, and there is no basis to believe that he or she distorts the truth;

3) the content of the testimony of the witness is what he or she heard from another person and which contains the admission of commission of a criminal offence or which is in another way in obvious conflict with the interests of the speaker;

4) the content of the testimony of the witness is the circumstances relating to a criminal offence committed jointly.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]



(3) A witness is required to give testimony unless there are lawful bases specified in §§ 71-73 of this Code for refusal to give testimony. While giving testimony, the witness is required to tell the truth.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 67. Ensuring safety of witnesses**

(1) Taking into account the gravity of a criminal offence or the exceptional circumstances relating thereto, a preliminary investigation judge may, at the request of a Prosecutor's Office, declare a witness anonymous by a ruling in order to ensure the safety of the witness.

(2) In order to make a ruling on anonymity, a preliminary investigation judge shall question the witness in order to ascertain his or her reliability and the need to ensure his or her safety, and shall hear the opinion of the prosecutor. If necessary, the preliminary investigation judge shall examine the criminal file.

(3) A fictitious name shall be assigned to an anonymous witness on the basis of the ruling on anonymity and the name shall be used in procedural acts in accordance with subsection 146 (8) of this Code.

(4) Information concerning the name, personal identification code or, in the absence thereof, date of birth, citizenship, education, residence and place of employment or the educational institution of a witness declared anonymous shall be enclosed in an envelope bearing the number of the criminal matter and the signature of the person conducting the proceedings. The envelope shall be sealed and kept separately from the criminal file. The information contained in the envelope shall be examined only by the person conducting the proceedings who shall seal and sign the envelope again after examining the information.

(5) In a court proceeding, a witness bearing a fictitious name shall be heard by telephone pursuant to the procedure provided for in clause 69 (2) 2) of this Code using voice distortion equipment, if necessary. Questions may be also submitted to the witness in writing.

(6) Regardless of whether or not a witness has been declared anonymous, the provisions of the Witness Protection Act may be applied to the witness in order to ensure his or her safety.

[RT I 2005, 39, 307 - entry into force 21.07.2005]

### **§ 67<sup>1</sup>. Representative of witness**

(1) A witness may request that an advocate or any other person who meets the educational requirements established for contractual representatives be present for the protection of his or her rights at the interrogation of the witness in the pre-trial proceedings.

(2) The body conducting the proceeding shall not allow a witness to be represented at the interrogation by persons who are already parties to the proceeding, witnesses or qualified persons, who may prove to be witnesses or qualified persons in the criminal matter concerned or if there is a reasonable doubt that the interests of the person are in conflict with the interests of

the witness. Such prohibition to allow a person to act as a representative shall be formalised by an order of the body conducting proceedings, and the witness may contest it at the preliminary investigation judge within two working days as of receipt of the order.

(3) If a witness fails to appear for hearing within three working days as of the time of the act specified in the summons of the body conducting proceedings together with a representative in compliance with the requirements of subsections (1) and (2) of this section, the hearing shall be conducted without a representative.

(4) The representative of a witness has the right to interfere in the hearing if violation of the procedural requirements results in violation of the rights of the witness and to submit complaints on the bases of and pursuant to the procedure specified in Division 5 of Chapter 8 of this Code. The representative of the witness does not have the right to give testimony in the name of the principal.

(5) A representative is required to maintain the confidentiality of all the information which becomes known to him or her upon grant of state legal aid in the course of the criminal proceeding. The representative is allowed to disclose to the principal the information which becomes known to him or her upon grant of state legal aid. The representative may disclose information concerning pre-trial proceedings about the principal only with the consent of the principal and under the conditions prescribed in § 214 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 68. Hearing of Witnesses**

(1) The rights and obligations of witnesses and the right to write the testimony in hand-writing shall be explained to a witness.

(2) A witness of at least 14 years of age shall be warned against refusal to give testimony without a legal basis and giving knowingly false testimony, and the witness shall sign the minutes of the hearing to that effect. If necessary, it is explained to the witness that intentional silence on the facts known to him or her shall be considered refusal to give testimony.

(3) While giving testimony, a witness may use notes and other documents concerning numerical data, names and other information which is difficult to memorise.

(4) A witness may be heard only as regards the facts relating to a subject of proof. Leading questions may be posed only in the cases specified in clauses 288<sup>1</sup> (2) 2)-5) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) Questions concerning the moral character and habits of a suspect, accused or victim may be posed to a witness only if the act which is the object of the criminal proceeding must be assessed in inseparable connection with his or her previous conduct.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 69. Telehearing**

(1) A body conducting the proceedings may organise telehearing of a witness if the direct hearing of the witness is complicated or involves excessive costs or if it is necessary to protect the witness or the victim.

(2) For the purposes of this Code, telehearing means hearing:

1) by means of a technical solution as a result of which the participants in the proceeding immediately see and hear the witness giving testimony outside the investigative body, Prosecutor's Office or court directly and may hear the witness through the person conducting the proceedings;

2) by telephone, as a result of which the participants in the proceeding immediately hear the witness giving testimony outside the investigative body or court and may question the witness through the person conducting the proceedings.

(3) Telehearing by telephone is permitted only with the consent of the person to be heard and the suspect or accused. The consent of the suspect or accused is unnecessary for the telehearing of anonymous witnesses by telephone.

(4) The minutes of a telehearing shall contain a notation that the witness has been warned against refusal to give testimony without a legal basis and giving knowingly false testimony.

(5) The provisions of § 468 apply to the hearing of witnesses staying in a foreign state.

(6) The Minister of Justice may establish more specific requirements for organising telehearing. [RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 69<sup>1</sup>. Deposition of testimony**

(1) A Prosecutor's Office, suspect or counsel may request hearing, before a preliminary investigation judge, of a person who is a witness in a criminal proceeding, if the object of the criminal proceeding is an intentional criminal offence for which at least up to three years' imprisonment is prescribed as punishment.

(2) A court shall satisfy the request if circumstances arise which enable to conclude that later hearing of a witness in the court hearing of a criminal matter may be impossible or the witness may be influenced to give false testimony. The court shall formalise the dismissal of the request by a reasoned ruling which can be contested by way of an appeal against the court ruling.

(3) The court shall adjudicate the request for deposition of testimony within five days as of the receipt thereof and if the request is satisfied shall determine, at the earliest opportunity, the time of hearing and notify the Prosecutor's Office and the counsel immediately thereof.

(4) The prosecutor, counsel, suspect and witness shall be summoned to the hearing before a preliminary investigation judge. A suspect shall not be summoned to hearing at the request of a witness or the prosecutor if the presence of the suspect at the hearing poses a threat to the safety

of the witness. Summoning of persons to deposition of testimony shall be arranged by the participant in a proceeding who requests the hearing. A counsel may request the assistance of a preliminary investigation judge for summoning a person to the extent provided for in subsections 163<sup>1</sup> (4) and (5) of this Code.

(5) Failure of a suspect who has received his or her summons to appear does not hinder the hearing. No hearing shall be conducted if a prosecutor or counsel who has received his or her summons does not appear for good reason and has given a prior notice thereof to the court. If the participant in the proceeding who requested the hearing fails to appear for hearing or the person whose hearing is requested by a judge is not taken to the judge, no hearing shall be conducted before the preliminary investigation judge.

(6) The provisions of §§ 155-158 and 287-291 shall apply to hearing and taking of minutes thereof.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 70. Specifications concerning hearing of witnesses who are minors**

(1) A body conducting proceedings may involve a child protection official, social worker, teacher or psychologist in the hearing of a witness who is a minor.

[RT I, 11.07.2013, 1 - entry into force 01.09.2013]

(2) If a body conducting proceedings has not received appropriate training, involvement of a child protection official, social worker, teacher or psychologist in the hearing of a minor is mandatory if:

[RT I, 11.07.2013, 1 - entry into force 01.09.2013]

- 1) the witness is up to ten years of age and repeated hearing may have a harmful effect on the mind of a minor;
- 2) the witness is up to fourteen years of age and the hearing is related to domestic violence or sexual abuse;
- 3) the witness is with speech impairments, sensory or learning disabilities or mental disorders.

(3) If necessary, the hearing of minors is video recorded. In the case specified in subsection (2) of this section, the hearing of minors is video recorded if the intention is to use such hearing as evidence in court proceeding because hearing of a minor directly in a court is impossible due to his or her age or mental state.

(4) A suspect has the right to examine during the pre-trial proceedings the video recordings specified in (3) of this section. The suspect or a counsel has the right to submit questions to witnesses during five days after the examining. A Prosecutor's Office shall review a request within five days as of the receipt thereof. Dismissal of a request shall be formalised by an order a copy of which shall be sent to the person who submitted the request. Dismissal of a request shall not prevent re-submission of the request pursuant to the procedure provided for in § 225 of this Code or in the court proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 71. Refusal to give testimony for personal reasons**

(1) The following persons have the right to refuse to give testimony as witnesses:

- 1) the descendants and ascendants of the suspect or accused;
- 2) a sister, stepsister, brother or stepbrother of the suspect or accused, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the suspect or accused;
- 3) a step or foster parent or a step or foster child of the suspect or accused;
- 4) an adoptive parent or an adopted child of the suspect or accused;
- 5) the spouse of or a person permanently living together with the suspect or accused, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended.

(2) A witness may also refuse to give testimony if:

(1) the testimony may lay blame on him or her or a person listed in subsection (1) of this section for the commission of a criminal offence or a misdemeanour.

2) he or she has been acquitted or convicted in the same criminal offence as a joint principal offender or an accomplice.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 72. Refusal to give testimony due to professional or other activities**

**[RT I, 21.12.2010, 1 - entry into force 31.12.2010]**

(1) The following persons have the right to refuse to give testimony as witnesses concerning the circumstances which have become known to them in their professional or other activities:

[RT I, 21.12.2010, 1 - entry into force 31.12.2010]

- 1) the ministers of religion of the religious organisations registered in Estonia;
- 2) counsels and notaries unless otherwise provided by law;
- 3) health care professionals and pharmacists regarding circumstances concerning the descent, artificial insemination, family or health of a person;
- 3<sup>1</sup>) persons processing information for journalistic purposes regarding information which enables identification of the person who provided the information, except in the case taking of the evidence by other procedural acts is precluded or especially complicated and the object of the criminal proceeding is a criminal offence for which at least up to eight years' imprisonment is prescribed as punishment, there is predominant public interest for giving testimony and the person is required to give testimony at the request of a Prosecutor's Office based on a ruling of a preliminary investigation judge or court ruling;

[RT I, 21.12.2010, 1 - entry into force 31.12.2010]

4) persons on whom the obligation to maintain a professional secret has been imposed by law.

(2) The professional support staff of the persons specified in clauses (1) 1)-3) of this section also have the right to refuse to give testimony.

(2<sup>1</sup>) In the case provided for in clause (1) 3<sup>1</sup>) of this section, the persons who in their professional activities come across the circumstances which may identify the person who provided information to the person processing the information for journalistic purposes has the

right to refuse to give testimony.

[RT I, 21.12.2010, 1 - entry into force 31.12.2010]

(3) The persons specified in subsection (1) of this section and their professional support staff and the persons specified in subsection (2<sup>1</sup>) do not have the right to refuse to give testimony if their testimony is requested by a suspect or accused.

[RT I, 21.12.2010, 1 - entry into force 31.12.2010]

(4) If the court is convinced on the basis of a procedural act that the refusal of a person specified in subsection (1) or (2) of this section to give testimony is not related to his or her professional activities, the court may require the person to give testimony.

### **§ 73. Refusal to give testimony concerning state secrets or classified information of foreign states**

[RT I 2007, 16, 77 - entry into force 01.01.2008]

(1) A witness has the right to refuse to give testimony concerning circumstances to which the State Secrets and Classified Information of Foreign States Act applies.

[RT I 2007, 16, 77 - entry into force 01.01.2008]

(2) If a witness refuses to give testimony in order to protect a state secret or classified information of a foreign state, the investigative body, Prosecutor's Office or court shall request the agency in possession of the state secret or classified information of a foreign state to confirm classification of the facts as state secret or classified information of a foreign state.

[RT I 2007, 16, 77 - entry into force 01.01.2008]

(3) If an agency in possession of a state secret or classified information of a foreign state does not confirm classification of facts as state secret or classified information of a foreign state or does not respond to a request specified in subsection (2) of this section within twenty days, the witness is required to give testimony.

### **§ 74. Minutes of hearing of witness**

[RT I 2007, 16, 77 - entry into force 01.01.2008]

(1) The following shall be entered in the minutes of the hearing of a witness:

1) the name, personal identification code or, in the absence thereof, date of birth, citizenship, education, residence and the place of work or the name of the educational institution of the witness;

2) the relationship between the witness and the suspect or accused;

3) the testimony.

(2) In the minutes of an additional or repeated hearing, the personal data of the person being heard or information concerning the relationship between him or her and the suspect or accused shall not be repeated but reference shall be made to the minutes of the first hearing.

(3) At the request of a witness, the residence or place of work or the name of the educational institution of the witness shall not be indicated in the minutes of the hearing of the witness. Such data shall be appended to the minutes of the hearing in a sealed envelope.

(4) After a witness being heard has spoken in his or her own words, he or she may write the testimony in the minutes of the hearing in hand-writing, and a corresponding notation shall be made in the minutes.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **Division 3 Interrogation of Suspect**

#### **§ 75. Interrogation of Suspect**

(1) Upon application of interrogation of a suspect, his or her name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution shall be ascertained.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(2) At the beginning of interrogation, it shall be explained to the suspect that he or she has the right to refuse to give statements and that the statements given may be used against him or her.

(3) The suspect shall be asked whether he or she committed the criminal offence of which he or she is suspected and a proposal shall be made to the suspect to give statements in his or her own words concerning the facts relating to the criminal offence on which the suspicion is based.

(3<sup>1</sup>) The suspect and his or her counsel have the right to get a copy of the record of interrogation of the suspect during the interrogation to the extent provided for in clauses 76 (1) 1)-3) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) Subsections 66 (2<sup>1</sup>) and 68 (3)-(6) of this Code apply to interrogation of suspects.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 76. Record of interrogation of suspect**

(1) The following shall be entered in the minutes of the hearing of a witness:

1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the suspect;

2) marital status of the suspect;

3) the facts relating to the criminal offence of which the person is suspected and the legal assessment of the criminal offence pursuant to the relevant section, subsection and clause of the Penal Code;

4) statements of the suspect.

(2) The record of interrogation of a suspect shall be prepared pursuant to subsections 74 (2) and (4) of this Code.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **Division 4 Confrontation, Comparison of Statements to Circumstances and Presentation for Identification**

##### **§ 77. Confrontation**

(1) Persons may be confronted if a contradiction contained in their statements cannot be eliminated otherwise.

(2) In confrontation, the relationship between the persons confronted shall be ascertained and questions concerning the contradicting facts shall be posed to them in series.

(3) In confrontation, the previous statements of a person confronted may be disclosed and other evidence may be submitted.

(4) With the permission of an official of the investigative body, the persons confronted may pose questions to each other through the official concerning the contradictions contained in their statements. If necessary, the official of the investigative body changes the wording of a question posed.

(5) In the course of confrontation, statements are obtained pursuant to subsections 66 (2<sup>1</sup>) and 68 (2)-(6) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) The body conducting proceedings may organise the participation of a person confronted in confrontation by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code. Confrontation organized by means of a technical solution shall be video recorded.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

##### **§ 78. Record of confrontation**

(1) A record of confrontation shall set out the course and results of the procedural act in the form of questions and answers in the order of the questions posed and answers given.

(2) At the request of the body conducting proceedings the correctness of each answer recorded shall be confirmed by the signatures of the persons confronted.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) If the answers of the persons confronted coincide, the answers may be recorded as a single answer.



(4) If the previous statements of a person confronted are disclosed or other evidence is submitted, such disclosure or submission shall be evident from the wording of the questions recorded.

#### **§ 79. Comparison of statements to circumstances**

(1) Upon comparison of statements to circumstances, a proposal shall be made to a suspect, accused, victim or witness who has been interrogated or heard to explain and specify the facts relating to the criminal act on the scene of the act and compare his or her statements to the circumstances on the scene.

(2) If it is necessary in a pre-trial proceeding to compare the statements of several persons to circumstances, the comparison shall be conducted separately with each person.

(3) In the course of comparison of statements to circumstances, statements are obtained pursuant to subsections 66 (2<sup>1</sup>) and 68 (2)-(6) of this Code.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 80. Report on comparison of statements to circumstances**

A report on comparison of statements to circumstances shall set out:

- 1) the proposal made to the suspect, accused, victim or witness to explain and specify the facts relating to the subject of proof on the scene of events;
- 2) the statements given upon comparison of statements to circumstances;
- 3) the nature and content of the acts performed by the suspect, accused, victim or witness and the name of the place or object the circumstances relating to which are compared to the statements or acts;
- 4) whether and to which extent the circumstances on the scene of events have been recreated in the course of the procedural act;
- 5) the location, on the scene of events, of the object the circumstances relating to which are compared to the statements, and information derived from inspection of the object;
- 6) the names of the objects which are confiscated in order to be used as physical evidence.

#### **§ 81. Presentation for identification**

(1) If necessary, the person conducting a proceeding may present a person, thing or other object for identification to a suspect, accused, victim or witness who has been heard or interrogated.

(2) A person, thing or other object shall be presented for identification with at least two other similar objects.

(3) A set of objects shall not be formed if the object presented for identification is:

- 1) a body;
- 2) an area, building, room or other object in the case of which presentation of several objects concurrently is impossible;

3) an object the features of which are substantially different from other objects and therefore a set of similar objects cannot be formed.

(4) If necessary, a photograph, film or audio or video recording of a person, thing or other object shall be presented for identification.

(5) Presentation for identification may be repeated if the object was first presented for identification on a photograph, film or video recording or if there is reason to believe that the object was not recognised because it had changed, and it is possible to restore the former appearance of the object.

(6) If a suspect, accused, victim or witness recognises an object which is presented to him or her for identification or confirms the similarity of the object to the object related to the act under investigation, he or she shall be asked to specify the features on the basis of which he or she reached such conclusion and to explain how the object and the act are related. If he or she denies equivalence or similarity, he or she shall be asked to explain how the object or objects presented to him or her differ from the object related to the act under investigation.

(7) If an object or a set of objects is presented for identification, it shall be photographed or video recorded.

(8) In the course of presentation for identification, statements are obtained pursuant to subsections 66 (2<sup>1</sup>) and 68 (2)-(6) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 82. Report on presentation for identification**

(1) A report on presentation for identification shall set out:

- 1) the names of the object or objects presented for identification;
- 2) the essential features which were similar for all the objects presented for identification, and where the object presented for identification was located among the other objects;
- 3) the place chosen by the person presented for identification among the other persons;
- 4) the proposal made to the identifier to watch the object or objects presented to him or her and say whether he or she recognises the object related to the event under investigation and whether he or she finds the object similar to or different from the other objects;
- 5) the features by which the identifier recognised the object.

(2) If a person who has been recognised contests the result of the procedural act, a corresponding notation shall be made in the report.

**Division 5 Inspection and Inquiries to Electronic Communications Undertakings**  
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

**§ 83. Objective of inspection and objects of inspection**

(1) The objective of an inspection is to collect information necessary for the adjudication of a criminal matter, detect the evidentiary traces of the criminal offence and confiscate objects which can be used as physical evidence.

(2) The objects of inspection are:

- 1) a scene of events;
- 2) a body;
- 3) a document, any other object or physical evidence;
- 4) in the case of physical examination, the person and the postal or telegraphic item.

(3) If the explanations of a suspect, accused, witness, qualified person or victim help to ensure the thoroughness, comprehensiveness and objectivity of the inspection, such person shall be asked to be present at the inspection.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 84. Inspection of scene of events**

(1) Inspection of a scene of events shall be conducted at the place of commission of a criminal offence or a place related to the commission of a criminal offence.

(2) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 85. Inspection of body**

(1) Inspection of a body shall be conducted on a scene of events or at any other location of the body.

(2) The following shall be ascertained upon inspection of a body:

- 1) the identity of the body or, in the case of an unidentified body, a description of the body;
- 2) the location and position of the body;
- 3) the evidentiary traces of a criminal offence and the objects adjacent to the body;
- 4) the evidentiary traces of a criminal offence on the uncovered parts of the body, clothes, footwear, and covered parts of the body;
- 5) the signs of death;
- 6) other characteristics necessary for the adjudication of the criminal matter.

(3) If possible, inspection of a body shall be conducted in the presence of a forensic pathologist or qualified person whose task is to:

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 1) ascertain that the person is dead unless death is evident;

2) assist the official of the investigative body in the conduct of the inspection in order to collect and record the source information necessary for an expert assessment.

### **§ 86. Inspection of document, other object or physical evidence**

(1) Upon inspection of a document or any other object, the evidentiary traces of a criminal offence and other features which are necessary for the adjudication of the criminal matter and form the basis for using the object as physical evidence shall be ascertained.

(2) If additional examination of a document, thing or any other object used as physical evidence is necessary, inspection of the physical evidence shall be conducted.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 87. Inspection report**

(1) An inspection report shall set out:

- 1) a description of the circumstances on the scene of events;
- 2) the identity of the body or, in the case of an unidentified body, a description of the body;
- 3) the names and characteristics of the documents or other objects discovered in the course of the inspection;
- 4) a description of the evidentiary traces of the criminal offence;
- 5) other information derived from the inspection;
- 6) the names and numbers of the objects which have been confiscated in the course of the procedural act in order to be used as physical evidence.

(2) The statements of the persons participating in the inspection of a scene of events or information relating to the surveillance activities conducted in the course of the inspection shall not be recorded in the report on the inspection of the scene of events.

### **§ 88. Physical examination**

(1) The following shall be ascertained upon physical examination:

- 1) whether there are evidentiary traces of a criminal offence on the body, clothes or footwear of the person and whether this gives reason to declare him or her as a suspect;
- 2) the nature of any health damage and the location and other characteristics of injuries;
- 3) the specific features of the body of the suspect, accused or victim or the distinctive characteristics on his or her body which need to be recorded in order to adjudicate the criminal matter;
- 4) whether the person has objects which can be used as physical evidence with him or her or hidden in his or her body;
- 5) other facts relating to a subject of proof in the criminal matter.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(2) If the objective of a physical examination is to detect the evidentiary traces of a criminal offence on the body of the person, a forensic pathologist, a health care professional or another

qualified person shall participate in the examination.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) Samples and assessment material may be taken from a person upon physical examination. Samples and assessment material shall be taken in accordance with the provisions of § 100 of this Code.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

(4) A report on physical examination shall set out:  
1) a description of the evidentiary traces of a criminal offence discovered on the body, clothes or footwear of the person;  
2) a description of the specific features or distinctive characteristics of the body of the person;  
3) the names of the objects which have been discovered in the course of the procedural act and can be used as physical evidence.

(5) A report on physical examination shall not contain conclusions as to the type of health damage, the time of incurring the health damage or the manner in or means by which the health damage was caused.

#### **§ 89. Seizure and examination of postal or telegraphic items**

(1) A postal or telegraphic item is seized for the purposes of examination at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(2) An order or ruling on the seizure of a postal or telegraphic item shall set out:  
1) the name of the sender or addressee of the seized item and the residence or seat and address thereof;  
2) the reason for the seizure;  
3) the procedure for notifying an investigative body of the seized postal or telegraphic item.

(3) A copy of an order or ruling on the seizure of a postal or telegraphic item shall be sent to the head of the provider of the postal or telecommunications service for execution.

(4) In the course of examination of a postal or telegraphic item, information derived from inspection of the circumstances relating to the subject of proof shall be collected and the item to be used as physical evidence in a criminal proceeding shall be confiscated from the provider of the postal or telecommunications service. An object of examination which is not related to the criminal matter shall be sent to the addressee by the provider of the postal or telecommunications service.

(5) A postal or telegraphic item shall be released from seizure by an order of the Prosecutor's Office. A copy of an order on release from seizure shall be sent to the persons who are not participants in the proceeding but in the case of whom the confidentiality of messages has been violated by the seizure and examination of the postal or telegraphic item.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 90. Report on examination of postal or telegraphic items**

A report on the examination of a postal or telegraphic item shall set out:

- 1) a reference to the order or ruling on the seizure of the postal or telegraphic item;
- 2) the name of the object of seizure;
- 3) information derived from the examination;
- 4) the name of the postal or telegraphic item which was confiscated in order to be used as physical evidence.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 90<sup>1</sup>. Request to electronic communications undertakings to submit information**

(1) A body conducting proceedings may make enquiries to electronic communications undertakings about the data required for the identification of an end-user related to the identification tokens used in the public electronic communications network, except for the data relating to the fact of transmission of messages.

(2) With the permission of a Prosecutor's Office an investigative body may make enquiries in pre-trial procedure or with the permission of a court in court proceeding to electronic communications undertakings about the data listed in subsections 111<sup>1</sup> (2) and (3) of the Electronic Communications Act and not specified in the first subsection of this section. The permission to make inquiries shall set out the dates of the period of time about which the requesting of data is permitted.

(3) The enquiries prescribed in this section may be made only if this is unavoidably necessary for the achievement of the objectives of criminal proceedings.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

## **Division 6 Search and Investigative Experiment**

### **§ 91. Search**

(1) The objective of a search is to find an object to be confiscated or used as physical evidence, a document, thing or person necessary for the adjudication of a criminal matter, property to be seized for the purposes of compensation for damage caused by a criminal offence or of confiscation, or a body, or to apprehend a fugitive in a building, room, vehicle or enclosed area.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(2) A search shall be conducted at the request of a Prosecutor's Office on the basis of an order of a preliminary investigation judge or on the basis of a court ruling, taking into account the exceptions listed in subsections (2<sup>1</sup>) and (3) of this section.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2<sup>1</sup>) A search may be conducted on the basis of an order of a Prosecutor's Office, except for searches of a notary's office or advocate's law office or at the persons processing information for journalistic purposes, if there is reason to believe that:

1) the suspect used or uses the site or vehicle to be searched at the time of commission of a criminal act or during the pre-trial proceedings, or

2) a criminal offence was committed at the site or in the vehicle, or it was used in the preparation for or committing of a criminal offence.

[RT I, 14.03.2011, 3 - entry into force 01.09.2011]

(3) In cases of urgency, a search may be conducted on the basis of an order of an investigative body without the permission of a court, but in such case the Prosecutor's Office shall notify a preliminary investigation judge of the search or the Prosecutor's Office in the case specified in subsection (2<sup>1</sup>) of this section within 24 hours, and the preliminary investigation judge or the Prosecutor's Office shall decide on the admissibility of the search.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A search warrant shall set out:

1) the objective of the search;

2) the reasons for the search.

(5) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) If a search is conducted, the search warrant shall be presented for examination to the person whose premises are to be searched or to his or her adult family member or a representative of the legal person or the state or local government agency whose premises are to be searched and he or she shall sign the warrant to that effect. In the absence of the responsible person or representative, the representative of the local government shall be involved.

(7) A notary's office or an advocate's law office shall be searched in the presence of the notary or advocate. If the notary or advocate cannot be present during the search, the search shall be conducted in the presence of a person substituting for the notary or another advocate providing legal services through the same law office, or if this is impossible, another notary or advocate.

(8) If a search is conducted, the person shall be asked to hand over the object specified in the search warrant or to show where the body is hidden or the fugitive is hiding. If the proposal is not complied with or if there is reason to believe that the person complied with the proposal only partly, a search shall be conducted.

## **§ 92. Search report**

(1) A search report shall set out:

1) a proposal to hand over the object to be found or to show where the body is hidden or the fugitive is hiding;

2) the names of the objects which were handed over voluntarily;

3) the conditions, course and results of the search;

4) the names of the objects found and the characteristics of the objects which are relevant to the adjudication of the criminal matter;

5) the personal data of the apprehended fugitive.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If physical examination is performed in the course of a search, the data listed in subsection 88 (4) of this Code may be entered in the search report. In such case a report on physical examination need not be prepared.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 93. Investigative experiment**

(1) The objective of an investigative experiment is to ascertain whether circumstances relating to an event under investigation existed or an act was performed at the time of commission of a criminal act or whether their existence or performance was perceptible.

(2) A suspect, accused, victim or witness shall participate in an investigative experiment if:

- 1) his or her assistance is necessary in order to recreate the circumstances relating to an event;
- 2) the results of the investigative experiment enable his or her statements or testimony to be verified;
- 3) the results of the experiment depend on the characteristics, abilities or skills of the participant in the experiment.

(3) Physical evidence may be used in an investigative experiment if:

- 1) replacement of the physical evidence may influence the results of the investigative activities, and the destruction of the evidence is precluded;
- 2) it is not necessary to present the physical evidence for identification to a person participating in the investigative experiment.

(4) In the evaluation of the results of an investigative experiment, conclusions based on specific expertise shall not be drawn.

### **§ 94. Report on investigative experiment**

A report on an investigative experiment shall set out:

- 1) the issue for the resolution of which it is deemed necessary to conduct tests;
- 2) whether and how the circumstances on the scene of events were recreated for the purposes of the tests;
- 3) whether the suspect, accused, witness or victim has confirmed the correspondence of the circumstances relating to the investigative experiment to the circumstances relating to the event under investigation;
- 4) a description of the tests: the number, order, conditions, changes in the number, and the content of the tests;
- 5) the results of the tests.



**Division 7 Ascertainment of Facts Requiring Expertise**  
**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

**§ 95. Expert**

(1) Expert means a person who uses his or her specific non-legal expertise in the conduct of an expert assessment in the cases and pursuant to the procedure provided for in this Code.

(2) Upon ordering expert assessment, the body conducting proceedings shall prefer a state forensic institution. (2) If the required class of expert assessment is not on the list of the expert assessments conducted by a state forensic institution, the body conducting the proceedings shall give preference upon appointment of an expert to an officially certified expert but other persons with the relevant knowledge may also be appointed as experts.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(3) If an expert assessment is arranged outside a forensic institution, the body conducting the proceedings shall ascertain whether the person to be appointed as an expert is impartial with regard to the criminal matter and consents to conduct the expert assessment. The rights and obligations of experts provided for in § 98 of this Code shall be explained to him or her. If a person who has not been sworn in is appointed as an expert, he or she shall be warned about a criminal punishment for rendering a knowingly false expert opinion. The body conducting the proceeding shall determine the term of an expert assessment by agreement with the expert.

(4) The body conducting a proceeding may request an expert assessment to be conducted in a foreign forensic institution and use an expert opinion rendered in a foreign state as evidence in the adjudication of a criminal matter.

**§ 96. Bases for expert to remove himself or herself**

(1) An expert is required to remove himself or herself from a criminal proceeding:

1) on the bases provided for in subsections 49 (1) and (6) of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) if he or she works in a position subordinate to a participant in the criminal proceeding or an official of an investigative body who is conducting proceedings in the criminal matter or is in any other dependent relationship with such persons.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(2) A committee of experts shall not include persons close to each other as specified in subsection 71 (1) of this Code.

(3) Earlier participation of an expert in a criminal proceeding as an expert or qualified person does not constitute a basis for him or her to remove himself or herself.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) The removal of an expert by himself or herself shall be formalised on the basis of a reasoned request for removal which shall be included in the criminal file.

## **§ 97. Removal of expert**

(1) If an expert does not remove himself or herself on a bases provided for in § 96 of this Code, a suspect, accused, victim, civil defendant or counsel may submit a petition of challenge against the expert.

(2) A petition of challenge against an expert shall be adjudicated pursuant to the procedure provided for in subsections 59 (5) and (6) of this Code.

## **§ 98. Rights and obligations of experts**

(1) An expert conducting an expert assessment has the right to:

- 1) request additions to be made to the materials of the expert assessment;
- 2) in order to ensure the completeness of the assessment materials, participate in procedural acts at the request of the investigative body or Prosecutor's Office and in court hearing at the request of the court;
- 3) examine the materials of the criminal matter in so far as this is necessary for the purposes of the expert assessment;
- 4) refuse to conduct the expert assessment if the assessment materials submitted to him or her are not sufficient or if the expert assignments set out in the ruling on the expert assessment are outside his or her specific expertise or if answering to the questions does not require expert enquiry or conclusions based on specific expertise;
- 5) request that a person who may provide explanations necessary for the expert enquiries be present at the conduct of the expert assessment with the permission of the body conducting the proceedings;
- 6) to assume and resolve, on his or her own initiative, expert assignments not set out in the ruling on the expert assessment.

(2) An expert is required to:

- 1) conduct an expert assessment if he or she has been appointed as an expert;
- 2) appear when summoned by the body conducting the proceedings;
- 3) ensure that all expert enquiries are conducted thoroughly, completely and objectively and the expert opinion rendered is scientifically valid;
- 4) [repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]
- 5) maintain the confidentiality of the facts which become known to him or her upon the conduct of the expert assessment and which may be disclosed only with the written permission of the body conducting the proceedings.

(3) If an expert fails to appear without good reason, a fine may be imposed on the expert by a preliminary investigation judge at the request of a Prosecutor's Office or by a court on the basis of a court ruling.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 99. Securing of conduct of expert assessment and investigation**

(1) If necessary, assessment or examination material is taken for the conduct of an expert assessment or examination, compulsory placement in a medical institution is applied with regard to the suspect or accused in order to conduct a forensic psychiatric or forensic medical examination, or a body is exhumed in order to conduct a forensic medical examination or any other expert assessment or comparative examination.

(2) Prints left by papillary skin ridges and data obtained upon analysis of the DNA samples taken in the course of a procedural act shall be entered, if necessary, in the state register of fingerprints and the state DNA register respectively.

(3) Investigative bodies or other competent authorities may preserve non-personal prints and samples taken in the course of a procedural act, unless otherwise provided by law. Investigative bodies may preserve non-personal prints left by papillary skin ridges and DNA samples taken in the course of investigative activities only in the case they shall not be entered in the state register of fingerprints or state DNA register.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

## **§ 99<sup>1</sup>. Fingerprinting of persons and taking of their DNA samples**

(1) A person who is a suspect, accused or offender convicted of an intentionally committed criminal offence specified in Divisions 1, 2, 6 or 7 of Chapter 9, Division 2 of Chapter 11, Divisions 1 or 4 of Chapter 22 of the Penal Code or provided for in another Chapter of the Penal Code which necessary elements of a criminal offence include use of violence and which is punishable by at least two years of imprisonment shall be fingerprinted and his or her DNA sample is taken for the purposes of proceeding, detection and prevention of offences.

(2) For the purpose of proceeding, detection and prevention of offences, persons who are suspects, accused or offenders convicted of a criminal offence not specified in subsection (1) of this section but which is punishable by at least one year of imprisonment pursuant to the Penal Code may be also fingerprinted and their DNA samples may be taken.

(3) Coercion may be imposed with regard to persons specified in subsections (1) and (2) of this section if the person refuses to give his or her fingerprints or DNA samples.

(4) The data obtained upon fingerprinting and analysis of the DNA samples of the persons specified in subsections (1) and (2) of this section shall be entered in the respective state register of fingerprints and state DNA register.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

## **§ 99<sup>2</sup>. Use for detection of offences of data obtained upon fingerprinting and analysis of DNA samples for other purposes**

(1) It is permitted to use the data collected upon fingerprinting and analysis of the DNA samples taken for other purposes for securing the conduct of the expert assessment ordered in criminal

proceedings if taking of evidence by other procedural acts is impossible or especially complicated or if this may damage the interests of the criminal proceedings.

(2) The provisions of subsection (1) of this section may be applied only in the case a need exists to collect information in the criminal proceedings about such criminal offence in the first degree or intentionally committed criminal offence in the second degree for which at least up to three years' imprisonment is prescribed as punishment.

(3) The activities specified in subsection (1) of this section may be performed only with a written permission of a Prosecutor's Office which also contains justifications of the need to use the data.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

### **§ 100. Taking of comparative samples**

**[RT I, 04.07.2012, 1 - entry into force 01.08.2012]**

(1) Comparative samples are taken in order to collect comparative trace evidence and samples necessary for an expert assessment or examination.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(1<sup>1</sup>) For the purpose of exclusion of traces legally left on the scene of events, a victim, witness or another person may be fingerprinted and their DNA samples may be taken.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(2) An order or ruling on the taking of comparative samples is necessary if:

- 1) a suspect or accused refuses to allow comparative samples to be taken but the objective of the procedural act can be achieved by force;
- 2) the taking of comparative samples infringes the privacy of the body of the person;
- 3) a legal person is required to submit documents as comparative samples.

(3) An order or ruling on the taking of comparative samples shall set out:

- 1) the person from whom the comparative samples are taken;
- 2) the type of the comparative samples;
- 3) the reason for the performance of the procedural act.

(4) If taking of comparative samples infringes the privacy of the body of a person, a forensic pathologist, health care professional or another qualified person shall participate in the procedural act.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) Investigative bodies or other competent authorities may preserve comparative samples taken for the purpose of processing, detection and prevention of offences, unless otherwise provided by law.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(6) The data obtained upon fingerprinting persons pursuant to subsection (1<sup>1</sup>) of this section shall not be entered in the state register of fingerprints or shall be deleted from the specified register immediately after conduct of the comparative examination. The state forensic institution shall return the comparative samples to the body conducting the proceedings together with the expert's report or examination report. The comparative samples taken on the basis of this section are destroyed upon termination of criminal procedure, expiry of the limitation period of the offence or upon entry into force of the judgment. The comparative samples are destroyed by the body conducting the proceedings in whose possession the comparative samples are at the time of the destruction. The destruction shall be documented in writing and the document confirming destruction shall be included in the file.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(7) The data obtained upon analysis of DNA samples of persons pursuant to subsection (1<sup>1</sup>) of this section shall not be entered in the state DNA register or shall be deleted from the specified register immediately after conduct of the comparative examination. DNA samples taken shall be destroyed within two months as of the completion of the expert assessment or comparative examination. DNA samples shall be destroyed by a state forensic institution by making a respective notation in the expert's or examination report.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

### **§ 101. Report on taking of assessment material**

A report on the taking of assessment material shall set out:

- 1) the names of the comparative trace evidence and samples taken;
- 2) the manner and conditions of taking the assessment material;
- 3) the amount or quantity of the assessment material.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 102. Compulsory placement of suspect or accused in medical institution**

(1) If long-term expert enquiries are necessary for a forensic psychiatric or forensic medical examination, a body conducting the proceeding shall order the expert assessment from a committee of experts and apply compulsory placement in a medical institution with regard to the suspect or accused.

(2) A suspect or accused shall be placed in a medical institution at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(3) A suspect or accused is placed in a medical institution for up to one month. At the request of a Prosecutor's Office, a preliminary investigation judge or court may extend such term by three months.

(4) The period for which a suspect or accused is placed in a medical institution shall be included in the term of his or her holding in custody.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 103. Exhumation from official place of burial**

(1) A body or the remains thereof shall be exhumed from their official place of burial if it necessary to ascertain the cause of death or any other facts relating to the subject of proof, or take comparative trace evidence or samples for the purposes of an expert assessment in a criminal proceeding.

(2) A body is exhumed on the basis of an order of a Prosecutor's Office or a court ruling.

(3) A body is exhumed with the participation of a forensic pathologist or another qualified person and in the presence of a representative of the city or rural municipality government. If possible, a person close to the deceased is invited to be present at the performance of the procedural act, and the body is presented to him or her for identification if necessary.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If necessary, soil and other samples are taken from a place of burial.

(5) An order or ruling on exhumation shall contain an order addressed to the city or rural municipality government to re-bury the body and restore the grave.

### **§ 104. Report on exhumation**

A report on exhumation shall set out:

- 1) the name and location of the place of burial and information concerning the location of the grave;
- 2) a description of the grave and the grave markers;
- 3) information derived from inspection of the coffin and the body.

### **§ 105. Arrangement of conduct of expert assessment**

(1) The conduct of an expert assessment shall be arranged based on the need for proof on the basis of an order or ruling of the body conducting the proceedings.

(2) The body conducting a proceeding shall not refuse to order an expert assessment requested by a suspect, accused, counsel, victim or civil defendant if the facts for the ascertainment of which the assessment is requested may be essential for the adjudication of the criminal matter.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 106. Order or ruling on expert assessment**

(1) The main part of an order or ruling on an expert assessment shall set out:

- 1) the title and number of the criminal matter, the facts relating to the criminal offence, and other source information necessary for the expert assessment;
- 2) the reason for ordering the expert assessment.

(2) The final part of an order or ruling on an expert assessment shall set out:

- 1) the class of the expert assessment according to the field of special expertise;
- 2) the need to conduct an expert assessment;

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

3) the name of the expert or state forensic institution who is to execute the order or ruling on the expert assessment;

4) information concerning the objects of expert assessment related to the criminal act and concerning the comparative samples and the materials submitted for examination;

5) questions posed to the expert;

6) the term of the expert assessment in the case provided for in subsection 95 (3) of this Code.

(3) If an expert assessment is to be conducted in a state forensic institution, a specific forensic expert may be appointed with the approval of the head of the institution. On the basis of an order or ruling on an expert assessment, experts who do not work at a state forensic institution may also belong to a committee of experts.

(4) The following questions shall not be posed to an expert:

1) questions which are of legal nature or fall outside his or her area of expertise;

2) questions which can be answered without expert enquiry or conclusions based on specific expertise.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 107. Preparation of expert's report**

(1) The introduction of an expert's report shall set out:

1) the date and place of preparation of the report;

2) the name of the person who ordered the expert assessment, and the date of preparation of the order or ruling on the expert assessment and of sending the order or ruling to the expert;

3) the title and number of the criminal matter;

4) the class of the expert assessment;

5) information concerning the expert;

6) the name of the object of the expert assessment or of the person regarding whom the expert assessment was conducted;

7) whether and when additions to the materials of the expert assessment were requested to be made and the date on which such request was satisfied;

8) the source information necessary for the expert assessment;

9) questions posed to the expert in the order or ruling on the expert assessment and questions formulated by the expert on his or her own initiative;

10) the names of the persons who were present at the conduct of the expert assessment;

11) the measures to be applied with regard to the physical evidence submitted for expert assessment, comparative samples, materials or objects of expert assessment.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(2) If an expert assessment is conducted by a person who has not been sworn in, such expert shall sign a notation in the introduction of the expert's report that he or she has been warned about criminal punishment.

(3) The main part of an expert's report shall set out:

- 1) a description of the examination;
- 2) information derived from evaluation of the results of the examination, and the reasons for the expert opinion.

(4) If questions posed to an expert are of legal nature, fall outside his or her area of expertise or do not require expert examination or conclusions based on specific expertise, the expert shall not provide answers to such questions in the expert's report.

(5) [Repealed - RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(6) The final part of an expert's report shall set out the expert's opinion based on the examinations conducted.

(7) [Repealed - RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(8) An expert's report is signed by the expert or experts who conducted the expert assessment.  
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

### **§ 108. Report on refusal to conduct expert assessment**

(1) If an expert refuses to conduct an expert assessment on the bases provided for in clause 98 (1) 4) of this Code, the expert shall prepare a report on his or her refusal to conduct the expert assessment.

(2) A report on refusal to conduct an expert assessment shall set out the information specified in subsection 107 (1) of this Code, and the reasons for the refusal.

### **§ 109. Hearing of experts**

If necessary, an expert shall be heard in a pre-trial proceeding in order to specify the content of the expert's report or the report on his or her refusal to conduct the expert assessment. An expert is heard pursuant to subsection 66 (2<sup>1</sup>) and §§ 68 and 69 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 109<sup>1</sup>. Qualified person**

(1) Qualified person is a natural person who has specific expertise which he or she uses in the cases and pursuant to the procedure provided for in this Code but who is not involved in the criminal person as an expert.

(2) Qualified persons may be involved in procedural acts. Before the commencement of a procedural act, a body conducting proceedings shall ascertain the identity of the qualified person, his or her competence and his or her relations with the suspect accused. The statements made by the qualified person in connection with the detection and storage of evidence shall be recorded.



(3) A qualified person may be questioned concerning the following circumstances:  
1) the course of the procedural act performed in the presence of the qualified person;  
2) other circumstances concerning which the qualified person can provide explanations due to his or her specific expertise if this is necessary for the purposes of better understanding of the facts relating to a subject of proof.

(4) A qualified person is heard pursuant to the provisions that apply to hearing of witnesses, taking into account the specifications arising from this section.

(5) If it becomes evident that a qualified person may know the facts specified in § 66 of this Code, he or she shall be heard as a witness concerning such facts. The same person may be heard as a witness and a qualified person in the course of one procedural act.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**Division 8 Taking of Evidence by Surveillance Activities**  
[Repealed - RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 110. – § 122. [Repealed - RT I, 29.06.2012, 2 - entry into force 01.01.2013]

**Division 9 Document and Physical Evidence**

**§ 123. Document**

(1) A document containing information concerning the facts relating to a subject of proof may be used for the purposes of proof.

(2) A document is physical evidence if the document has the characteristics specified in subsection 124 (1) of this Code.

**§ 124. Physical evidence**

(1) Physical evidence means a thing which is the object of a criminal offence, the object used for the commission of a criminal offence, a thing bearing the evidentiary traces of a criminal offence, the impression or print made of the evidentiary traces of a criminal offence, or any other essential object relating to a criminal act, which can be used in ascertaining the facts relating to a subject of proof.

(2) If an object used as physical evidence has not been described in the report on the investigative activities as exactly as necessary for the purposes of proof, inspection of the object shall be carried out in order to record the characteristics of the physical evidence.

(3) Physical evidence or confiscated objects are immediately returned to the owner or former lawful possessor thereof if this does not hinder the criminal procedure.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If six months have elapsed from the confiscation of physical evidence but there is no one accused in the criminal matter, physical evidence is stored at the request of the owner or lawful holder thereof with the person filing the request pursuant to the conditions for storage of physical evidence, except in the cases specified in subsections (5) and (6) of this section.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) A prosecutor may extend the six-month term specified in subsection (4) of this section at the request of an investigative body for up to one year. The term is extended automatically if the request specified in subsection (4) is not submitted.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) A preliminary investigation judge may extend the terms specified in subsections (4) and (5) of this section at the request of a Prosecutor's Office for a term longer than one year if the delay in bringing the charges arose due to the complexity or extent of a criminal matter or exceptional cases arising from international cooperation. The term is extended automatically if the request specified in subsection (4) is not submitted.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 125. Storage of physical evidence**

(1) Physical evidence shall be stored in a criminal file, physical evidence storage facility of a body conducting the proceedings or in another premises in the possession of or territory guarded by the body or in a forensic institution, or the measures prescribed in § 126 of this Code shall be applied with regard to the physical evidence if this does not damage the interests of the criminal proceedings.

(2) Physical evidence which cannot be stored pursuant to the procedure provided for in subsection (1) of this section and with regard to which the measures prescribed in § 126 of this Code cannot be applied in the interests of the criminal proceedings prior to the entry into force of a court judgment or termination of the criminal proceeding shall be deposited into storage with liability on the basis of a contract.

(3) A person with whom physical evidence is deposited shall ensure the inviolability and preservation of the evidence.

(4) A person with whom physical evidence is deposited but who is not the owner or legal possessor thereof has the right to receive compensation for the storage fee which shall be included in the procedure expenses. The storage costs shall be compensated for on the basis of a contract between the body conducting the proceedings and the depositary.

(5) If physical evidence is a document which is necessary for the owner in the future economic or professional activity thereof or for another good reason, the body conducting the proceedings shall make a copy of the document for the owner. The authenticity of the copy shall be certified by the signature of the person conducting the proceedings on the copy.

(6) Subsections (1)-(5) of this section are applied also with regard to confiscated objects which are not physical evidence.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 126. Measures applicable to physical evidence and confiscated property**

(1) Highly perishable physical evidence which cannot be returned to its lawful possessor shall be granted to a state or local government health care or social welfare institution free of charge, transferred, or destroyed in the course of the criminal proceeding on the basis of an order or ruling of the body conducting the proceedings. The money received from the sale shall be transferred into public revenues.

(2) Property subject to confiscation which lawful possessor has not been ascertained may be confiscated in the course of the criminal proceeding at the request of a Prosecutor's Office and on the basis of a court ruling.

(2<sup>1</sup>) The property seized in order to secure confiscation may be transferred with the consent of the owner of the property and at the request of the Prosecutor's Office on the basis of an order of a preliminary investigation judge. Property may be transferred without the consent of the owner if this is necessary for prevention of decrease in the value of the property. The amount received from transfer shall be seized.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(3) An order or ruling of a body conducting a proceeding or a court judgment shall prescribe the following measures applicable to physical evidence:

1) a thing bearing evidentiary traces of criminal offence, a document, or an impression or print made of evidentiary traces of a criminal offence may be stored together with the criminal matter, included in the criminal file or stored in the physical evidence storage facility or any other premises in the possession of the body conducting the proceeding or in a forensic institution;

2) other physical evidence the ownership of which has not been contested shall be returned to the owner or lawful possessor thereof;

3) physical evidence of commercial value the owner or lawful possessor of which has not been ascertained shall be transferred into state ownership;

4) things of no value and pirated or counterfeit goods shall be destroyed or, in the cases provided by law, recycled;

5) objects which were used for staging a criminal offence shall be returned to the owners or lawful possessors thereof;

6) property which was obtained by the criminal offence and the return of which is not requested by the lawful possessor shall be transferred into state ownership or transferred in order to cover the costs of the civil action.

(4) If the ownership relations pertaining to physical evidence specified in clause (3) 2) of this section are not apparent, the measures applicable to the physical evidence in the pre-trial proceeding shall be decided by a ruling of the preliminary investigation judge at the request of the Prosecutor's Office.

(5) Subsections (1)-(3) of this section are also applied with regard to objects confiscated in a criminal proceeding which are not physical evidence.

(6) The procedure for the transfer and destruction of confiscated property and physical evidence transferred into state ownership and for the refund of the money received from the transfer to the lawful possessor of the property from the budget shall be established by the Government of the Republic.

(7) The procedure for registration, storage, transfer and destruction of physical evidence and seized property and for evaluation, transfer and destruction of highly perishable physical evidence and property seized in order to secure confiscation by the bodies conducting the proceedings shall be established by the Government of the Republic.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **Chapter 3<sup>1</sup> SURVEILLANCE ACTIVITIES** **[RT I, 29.06.2012, 2 - entry into force 01.01.2013]**

#### **§ 126<sup>1</sup>. General conditions for conduct of surveillance activities**

(1) Surveillance activities denote the processing of personal data for the performance of a duty provided by law with the objective of hiding the fact and content of data processing from the data subject.

(2) Surveillance activities are permitted on the bases provided for in this Code if collection of data by other activities or taking of evidence by other procedural acts is impossible, is impossible on time or is especially complicated or if this may damage the interests of the criminal proceedings.

(3) Surveillance activities shall not endanger the life or health of persons, cause unjustified property and environment damage or unjustified infringement of other personality rights.

(4) Information obtained by surveillance activities is evidence if application for and grant of authorisation for surveillance activities and the conduct of surveillance activities is in compliance with the requirements of law.

(5) Surveillance activities are conducted both directly through the institution specified in subsection 126<sup>2</sup> (1) of this Code as well as the institutions, subordinate units and employees administered by them and authorised to conduct surveillance activities, and through police agents, undercover agents and persons recruited for secret co-operation.

(6) A member of the *Riigikogu* or a rural municipality or city council, a judge, prosecutor, advocate, minister of religion or an official elected or appointed by the *Riigikogu* with his or her consent and a minor with the consent of his or her legal representative may be involved in the activities provided for in this Chapter with the permission of a preliminary investigation judge only if they are parties to the proceeding or witnesses in the criminal matter concerned or a criminal offence is directed against him or her or a person close to him or her.

(7) If the conduct of surveillance activities is requested by another investigative body, the surveillance agency having conducted the surveillance activities shall send the information obtained by the surveillance activities to the requesting investigative body together with the photographs, films, audio and video recordings and other data recordings made in the course of the surveillance activities.

(8) A surveillance agency has the right to also process, when conducting the surveillance activities, the data available from other sources besides surveillance activities.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

## **§ 126<sup>2</sup>. Bases for conduct of surveillance activities**

(1) The Police and Border Guard Board, the Security Police Board, the Tax and Customs Board, the Military Police and the Prisons Department of the Ministry of Justice and prisons (hereinafter *surveillance agency*) may conduct surveillance activities on the following bases:

- 1) a need to collect information about the preparation of a criminal offence for the purpose of detection and prevention thereof;
- 2) the execution of a ruling on declaring a person a fugitive;
- 3) a need to collect information in confiscation proceedings pursuant to the provisions of Chapter 16<sup>1</sup> of this Code;
- 4) a need to collect information in a criminal proceeding about a criminal offence.

(2) On the basis of the provisions of clauses (1) 1) and 4) of this section, surveillance activities may be conducted in the event of criminal offences specified in §§ 89-93<sup>1</sup>, 95-97, 99, 101-104, 106, 107, 110-114, 116, 118, 120, 122, 133-137, 138<sup>1</sup> and 141-146, subsections 151 (2) and (4), § 157, subsection 161 (2), §§ 163, 164, 172-179, 183-185, 187-190, 199 and 200, subsection 201 (2), subsections 202 (2) and (3), §§ 204, 206-214, 216<sup>1</sup>-217, 217<sup>2</sup>, 222, 224, 227, 231-238, subsections 240 (2) and (3), §§ 241, 243, 244 and 246, subsections 248 (2) and (3), §§ 250 and 251, subsections 252 (2) and (3), §§ 255 and 256, subsections 259 (2) and (3), §§ 263, 291, 291<sup>1</sup>, 293 and 294, subsections 295 (2) and (3), subsections 296 (2) and (3), §§ 297-299, §§ 300<sup>1</sup>, 300<sup>2</sup>, 302-304, 310-313, 315-316<sup>1</sup>, subsection 321 (2), subsection 325 (2), §§ 326-328, 331, 331<sup>3</sup>, 333-334, 335, 336, 347, subsections 356 (1) and (3), subsections 357 (1) and (3), subsections 361 (1) and (3), subsections 364 (2) and (3), §§ 374-376<sup>2</sup>, 384, 389<sup>1</sup>-394, 398, 398<sup>1</sup>, §-s 400, §§ 403-407, 414-416, 418, 418<sup>1</sup>, 434, 435, 437-439, subsection 440 (3) and §§ 446 and 449 of the Penal Code.

(3) On the basis of this Act, surveillance activities may be conducted in respect of the following persons:

- 1) on the basis specified in clause (1) 1) of this section in respect of the person in the case of whom there are serious reasons to believe that he or she commits the criminal offence specified in subsection (2) of this section;
- 2) on the basis specified in clause (1) 2) of this section in respect of the person who is declared to be a fugitive;
- 3) on the basis specified in clause (1) 3) of this section in respect of the person who owns or possesses the assets which are the object of confiscation proceedings;
- 4) on the basis specified in clause (1) 4) of this section in respect of the person who is a suspect

in a criminal proceeding or with respect to whom there is justified reason to believe that he or she has committed or commits the specified criminal offence.

(4) The surveillance activities conducted on the basis provided for in clauses (1) 2)-4) of this section may be also conducted in respect of the person with regard to whom there is good reason to believe that he or she interacts with the person specified in clauses (3) 2)-4) of this section, communicates information to him or her, provides assistance to him or her or allows him or her to use his or her means of communication, and if the conduct of surveillance activities in respect of such person may provide the data required for the achievement of the objective of the surveillance activities.

(5) A surveillance agency may conduct surveillance activities on the basis specified in subsection (1) of this section if this is related to a criminal offence which is in the investigative jurisdiction of such surveillance agency.

(6) A surveillance agency may conduct surveillance activities at the request of another surveillance agency within the limits of its competence under the conditions and pursuant to the procedure provided for in this Code.

(7) The Police and Border Guard Board and the Security Police may also conduct surveillance activities at the request of other investigative bodies.

(8) The Prisons Department of the Ministry of Justice and prisons may also conduct surveillance activities in a custodial institution at the request of other investigative bodies.

(9) Where the bases for surveillance activities cease to exist, the surveillance activities shall be immediately terminated.

(10) Surveillance activities may be conducted on the basis not specified in this Code only on the basis provided for in the Estonian Defence Forces Organisation Act, Taxation Act, Police and Border Guard Act, Weapons Act, Strategic Goods Act, Customs Act, Witness Protection Act, Security Act, Imprisonment Act, Aliens Act and Obligation to Leave and Prohibition on Entry Act. The provisions of this Chapter apply to conduct of surveillance activities, processing of data collected by surveillance activities, giving notification of surveillance activities and submission of information collected for examination with the specifications provided for in the above specified Acts.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>3</sup>. Surveillance activities**

(1) On the basis specified in subsection 126<sup>2</sup> (1) of this Code, a surveillance agency may covertly watch a person, thing or area, covertly take comparative samples and perform initial examinations, covertly examine a thing and covertly replace it.

(2) The Police and Border Guard Board and the Security Police Board may conduct the following surveillance activities on the basis specified in clause 126<sup>2</sup> (1) 1) of this Code upon

collection of information concerning the preparation of a criminal offence specified in §§ 244, 246, 248, 255 and 256 of the Penal Code and on the basis specified in clauses 3) and 4):

- 1) to covertly examine a postal item;
- 2) to covertly observe or wire-tap information;
- 3) to use a police agent.

(3) The Police and Border Guard Board and the Security Police Board may stage a criminal offence on the basis specified in clause 126<sup>2</sup> (1) 4) of this Code for the purpose of detection of a criminal offence or detention of a criminal.

(4) The Prisons Department of the Ministry of Justice and prisons may conduct the following surveillance activities specified in clauses 126<sup>2</sup> (1) 1) and 4) of this Code:

- 1) to covertly examine a postal item;
- 2) to covertly observe or wire-tap information.

(5) Covert entry into a building, premises, vehicle, enclosed area or computer system is permitted upon conduct of the surveillance activities specified in subsection (1) and clauses (2) 2) and 3) of this section in the case this is unavoidably necessary for the achievement of the objectives of the surveillance activities.

(6) For the purposes of this Act, entry into the possessions of other persons is deemed to be covert if the fact of entry is covert for the possessor or if a misconception of existing facts is knowingly caused by fraud upon entry and the possessor, with knowledge of the actual circumstances, would not have given possession for entry.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

#### **§ 126<sup>4</sup>. Grant of permission for surveillance activities**

(1) Surveillance activities may be conducted with a written permission of a Prosecutor's Office or a preliminary investigation judge. The preliminary investigation judge shall decide the grant of permission by a ruling on the basis of a reasoned application of the Prosecutor's Office. The preliminary investigation judge shall immediately review a reasoned request submitted by a Prosecutor's Office and grant or refuse to grant permission for the conduct of the surveillance activities by a ruling.

(2) In cases of urgency, surveillance activities requiring the permission of a Prosecutor's Office may be conducted with the permission of the Prosecutor's Office issued in a format which can be reproduced in writing. A written permission shall be formalised within 24 hours as of the commencement of surveillance activities.

(3) In the case of immediate danger to the life, physical integrity or physical freedom of a person or to proprietary benefits of high value and requesting a permission or execution thereof on time is impossible, surveillance activities requiring the permission of a court may be conducted, in cases of urgency, with the permission of the court issued in a format which can be reproduced in writing. A written application and permission shall be formalised within 24 hours as of the commencement of surveillance activities.

(4) A permission issued in cases of urgency in a format which can be reproduced in writing shall contain the following information:

- 1) the issue of the permission;
- 2) the date and time of issue of the permission;
- 3) surveillance activities for which the permission is issued;
- 4) if known, the name of the person with regard to whom the surveillance activities are conducted;
- 5) the term of the permission for surveillance activities.

(5) If covert entry into a building, premises, vehicle, enclosed area or computer system is necessary for conduct of surveillance activities or in order to install or remove technical appliances necessary for surveillance, a Prosecutor's Office shall apply for a separate permission of a preliminary investigation judge for such purpose.

(6) The duration of surveillance activities conducted with respect to a specific person on the basis provided for in clauses 126<sup>2</sup> (1) 1), 3) and 4) of this Code in one criminal matter shall not exceed one year. In the case of particular complexity or extent of a criminal matter, the Chief Public Prosecutor may grant permission or apply for a permission to a court for conduct of surveillance activities for a term of more than one year.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

#### **§ 126<sup>5</sup>. Covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things**

(1) A Prosecutor's Office shall issue a permission for covert surveillance of persons, things or areas, covert collection of comparative samples and conduct of initial examinations and covert examination or replacement of things for up to two months. The Prosecutor's Office may extend the term of the permission for up to two months at a time.

(2) In the course of the surveillance activities specified in this section, the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

#### **§ 126<sup>6</sup>. Covert examination of postal items**

(1) Upon covert examination of a postal item, information derived from the inspection of the item is collected.

(2) After the covert examination of a postal item, the item shall be sent to the addressee.

(3) In the course of the activities specified in this section, the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way.

(4) In the course of covert examination of a postal item, the item may be replaced.



(5) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>7</sup>. Wire-tapping or covert observation of information**

(1) Information obtained by wire-tapping or covert observation of messages or other information transmitted by the public electronic communications network or communicated by any other means shall be recorded.

(2) Information communicated by a person specified in § 72 of this Code or information communicated to such person by another person which is subject to wire-tapping or covert observation shall not be used as evidence if such information contains facts which have become known to the person in his or her professional activities, unless:

1) the person specified in § 72 of this Code has already given testimony with regard to the same facts or if the facts have been disclosed in any other manner;

2) a permission has been granted with respect to such person for wire-tapping or covert observation; or

3) it is evident on the basis of wire-tapping or covert observation of another person that the specified person commits or has committed a criminal offence.

(3) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>8</sup>. Staging of criminal offence**

(1) Staging of a criminal offence is the commission of an act with the elements of a criminal offence with the permission of a court, taking into account the restrictions prescribed in subsection 126<sup>1</sup> (3) of this Code.

(2) If possible, a staged criminal offence shall be photographed, filmed or audio or video recorded.

(3) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>9</sup>. Use of police agents**

(1) Police agent for the purposes of this Act is a person who collects evidence in a criminal proceeding by using a false identity.

(2) A Prosecutor's Office shall issue a written permission for the use of police agents. Permission for the use of a police agent is granted for up to six months and this term may be extended by six months at a time.

(3) A police agent has all the obligations of an official of a surveillance agency in so far as the obligations do not require disclosure of the false identity.

(4) The statements of a police agent are used as evidence pursuant to the provisions of this Code concerning witnesses.

(5) Based on an order of a Prosecutor's Office, the fact of using a police agent or the identity of a police agent shall also remain confidential after completion of surveillance activities if disclosure may endanger the life or health, honour and good name or property of the police agent or the persons connected with him or her or his or her further activities as a police agent.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>10</sup>. Documentation of surveillance activities**

(1) On the basis of the information collected by surveillance activities, an official of the body that conducted surveillance activities or applied for surveillance activities shall prepare a report on surveillance activities which shall set out:

- 1) the name of the body which conducted the surveillance activities;
- 2) the time and place of conducting the surveillance activities;
- 3) the name of the person with regard to whom the surveillance activities were conducted;
- 4) the date of issue of a permission of a court or a permission of a Prosecutor's Office which is the basis for surveillance activities;
- 5) the date of submission of an application of a Prosecutor's Office if the surveillance activities are based on a permission of a court;
- 6) information collected by surveillance activities which is necessary to achieve the objectives of surveillance activities or to adjudicate a criminal matter.

(2) The photographs, films, audio and video recordings and other data recordings made in the course of surveillance activities shall be appended to a report, if necessary.

(3) If necessary, the surveillance agency that conducted surveillance activities shall record the information collected by surveillance activities in a summary of surveillance activities. The summary of surveillance activities and the photographs, films, audio and video recordings and other data recordings made in the course of surveillance activities shall be appended to a surveillance file.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>11</sup>. Keeping of surveillance files**

(1) The data collected by surveillance activities, data recordings made in the course of surveillance activities, data obtained in the manner specified in subsection 126<sup>1</sup> (8) of this Code and the data required for comprehension of the integrity of the information collected by

surveillance activities concerning an undercover agent and simulated person, structural unit, body and branch of a foreign company shall be stored in a surveillance file.

(2) The procedure for keeping and storage of surveillance files shall be established by a regulation of the Government of the Republic on the proposal of the Minister of Internal Affairs. [RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>12</sup>. Storage, use and destruction of surveillance files and data recordings collected by surveillance activities**

(1) The photographs, films, audio and video recordings and other data recordings or any part thereof necessary for the adjudication of a criminal matter and made in the course of surveillance activities shall be stored in the criminal file or together with the criminal matter. The rest of the materials on surveillance activities shall be stored at surveillance agencies pursuant to the procedure specified in subsection 126<sup>11</sup> (2) of this Code.

(2) Surveillance files shall be stored as follows:

1) surveillance files kept on criminal offences under preparation, files on searching persons and confiscation files – until the redundancy of information contained therein, but for not longer than 50 years;

2) files on criminal offences – until the deletion of data concerning punishment from the punishment register or the expiry of the limitation period of the criminal offence.

(3) The data obtained by surveillance activities may be used in other surveillance activities, other criminal proceedings, security checks, in deciding, in the cases provided by law, upon hiring persons and grant of permissions or licences to verify the conformity of the person to the requirements provided by law.

(4) The data obtained by surveillance activities may be stored for study and research purposes. Personal data and, if necessary, the information collected shall be completely altered in order to prevent disclosure of persons who have been engaged in surveillance activities or recruited therefor.

(5) If preservation of a data recording made in the course of surveillance activities and added to a criminal file is not necessary, the person subject to the surveillance activities whose fundamental rights were violated by such surveillance activities may request destruction of the data recording after the entry into force of the court judgment.

(6) The data recording specified in subsection (5) of this section shall be destroyed by a court. A report shall be prepared on the destruction of a data recording and included in the criminal file.

(7) If the materials on surveillance activities are stored in a criminal file, the information concerning the persons accused in criminal proceedings whose private or family life was significantly violated by the surveillance activities and whose rights or freedoms may be significantly damaged by disclosure shall be removed from or covered up in the criminal file upon disclosure thereof pursuant to the Public Information Act.

(8) Files containing a state secret or classified information of a foreign state shall be stored and destroyed pursuant to the State Secrets and Classified Information of Foreign States Act.

(9) Surveillance files subject to destruction and data recordings collected shall be destroyed by a committee formed by the head of a surveillance agency in the presence of a prosecutor. The committee shall prepare a report concerning the destruction of a file and data recording collected which shall set out the number of the file or information concerning the destructed data recording and the reason for the destruction thereof.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>13</sup>. Notification of surveillance activities**

(1) Upon expiry of the term of a permission for the conduct of surveillance activities and, when several surveillance activities are conducted that coincide at least partly in time, upon expiry of the term of the last permission, the surveillance agency shall immediately notify the person with respect to whom the surveillance activities were conducted and the person whose private or family life was significantly violated by the surveillance activities and who was identified in the course of the proceedings. The person shall be notified of the time and type of surveillance activities conducted with respect to him or her.

(2) With the permission of a prosecutor, a surveillance agency need not give notification of conduct of surveillance activities if this may:

- 1) significantly damage the criminal proceedings;
- 2) significantly damage the rights and freedoms of another person which are guaranteed by law or endanger another person;
- 3) endanger the confidentiality of the methods and tactics of a surveillance agency, the equipment or police agent used in conducting surveillance activities, of an undercover agent or person who has been recruited for secret co-operation.

(3) With the permission of a Prosecutor's Office, a person need not be given notification of surveillance activities until the basis specified in subsection (2) of this section cease to exist. The Prosecutor's Office shall verify the basis for non-notification at the criminal matter upon completion of pre-trial proceedings but not later than one year after the expiry of the term of the permission for surveillance activities.

(4) If the basis for non-notification of surveillance activities have not ceased to exist upon expiry of one year as of the expiry of the term of the permission for surveillance activities, a Prosecutor's Office applies, at the latest 15 days prior to the expiry of the specified term, for a permission of a preliminary investigation judge for extension of the non-notification term. The preliminary investigation judge grants permission by a ruling for non-notification of the person or refuses to grant such permission. Upon non-notification of a person, the ruling shall set out whether the non-notification is granted for an unspecified or specified term. In the case of non-notification during a specified term, the term during which a person is not notified shall be set out.

(5) If the basis specified in subsection (2) of this section have not ceased to exist upon expiry of the term of the permission granted for non-notification by a preliminary investigation judge specified in subsection (4) of this section, a Prosecutor's Office applies, at the latest 15 days prior to expiry of such term, for a permission from a preliminary investigation judge for extension of the non-notification term. The preliminary investigation judge grants permission by a ruling pursuant to the provisions of subsection (4) of this section.

(6) A person shall be immediately notified of surveillance activities upon expiry of the permission for non-notification or refusal to grant permission for the extension thereof.

(7) When a person is notified of surveillance activities conducted with respect to him or her, the procedure for appeal shall be explained to him or her.  
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>14</sup>. Submission of information collected by surveillance activities for examination**

(1) The person who has been notified pursuant to § 126<sup>13</sup> of this Code shall be permitted at his or her request to examine the data collected with respect to him or her and the photographs, films, audio and video recordings and other data recordings made in the course of the surveillance activities. With the permission of a Prosecutor's Office, the following information need not be submitted until the corresponding bases cease to exist:

- 1) information concerning the family or private life of other persons;
- 2) information the submission of which may damages the rights and freedoms of another person which are guaranteed by law;
- 3) information which contains state secrets, classified information of foreign states or secrets of another person that are protected by law;
- 4) information the submission of which may endanger the life, health, honour, good name and property of an employee of a surveillance agency, police agent, undercover agent, person who has been recruited for secret co-operation or another person who has been engaged in surveillance activities or of persons connected with them;
- 5) information the submission of which may endanger the right of a police agent, undercover agent and person who has been recruited for secret co-operation to maintain the confidentiality of co-operation;
- 6) the submission of which may result in communication of information concerning the methods, tactics of a surveillance agency and the equipment used in conduct of surveillance activities;
- 7) information which cannot be separated or disclosed without information specified in clauses 1-6) of this subsection becoming evident.

(2) Upon submission of or refusal to submit information collected by surveillance activities for examination to a person, the procedure for appeal shall be explained to him or her.

(3) The procedure for notification of surveillance activities and submission of surveillance files shall be established by a regulation of the Government of the Republic on the proposal of the Minister of Internal Affairs.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>15</sup>. Supervision over surveillance activities**

(1) a Prosecutor's Office shall exercise supervision over the compliance of surveillance activities with the permission provided for in § 126<sup>4</sup> of this Code.

(2) The committee of *Riigikogu* specified in § 36 of the Security Authorities Act shall exercise supervision over the activities of surveillance agencies. A surveillance agency shall submit a written report to the committee through the appropriate ministry at least once every three months.

(3) The Ministry of Justice shall publish on its website once a year a report on the basis of the information obtained from surveillance agencies, Prosecutor's Offices and courts, which contains the following information concerning the previous year:

- 1) number and type of opened surveillance files;
- 2) number of permissions for surveillance activities by types of surveillance activities;
- 3) number of persons notified of conduct of surveillance activities and number of persons in the case of whom notification was postponed pursuant to subsection 126<sup>13</sup> (4) of this Code for more than one year.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>16</sup>. Filing of appeals in connection with surveillance activities**

(1) An appeal may be filed pursuant to the procedure provided for in Chapter 15 of this Code against the court ruling that grants permission for surveillance activities on the basis specified in this Code.

(2) An appeal may be filed pursuant to the procedure provided for in Division 5 of Chapter 8 of this Code against the course of surveillance activities conducted on the basis specified in this Code, non-notification thereof and refusal to submit information collected thereby.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 126<sup>17</sup>. Surveillance activities information system**

(1) The surveillance activities information system (hereinafter *information system*) is a database belonging to the State Information Systems maintained for processing of the surveillance activities information provided for in this Code, the objective of which is to:

- 1) provide an overview of surveillance activities conducted by surveillance agencies;
- 2) provide an overview of requests of surveillance agencies and Prosecutor's Offices for conduct of surveillance activities;
- 3) provide an overview of permissions issued by Prosecutor's Offices and courts for conduct of surveillance activities;
- 4) provide an overview of notification of surveillance activities and submission of information collected by surveillance activities;
- 5) reflect information concerning the surveillance activities conducted;
- 6) enable the organisation of the activities of surveillance agencies, Prosecutor's Offices and courts;

7) collect statistics on surveillance activities which are necessary for the making of decisions concerning criminal policy;  
8) enable electronic forwarding of data and documents.

(2) The information system shall be established and the statutes of the register shall be approved by the Government of the Republic.

(3) The chief processor of the information system is the Ministry of Justice. The authorised processor of the information system is the Centre of Registers and Information Systems.

(4) The Minister of Justice may organise the activities of the information system by a regulation. [RT I, 29.06.2012, 2 - entry into force 01.01.2015]

## **Chapter 4 SECURING OF CRIMINAL PROCEEDINGS**

### **Division 1 Preventive Measure**

#### **§ 127. Choice of preventive measure**

(1) A preventive measure shall be chosen taking into account the probability of absconding from criminal proceedings or execution of a court judgment, continuing commission of criminal offences, or destruction, alteration or falsification of evidence, the degree of the punishment, the personality of a suspect, accused or convicted offender, his or her state of health and marital status, and other circumstances relevant to the application of preventive measures.

(2) A preventive measure is altered pursuant to the provisions of this Code concerning application of preventive measures.

#### **§ 128. Prohibition on departure from residence**

(1) Prohibition on departure from the residence means the obligation of a suspect or accused or the representative of a suspect or accused who is a legal person not to leave his or her residence for more than seventy-two hours without the permission of the body conducting the proceedings. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A prohibition on departure from the residence shall be applied by a ruling which shall be signed by a suspect or accused or the representative of a suspect or accused who is a legal person. A person shall be cautioned upon the obtainment of a signature that in the case of violation of the preventive measure a fine may be imposed on the person or a more severe preventive measure may be applied with regard to him or her. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) In pre-trial proceedings, the prohibition on departure from residence may be imposed for not longer than one year. In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in a criminal proceeding, a Prosecutor's Office may extend the term of the prohibition on departure from residence in pre-trial procedure

for more than six months.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A fine may be imposed on a person who violated the prohibition on departure from residence by a court ruling of a preliminary investigation judge at the request of a Prosecutor's Office, or of a court at the request of party to the court proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 129. Supervision over members of Defence Forces**

A suspect or accused who is a member of the Defence Forces serving in compulsory military service may, by way of a preventive measure, be subjected to the supervision of the command staff of his or her military unit on the basis of an order or ruling.

[RT I 2008, 35, 212 - entry into force 01.01.2009]

### **§ 130. Grounds for taking into custody and holding in custody**

(1) Taking into custody is a preventive measure which is applied with regard to a suspect, accused or convicted offender and which means deprivation of a person of his or her liberty on the basis of a court ruling.

(2) A suspect or accused may be taken into custody at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if he or she is likely to abscond from the criminal proceeding or continue to commit criminal offences.

(3) In pre-trial procedure, a suspect or accused shall not be held in custody for more than six months. The term shall not include the time spent in provisional custody and in custody for surrender in a foreign country by a person whose extradition has been applied for by the Republic of Estonia or the time a person was held in custody in pre-trial procedure based on a decision of a competent authority of a foreign state prior to assumption of criminal proceedings by the Republic of Estonia.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3<sup>1</sup>) In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in a criminal proceeding, a preliminary investigation judge may extend the term for holding in custody for more than six months at the request of the Chief Public Prosecutor.

(4) An accused who has been prosecuted and is at large may be taken into custody on the basis of a ruling of a city, county or circuit court if he or she has failed to appear when summoned by a court and may continue absconding from the court proceeding.

(4<sup>1</sup>) An accused who is at large may be taken into custody by a court in order to ensure execution of imprisonment imposed by a judgment of conviction.

[RT I 2008, 19, 132 - entry into force 23.05.2008]



(5) A convicted offender who is at large may be taken into custody by a court pursuant to the procedure provided for in § 429 of this Code in order to secure execution of the court judgment.

(6) A member of the Defence Forces who is a suspect and does not stay in the territory of the Republic of Estonia may, at the request of a Prosecutor's Office, be taken into custody on the bases provided for in subsection (2) of this section in order to bring him or her to the Republic of Estonia on the basis of an order of a preliminary investigation judge.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

### **§ 131. Procedure for taking into custody**

(1) At the request of a suspect or accused, the Prosecutor's Office shall immediately notify his or her counsel of preparation of an application for an arrest warrant.

(2) On the order of a Prosecutor's Office, an investigative body shall convey a suspect or accused with regard to whom an application for an arrest warrant or an application for extension of the term for holding in custody has been prepared to a preliminary investigation judge for the hearing of the application.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) In order to issue an arrest warrant, a preliminary investigation judge shall examine the criminal file and interrogate the person to be taken into custody with a view to ascertaining whether the application for an arrest warrant is justified. The prosecutor and, at the request of the person to be taken into custody, his or her counsel shall be summoned before the preliminary investigation judge and their opinions shall be heard.

(3<sup>1</sup>) A preliminary investigation judge may organise the participation of the persons specified in subsection (3) of this section in the hearing of the request for taking into custody by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) For the purposes of taking a person who has been declared a fugitive or a suspect and who stays outside the territory of the Republic of Estonia into custody, a preliminary investigation judge shall issue an arrest warrant without interrogating the person. Not later than on the second day following the date of apprehension of a fugitive or bringing a suspect into Estonia, the person held in custody shall be taken before a preliminary investigation judge for interrogation.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(5) If there are no grounds for holding in custody, the person shall be released immediately.

### **§ 132. Arrest warrant**

(1) An arrest warrant shall set out:

1) the name and residence of the person to be taken into custody;

2) the facts relating to the criminal offence of which the person is suspected or accused, and the

legal assessment of the act;

- 3) the grounds for taking into custody with a reference to §§ 130 or 429 of this Code;
- 4) the reason for taking into custody.

(2) An arrest warrant shall be included in the criminal file and a copy of the warrant shall be sent to the person in custody.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 133. Notification of taking into custody**

(1) A preliminary investigation judge or court shall immediately give notification of taking of a person into custody to a person close to the person in custody and his or her place of employment or study.

(2) Notification of taking into custody may be delayed in order to prevent a criminal offence or ascertain the truth in a criminal proceeding.

(3) If a foreign citizen is taken into custody, a copy of the arrest warrant or court judgment shall be sent to the Ministry of Foreign Affairs.

### **§ 134. Refusal to take into custody and release of person held in custody**

(1) A preliminary investigation judge or court shall set out the reasons for a refusal to take a person into custody in a ruling on the refusal of taking into custody.

(2) If the grounds for holding in custody cease to exist before a statement of charges is sent to a court pursuant to the procedure provided for in subsection 226 (3) of this Code, a preliminary investigation judge or Prosecutor's Office shall release the person held in custody by an order.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 135. Bail**

(1) At the request of a suspect or accused, a preliminary investigation judge or court may impose bail instead of taking into custody.

(2) Bail is a sum of money paid as a preventive measure by a suspect, accused or another person on behalf of him or her to the deposit account of the court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) A suspect or accused shall be released from custody after the bail has been received into the bank account of a court.

(4) A court shall determine the amount of bail on the basis of the degree of the potential punishment, the extent of the damage caused by the criminal offence, and the financial situation of the suspect or accused. The minimum amount of bail shall be five hundred days' wages.

(5) Bail is imposed by a court ruling. For the purposes of adjudication of an application for bail, the person held in custody shall be taken before a preliminary investigation judge; a prosecutor and, at the request of the person held in custody, his or her counsel shall be summoned to the judge and their opinions shall be heard.

(5<sup>1</sup>) At the request of a Prosecutor's Office or on its own initiative, a court may, together with the imposition of bail, apply a prohibition on departure from residence with respect to a suspect or an accused pursuant to the procedure provided for in §§ 127 and 128 of this Code.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(5<sup>2</sup>) A preliminary investigation judge may organise the participation of the persons specified in subsection (5) of this section in the adjudication of an application for bail by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) If a suspect or accused absconds from criminal proceedings or intentionally commits another criminal offence or violates the prohibition on departure from his or her residence, the bail shall be transferred into public revenues on the basis of a court judgment or ruling on termination of the criminal proceeding after deduction of the amount necessary for reimbursement of the expenses relating to the criminal proceeding.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(6<sup>1</sup>) If the grounds for taking into custody cease to exist before a statement of charges is sent to a court pursuant to the procedure provided for in subsection 226 (3) of this Code, a preliminary investigation judge or Prosecutor's Office shall annul the bail by an order.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) Bail shall be refunded if:

- 1) the suspect or accused does not violate the conditions for bail;
- 2) the criminal proceeding is terminated;
- 3) the accused is acquitted.

### **§ 136. Contestation of taking into custody or refusal to take into custody and of extension of or refusal to extend term for holding in custody**

A Prosecutor's Office, a person held in custody or his or her counsel may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against a court ruling by which holding in custody was imposed or refused, extension of the term for holding in custody or refusal to extend the term for holding in custody.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

**§ 137. Verification of reasons for holding in custody and bail**  
**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) A suspect, accused or counsel may submit a request to a preliminary investigation judge or court to verify:

1) the reasons for holding in custody after two months have expired from the taking into custody;

2) the reasons for bail after four months have expired from the imposition of bail.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A preliminary investigation judge shall hear a request within five days as of receipt of the request. A prosecutor, counsel and, if necessary, the person held in custody or the person on whom bail was imposed shall be summoned before the preliminary investigation judge. A new request may be submitted after expiry of the term provided for in subsection (1) of this section after the review of the previous request.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2<sup>1</sup>) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (2) of this section in the adjudication of a request by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) In order to adjudicate a request, a preliminary investigation judge shall examine the criminal file. The request shall be adjudicated by a court ruling which is not subject to appeal.

(3<sup>1</sup>) If a preliminary investigation judge or court finds that further imposition of bail is not justified, the court ruling shall set out whether bail is to be returned or holding of the suspect or accused in custody is applied.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If the term for holding a person in custody has been extended for more than six months pursuant to the procedure provided for in subsection 130 (3<sup>1</sup>) of this Code, a preliminary investigation judge shall verify the reasons for holding in custody at least once a month by examining the criminal file regardless of whether verification of the reasons has been requested and shall appoint a counsel for the person held in custody if he or she does not have a counsel.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

**§ 137<sup>1</sup>. Commutation of holding in custody to electronic surveillance**

(1) At the request of a suspect or accused, a preliminary investigation judge or court may commute holding in custody to the obligation to submit to electronic surveillance provided for in subsection 75<sup>1</sup> (1) of the Penal Code. The time of electronic surveillance shall not be deemed to be custody pending trial or detention and it is not included in the term of punishment.

(2) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) When a preliminary investigation judge or court receives a request for commutation of holding in custody, he or she assigns a task to a probation officer of the residence of the suspect or accused to submit an opinion within five working days about the possibility of application of electronic surveillance.

(4) Electronic surveillance is applied by a court ruling. For the purposes of application of electronic surveillance, the person held in custody shall be taken before a preliminary investigation judge or court; the prosecutor and, at the request of the person held in custody, his or her counsel shall be summoned to the judge or court and their opinions shall be heard.

(5) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (4) of this section in the adjudication of a request for application of electronic surveillance by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

(6) Before making a decision on application of electronic surveillance, a preliminary investigation judge or court shall submit the opinion of a probation supervisor about the possibility of application of electronic surveillance at the place of residence of the suspect or accused.

(7) A suspect or accused shall be released from custody and electronic surveillance shall be applied to him or her upon expiry of a term for filing of an appeal against the ruling or entry into force of a court ruling made by a higher court.

(8) If a suspect or accused does not submit to electronic surveillance, a preliminary investigation judge or court shall commute electronic surveillance to taking in custody by its ruling based on a report of the probation officer.

(9) The requirements established on holding in custody in this Code shall apply to the term of application of electronic surveillance and application of and refusal to apply electronic surveillance, contestation of extension of or refusal to extend the term of electronic surveillance and verification of the reasons for application of surveillance.

[RT I 2010, 44, 258 - entry into force 01.01.2011]

### **§ 137<sup>2</sup>. Release from custody of persons who committed unlawful act in state of mental incompetence or persons with severe mental disorder**

(1) If it becomes evident as a result of expert assessment that a person held in custody committed an unlawful act in a state of mental incompetence, he or she is mentally ill, feeble-minded or he or she has another severe mental disorder, he or she shall be immediately released from custody by an order of a Prosecutor's Office, unless otherwise provided for in § 395<sup>1</sup> of this Code.

(2) An investigative body shall immediately forward the expert's report specified in subsection (1) of this section to a Prosecutor's Office.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Division 2 Other Means of Securing Criminal Proceedings**

### **§ 138. Consequences of failure to appear when summoned by body conducting proceedings**

(1) A fine or detention for up to five days shall be imposed by a preliminary investigation judge at the request of a Prosecutor's Office or by a court on its own initiative on the basis of a court ruling on a person who failed to appear when summoned by the body conducting the proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) On the basis of a complaint submitted by a person on whom a fine or detention was imposed, a court may annul the fine or detention imposed on the person for failure to appear if the person proves that he or she failed to appear for a good reason provided for in § 170 of this Code.

(3) Compelled attendance may be imposed, pursuant to the provisions of § 139 of this Code, on a suspect, accused, convicted offender, victim, civil defendant or witness who failed to appear when summoned by a body conducting proceedings or such person may be declared a fugitive pursuant to the provisions of § 140 of this Code.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 138<sup>1</sup>. Imposition of fines**

(1) In the cases provided for in this Code where a court or preliminary investigation judge has the right to impose a fine, the amount of such fine may be up to 3200 euros, unless this Code provides otherwise. In determining the amount of a fine, a court or preliminary investigation judge shall take the financial situation of the person and other circumstances into consideration.

(2) Instead of or in addition to a minor, a fine may be imposed on his or her parent or guardian, unless this Code provides otherwise. Instead of an adult with restricted active legal capacity, a fine may be imposed on his or her guardian. No fine shall be imposed on minors of less than 14 years of age and persons with restricted active legal capacity.

(3) A fine may be imposed on a person only after a warning of fine has been given to him or her, except in the case where prior notice is impossible or unreasonable.

(4) A fine imposed on a person for non-performance of an obligation does not release the person from performing the obligation. If an obligation is not performed after the imposition of a fine, a new fine may be imposed.

(5) A copy of the ruling whereby a fine is imposed shall be immediately delivered to the person fined or the representative thereof.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 139. Compelled attendance**

(1) Compelled attendance means conveyance of a suspect, accused, convicted offender, victim, civil defendant or witness to an investigative body, forensic institution, Prosecutor's Office or court for the performance of a procedural act and conveyance of a convicted offender to a prison or house of detention for serving the sentence.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Compelled attendance may be applied if:

1) a person who received a summons fails to appear without a good reason specified in § 170 of this Code;

1<sup>1</sup>) there is reason to believe that the person absconds the criminal proceedings;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) prior summoning of the person may hinder the criminal proceeding, or if the person refuses to come voluntarily at the order of the investigative body or Prosecutor's Office;

3) the person absconds from the execution of a court judgment.

(3) A person shall be conveyed to a Prosecutor's Office or court on the basis of an order of the Prosecutor's Office or court ruling which shall set out:

1) the name of the person subjected to compelled attendance, his or her status in the proceeding, residence and place of employment or name of the educational institution;

2) the reason for compelled attendance;

3) the time of execution of the order or ruling and the place where the person is to be taken.

(3<sup>1</sup>) Compelled attendance to a prison or a house of detention may be applied to a convicted offender on the bases of and pursuant to procedure provided for in subsection 414 (3) of this Code.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(4) An order or ruling on compelled attendance shall be sent to an investigative body for execution.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

(5) A person subjected to compelled attendance may be detained for as long as is necessary for the performance of the procedural act which is the basis for application of compelled attendance but not for longer than forty-eight hours.

## **§ 140. Search**

(1) A body conducting the proceedings may declare a suspect, accused, victim, civil defendant or witness a fugitive by an order or ruling if he or she has failed, without a good reason specified in § 170 of this Code, to appear when summoned and if his or her whereabouts are unknown, and a body conducting the proceedings may declare a convicted offender a fugitive if he or she absconds from the execution of the court judgment.

(2) An order or ruling on declaring a person a fugitive shall set out:

- 1) the facts relating to the criminal offence;
- 2) the name of the fugitive, his or her status in the proceeding, residence and place of employment or name of the educational institution.

(2<sup>1</sup>) If necessary, a body conducting proceedings shall set out in an order or ruling on declaring a person fugitive the obligation to bring the fugitive, upon his or her apprehension, before the body conducting proceedings pursuant to the provisions on compelled attendance.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) A ruling on declaring a person a fugitive shall be sent for execution to a surveillance agency which conducts or conducted the proceedings in the criminal matter which is the basis for the search. If the proceedings in the criminal matter were conducted by an investigative body which is not a surveillance agency, the ruling on declaring a person a fugitive shall be sent for execution to the Police and Border Guard Board.

[RT I, 29.06.2012, 2 - entry into force 09.07.2012]

(3<sup>1</sup>) In the case a suspect, accused or convicted offender is declared a fugitive, an arrest warrant or a decision which has entered into force and is the basis for enforced imprisonment shall be sent to a surveillance agency together with the ruling on declaring a person a fugitive.

[RT I, 29.06.2012, 2 - entry into force 09.07.2012]

(4) Upon apprehension of a fugitive, compelled attendance at a body conducting proceedings shall be imposed on him or her or the fugitive is brought to the place of custody pending trial or imprisonment, and the body conducting the proceedings shall be notified thereof.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 141. Exclusion of suspect or accused from office**

(1) A suspect or accused shall be excluded from office at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if:

[RT I 2004, 46, 329 - entry into force 01.07.2004]

- 1) he or she may continue to commit criminal offences in case he or she remains in the office;
- 2) his or her remaining in the office may prejudice the criminal proceeding.

(2) A copy of a ruling on exclusion of a suspect or accused from office shall be submitted to the suspect or accused and sent to the head of his or her place of employment.

(3) If the grounds for exclusion from office cease to exist before a statement of charges is sent to a court pursuant to the procedure provided for in subsection 226 (3) of this Code, a preliminary investigation judge or Prosecutor's Office shall annul the exclusion from office by an order.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]



## **§ 141<sup>1</sup>. Temporary restraining order**

(1) For protection of private life or other personality rights of a victim, a person suspected or accused of a crime against the person or against a minor may be prohibited to stay in places determined by a court, to approach the persons determined by the court or communicate with such persons at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(2) A temporary restraining order is applied to a suspect or accused with the consent of the victim.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(3) In order to issue a ruling on application of a temporary restraining order, a preliminary investigation judge shall examine the criminal file and interrogate the suspect or accused and, if necessary, the victim with a view to ascertaining whether the request for temporary restraining order is justified. A prosecutor and, at the request of the suspect or accused, a counsel shall also be summoned before the court or the preliminary investigation judge and their opinions shall be heard.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(3<sup>1</sup>) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (3) of this section in the adjudication of a request for application of a restraining order by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A ruling on temporary restraining order shall set out:

- 1) the reasons for the temporary restraining order;
- 2) the conditions of the temporary restraining order.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(5) A victim, Prosecutor's Office, suspect, accused or his or her counsel may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against application of temporary restraining order or refusal to apply temporary restraining order.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

(6) A copy of a ruling on establishment of temporary restraining order shall be submitted to a suspect or accused and victim and shall be sent to the Police and Border Guard Board. A preliminary investigation judge or court shall also immediately notify other persons whom the restraining order concerns of the application of temporary restraining order.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

**§ 141<sup>2</sup>. Verification of reasons for exclusion from office and temporary restraining order**  
**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) A suspect or accused or his or her counsel may, upon expiry of four months from the exclusion from office or application of temporary restraining order, submit a request to a preliminary investigation judge or court to verify the reasons for the exclusion from office or application of temporary restraining order or to amend the conditions of application of temporary restraining order. A new request may be submitted four months after the review of the previous request.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1<sup>1</sup>) If a temporary restraining order restricts the right of a suspect or accused to use his or her dwelling, the suspect, accused or his or her counsel may submit the request described in subsection (1) of this section upon expiry of one month from the application of a temporary restraining order.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A preliminary investigation judge or court shall review a request within five days as of the receipt thereof. The prosecutor, suspect or accused and, at the request of the suspect or accused, his or her counsel shall be summoned before the preliminary investigation judge or court. The victim shall be also summoned to the review of an application for verification of the reasons for a temporary restraining order.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2<sup>1</sup>) A preliminary investigation judge or court may organise the participation of the persons specified in subsection (2) of this section in the adjudication of a request by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) A request shall be adjudicated by a court ruling. A ruling made in reviewing of a request is not subject to contestation, except in the case the conditions of the temporary restraining order are amended.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

**§ 141<sup>3</sup>. Amendment and annulment of temporary restraining order at request of victim and Prosecutor's Office**

(1) At the request of a victim or at the request of a Prosecutor's Office and with the consent of the victim, a preliminary investigation judge or court may amend the conditions of a temporary restraining order or annul the temporary restraining order.

(2) In order to issue a ruling on amendment of the conditions of or annulment of a temporary restraining order, a preliminary investigation judge or court shall examine the criminal file and interrogate the suspect or accused and the victim with a view to ascertaining whether the request is justified. The prosecutor, victim, suspect or accused and, at the request of the suspect or

accused, his or her counsel shall be summoned before the preliminary investigation judge or court.

(3) A copy of a ruling on amendment of the conditions of or annulment of a temporary restraining order shall be submitted to the suspect or accused and victim and to other persons whom the restraining order concerns.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

#### **§ 141<sup>4</sup>. Securing of confiscation, substitution thereof, civil action and fine to extent of assets**

(1) For securing confiscation, substitution thereof, civil action or fine to the extent of assets, assets may be seized pursuant to the procedure provided for in § 142 of this Code, or other measures for securing an action provided for in § 378 of the Code of Civil Procedure may be applied.

(2) Application of measures for securing an action shall comply with the procedure provided for in § 142 of this Code.

[RT I, 26.02.2014, 1 - entry into force 08.03.2014]

#### **§ 142. Seizure of property**

(1) The objective of seizure of property is to secure a civil action, confiscation or replacement thereof or fine to the extent of assets. Seizure of property means recording the property of a suspect, accused, convicted offender, civil defendant or third party or the property which is the object of money laundering or terrorist financing and preventing the transfer of the property.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Property is seized at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(3) In cases of urgency, property, except property which is the object of money laundering, may be seized without the permission of a preliminary investigation judge. The preliminary investigation judge shall be notified of the seizure of the property within 24 hours after the seizure and the preliminary investigation judge shall immediately decide whether to grant or refuse permission. If the preliminary investigation judge refuses to grant permission, the property shall be released from seizure immediately.

(4) Upon seizure of property in order to secure a civil action, the extent of the damage caused by the criminal offence shall be taken into consideration.

(5) A ruling on the seizure of property shall be immediately submitted for examination to the person whose property is to be seized or to his or her adult family member, or if the property of a legal person is to be seized, to the representative of the legal person, and he or she shall sign the ruling to this effect. If obtaining of a signature is impossible, the ruling shall be sent to the person whose property is to be seized or to the representative of the legal person who is the owner of the property to be seized. If property is seized in the courses of performance of a procedural act, the

representative of the local government shall be involved in the absence of the responsible person or representative.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) If necessary, an expert or qualified person who participates in a procedural act shall ascertain the value of the seized property on site.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) Seized property shall be confiscated or deposited into storage with liability.

(8) For the seizure of an immovable, a Prosecutor's Office shall submit an order on seizure to the land registry department of the location of such immovable in order for a prohibition on the disposal of the immovable to be made in the land register.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(9) For the seizure of an immovable or right entered in the state register, a Prosecutor's Office shall submit an order on seizure to the relevant state register.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(10) Property which pursuant to law is not be subject to a claim for payment shall not be seized.

(11) If the grounds for the seizure of property cease to exist before the completion of pre-trial proceedings, a Prosecutor's Office or preliminary investigation judge shall release the property from seizure by an order or ruling.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 143. Report of seizure of property**

(1) The report of seizure of property shall set out:

- 1) the names and characteristics of the seized objects and the number, volume or weight and value of the objects;
- 2) a list of property taken over or deposited into storage with liability;
- 3) absence of property to be seized if such property is missing.

(2) A list of seized property may be appended to the report of seizure of property and a notation concerning the list is made in the report. In such case, the report shall not contain the information listed in clause (1) 1) of this section.

### **§ 143<sup>1</sup>. Additional restrictions applied to persons whose personal liberty has been restricted**

(1) If there is sufficient reason to believe that a suspect or accused who is held in custody or imprisoned or serving detention may adversely affect the conduct of criminal proceedings by his or her behaviour, a Prosecutor's Office or court may issue a ruling on the transfer of the suspect or accused for complete isolation from other persons held in custody or prisoners or detained persons. A Prosecutor's Office or court may also, by a ruling, restrict or totally prohibit the

following with regard to a suspect or accused:

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 1) right to short or long-term visit;
- 2) right to correspondence or use of telephone;
- 3) right to prison leave;
- 4) right to prison leave under supervision or release.

(2) A ruling shall set out:

- 1) the name of the suspect or accused;
- 2) the reasons for and extent of transfer or restriction of rights;
- 3) the term for application of transfer or restrictions.

(3) The ruling shall be sent to the prison or house of detention for immediate execution. A copy of the ruling shall be sent to the suspect or accused.

(4) The restriction specified in clause (1) 2) of this section shall not extend to the correspondence and use of telephone for communication with state agencies, local governments and their officials and with a criminal defence counsel.

[RT I 2006, 63, 466 - entry into force 01.02.2007]

## **Chapter 5 PROCEDURAL DOCUMENTS, TRANSLATION, INTERPRETATION AND SUMMONING**

### **Division 1 Procedural Documents**

#### **§ 144. Language of procedural documents**

(1) Procedural documents shall be prepared in Estonian. If a procedural document is prepared in another language, a translation into Estonian shall be appended thereto.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Translation into the Estonian language of procedural documents prepared in other languages by investigative bodies and Prosecutors' Offices in terminated criminal proceedings shall be appended at the order of the Prosecutor's Office or at the request of a participant in the proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 145. Order and ruling**

(1) An order or ruling is:

1) a reasoned procedural decision which is be prepared in writing by a body conducting the proceedings;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

1<sup>1</sup>) a decision on termination of criminal proceedings made pursuant to the procedure provided for in subsection 206 (1<sup>1</sup>) if this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) in a court proceeding, a procedural decision which is made pursuant to the procedure provided for in § 137 of this Code and entered in the minutes of the court session upon adjudication of a single issue and which is not reasoned.

(2) The introduction of a reasoned order or ruling shall set out:

- 1) the date and place of preparation thereof;
- 2) the official title and name of the person who prepared the order or ruling;
- 3) the title of the criminal matter: the number of the criminal matter and the legal assessment of the criminal offence or the name of the suspect or accused.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(3) The main part of a reasoned order or ruling shall set out:

- 1) the reasons for the order or ruling;
- 2) the basis for the order or ruling under procedural law.

(4) The final part of a reasoned order or ruling shall set out the decision made in the adjudication of the criminal matter or a single issue relating thereto.

(5) An order or ruling shall be prepared in accordance with the additional requirements for the content thereof.

(6) In the cases provided for in this Code, a reasoned order or ruling shall be submitted for examination to a participant in the proceedings and his or her rights and obligations shall be explained to him or her and the participant shall sign the order or ruling to this effect.

(7) An order or ruling made by a body conducting the proceedings in a criminal matter heard by the body is binding on everyone.

#### **§ 146. Report of investigative activities and other procedural acts**

(1) Report of the conditions, course and results of investigative activities or other procedural acts shall be made in typewritten form or in clearly legible handwriting. If necessary, the assistance of a secretary shall be used.

(2) The introduction of the report shall set out:

- 1) the date and place of the investigative activities or other procedural acts;
- 2) the official title and name of the person preparing the report;
- 3) the number of the criminal matter and the title of the investigative activities or other procedural acts;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

4) in the cases provided by law, a reference to the order or ruling on the basis of which the investigative activities or other procedural acts were conducted;

5) the status in the proceeding of the person subject to the investigative activities or other procedural acts, the person's name, residence or seat, address, and telecommunications numbers or electronic mail address;

6) the status in the proceeding, name, residence or seat and address of any other person who

participated in the investigative activities or other procedural acts;

7) the time of commencement and end of the investigative activities or other procedural acts and other information relating thereto;

8) the performance of the investigative activities or other procedural acts pursuant to § 8 of this Code;

9) the basis of the investigative activities or other procedural acts under procedural law.

(3) If a witness who gives testimony in the course of investigative activities is at least fourteen years of age, the introduction of the report of the activities shall set out that the witness was warned that, pursuant to the Penal Code, refusal to give testimony without a legal basis or giving knowingly false testimony may result in a criminal punishment.

(4) A participant in the proceedings shall sign the introduction of the report in confirmation that his or her rights and obligations were explained to him or her.

(5) The main part of the report shall set out:

1) the course and results of the investigative activities or other procedural acts in such detail as is necessary for the purposes of proof and in compliance with the additional requirements provided for the content of procedural acts by this Code;

2) the technical equipment used.

(6) The final part of the report shall set out:

1) the names of the objects confiscated in the course of the investigative activities or other procedural acts and the manner of packaging of the objects;

2) submission of the report for examination to the persons who participated in the investigative activities or other procedural acts;

3) the annexes to the report.

(7) If the report contains conclusions the comprehension of which requires specific expertise, the report shall set out the method of reaching such conclusions and the personal data of the person who made the conclusions based on specific expertise.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(8) If a witness participates in a procedural act under a fictitious name, a copy shall be made of the minutes of the procedural act where no other personal data besides the fictitious name shall be indicated and the witness shall not sign the copy. The original report shall be placed in an envelope specified in subsection 67 (4) of this Code which is kept separately from the criminal file.

## **§ 147. Secretary**

An investigative body or Prosecutor's Office may use the assistance of a secretary when making report of the conditions, course and results of procedural acts.

#### **§ 148. Annex to report of investigative activities or other procedural acts**

(1) If necessary, evidentiary information may be recorded, in addition to the report of the investigative activities or other procedural acts, on a photograph, on film, as an audio or video recording, drawing or in any other illustrative manner.

(2) Photographs, drawings and other illustrative material shall be included in the criminal file together with the report, and films and audio and video recordings shall be packaged and stored with the criminal matter.

#### **§ 149. Photographs**

(1) The conditions, course and results of investigative activities or other procedural acts shall be photographed if this is considered necessary by the official of the investigative body or if the obligation to take photographs is provided for in this Code.

(2) If negatives are used in photographing, the negatives shall be appended to the report of the investigative activities or other procedural acts.

(3) Digital photographs shall be included in the minutes of a procedural act or presented as an annex thereto and preserved in the form of computer files in the E-File system. Digital photographs may also be created of single shots of a video recording.

[RT I 2008, 28, 180 - entry into force 15.07.2008]

#### **§ 150. Films and audio and video recordings**

(1) An investigative activity or any other procedural act or a distinct part thereof may be filmed or audio or video recorded. The witness or the participant in the proceedings shall be notified thereof before the commencement of the investigative activities or other procedural acts.

(2) The information specified in subsections 146 (2) and (3) of this Code shall be set out at the beginning of an audio or video recording. After the completion of investigative activities or other procedural acts, the recording shall be submitted to the participants in the investigative activities or procedural acts for listening or watching.

(3) Report shall be made of investigative activities or other procedural acts on the basis of an audio or video recording of the activity or act pursuant to the procedure provided for in this Code.

(4) An audio or video recording shall be appended to the criminal file. Later changes to an audio or video recording are prohibited.



## **§ 151. Drawings**

(1) Drawings may be appended to a report of investigative activities in order to illustrate the conditions, course and results of the activities and clarify and supplement the content of the report.

(2) A drawing shall contain a reference to the report of the investigative activities and the time of preparing the report.

(3) A drawing shall be signed by a body conducting the proceedings. If a drawing is made by a qualified person or a person subject to the investigative activities, he or she shall also confirm the authenticity of the drawing by his or her signature.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If necessary, a body conducting the proceedings shall have another person who participated in the investigative activities sign a drawing in order to confirm the authenticity of the drawing.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 152. Submission of report of investigative activities or other procedural acts for examination**

(1) The report of investigative activities or any other procedural acts shall be submitted for reading to the person subject to the activities or acts and to other persons who participated therein or the report shall be read to the persons at their request and a notation to this effect shall be made in the report.

(2) Petitions concerning the conditions, course and results of investigative activities or any other procedural acts or concerning the report of the activities or acts, the requests for amendment of the report and other requests made upon examination of the report shall be entered in the same report.

(3) A copy of a search report or of a report of seizure of property shall be submitted to the person subject to the procedural act or to his or her adult family member or, if the person is a legal person, state or local government agency, to the representative thereof who participated in the procedural act. In the absence of such persons, a copy of the report shall be submitted to the representative of a local government agency.

(4) The report shall be signed by the person conducting the proceedings, qualified persons, persons subject to the act and the persons participating in the act.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If a person specified in subsection (4) of this section refuses to sign the report or if a person is unable to sign the report due to a physical disability, a notation concerning the refusal and the reasons therefor or concerning the person's inability to sign the report shall be made in the report and confirmed by the official of the investigative body.

### **§ 153. Summary of pre-trial proceedings**

(1) The summary of pre-trial proceedings shall set out:

- 1) the date and place of preparation thereof;
- 2) the official title and name of the official of the investigative body;
- 3) the title of the criminal matter;
- 4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the suspect;
- 5) the suspect's criminal record;
- 6) the preventive measures applied with regard to the suspect and the duration thereof;
- 7) facts relating to the subject of proof which were ascertained in the pre-trial proceedings, as listed in clause 62 1) of this Code;
- 8) a list of evidence;
- 9) a list of physical evidence and recordings, and information concerning the location thereof;
- 10) information concerning the objects seized in order to secure the confiscation thereof;
- 11) information concerning a civil action and the measures for securing the action;
- 12) information concerning property which was obtained by the criminal offence;
- 13) list of information entered in the state register of fingerprints and state DNA register.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(2) The summary of pre-trial proceedings shall be signed and dated by the official of an investigative body.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 154. Statement of charges**

(1) The introduction of a statement of charges shall set out:

- 1) the date and place of preparation thereof;
- 2) the official title and name of the prosecutor;
- 3) the title of the criminal matter;
- 4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;
- 5) the criminal record of the accused.

(2) The main part of a statement of charges shall set out:

- 1) the facts relating to the criminal offence;
- 2) the nature and extent of the damage caused by the criminal offence;
- 3) information concerning property which was obtained by the criminal offence;
  - 1) the mitigating and aggravating circumstances;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 4) the evidence in proof of the facts which are the basis of the charge, and a reference to the facts which are intended to be proven with each piece of evidence;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 5) the preventive measures applied with regard to the accused and the duration thereof.

5) information concerning the circumstances on the basis of which a fine to the extent of assets is calculated or the circumstances which are the basis for confiscation;

[RT I 2007, 2, 7 - entry into force 01.02.2007]

7) [repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

8) information concerning the circumstances which are the prerequisites for the administration of addiction treatment of drug addicts or complex treatment of sex offenders;

[RT I, 15.06.2012, 2 - entry into force 01.06.2013]

9) information concerning the children and property of the accused requiring supervision;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

10) information concerning physical evidence and other objects confiscated during criminal proceedings;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

11) information concerning the expenses relating of the criminal proceedings;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

12) list of information entered in the state register of fingerprints and state DNA register.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(3) The final part of a statement of charges shall set out:

1) the name of the accused;

2) the content of the charges;

3) the legal assessment of the criminal offence pursuant to the relevant section, subsection and clause of the Penal Code;

(4) A statement of charges shall be signed and dated by the prosecutor.

## **§ 155. Minutes of court session**

(1) The minutes of a court session of a court of first instance or a court of appeal is a procedural document which is prepared in typewritten form and where the clerk of the court session records the conditions and course of the hearing of a criminal matter in his or her own wording or as summarised by the judge.

(2) The minutes of a court session shall set out:

1) the date and place of the session and the time of commencement and end of the session;

2) the name of the court and the composition of the panel of the court;

3) the names of the parties to the court proceeding, the clerk of the court session, translators, interpreters and experts;

4) the title of the criminal matter to be heard;

5) [repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

6) the names of the court activities in chronological order;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

7) the questions posed by parties to the court proceeding in a cross-examination and the testimony of the person being cross-examined;

8) the petitions and requests and the results of adjudication thereof;

9) the titles of the rulings made in the court session;

10) the requests submitted by the parties in the summations;

11) the requests submitted in the final statement of the accused;  
12) whether the court judgment or ruling was made in chambers;  
13) pronouncement of the court judgment or ruling and explanation of the procedure and term for appeal.

(2<sup>1</sup>) The clerk of a court session shall take the minutes of the session without interrupting the smooth running thereof.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2<sup>2</sup>) If a court session was audio or video recorded, the audio or video recording shall be an integral part of the minutes of the court session. If the minutes contradict the recording, the recordings shall be relied upon.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The minutes shall be signed and dated by the presiding judge and the clerk of the court session.

#### **§ 156. Audio and video recording of court sessions**

(1) Court sessions pursuant to general procedure shall be audio recorded. A court may also video record a court session or a part thereof:

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If a court session or court activity is audio or video recorded, the court may use the recording in order to supplement and specify the minutes of the court session.

(3) Changes to an audio or video recording are prohibited.

(4) In exceptional cases a court session pursuant to general procedure need not be recorded, if it becomes evident immediately before a session or in the course of a session that recording is technically impossible and if the court is convinced that holding of the court session without recording is appropriate and in line with the interests of the parties to the court proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) Court sessions are audio or video recorded in digital format.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 156<sup>1</sup>. Examination of recordings and minutes of court sessions**

(1) Parties to court proceedings have the right to receive a copy of the minutes of a court session and the recording thereof in the case the court session is recorded.

(2) A court shall notify the parties to court proceedings of the time of signing the minutes and send the minutes immediately after signing thereof by electronic means to a prosecutor and other parties to the court proceeding who have communicated their electronic mail addresses to the court. The parties to the court proceeding may also examine the minutes in the court office.

(3) At the request of a party to court proceedings, a court shall make the signed minutes of a court session accessible to the parties to the court proceeding not later than three days after the day of the court session.

(4) A copy of the audio recording of a court session shall be issued by a court office on a digital data medium or sent by electronic means within three days after submission of the respective request. Audio recordings of court sessions are made accessible to prosecutors by means of the E-File system.

(5) In the case a court session is video recorded, a court shall show the video recording to a party to the court proceeding at the court within three days after submission of the respective request.

(6) A copy of the minutes or recording of a court session held in camera or a part thereof shall be issued by a court only in the case this does not endanger the interests specified in subsection 12 (1) of this Code. The court shall allow a party to the court proceeding to examine the recordings or minutes of a court session held in camera at the court.

(7) The fee chargeable for making the copies specified in subsection (1) of this section in the amount of up to 65 euro cents per page and the procedure for payment thereof shall be established by a regulation of the Minister of Justice.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 156<sup>2</sup>. Making procedural documents available in court proceedings**

(1) A court shall make all the procedural documents of court proceedings immediately available to parties to court proceedings in the E-File system regardless of how these are delivered to the parties to court proceedings.

(2) The Minister of Justice may establish more specific requirements by a regulation for making procedural documents available through the information system.

[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

## **§ 157. Court session clerks**

(1) A court session clerk is a court officer whose duty is to conduct the technical preparations for a court session, to organise the audio and video recording thereof in the cases prescribed by law or at the direction of the court and to take minutes of the conditions, course and results of the court session.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A court session clerk is required to remove himself or herself from a criminal proceeding on the bases provided for in subsections 49 (1) and (6) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) If a court session clerk does not remove himself or herself on the bases provided for in clauses 49 (1) 3)6) of this Code, the prosecutor, accused, counsel, victim or civil defendant may submit a petition of challenge against the clerk. Petitions of challenge shall be adjudicated pursuant to the procedure prescribed in subsection 59 (6) of this Code.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 158. Request for amendment of minutes of court session**

(1) Within three days after signing of the minutes of a court session, the parties to the court proceeding may submit written requests for amendment of the minutes of the session and the requests shall be included in the criminal file.

(2) Requests shall be heard by a judge or presiding judge. If the judge or presiding judge consents to a request, he or she shall amend the minutes and the correctness of the amendments shall be confirmed by the signatures of the judge or presiding judge and the clerk of the court session.

(3) If a judge or presiding judge does not consent to a request for amendment, the request shall be heard in a court session held within five days as of receipt of the request. If possible, the audio or video recording of a court session shall be heard in order to adjudicate the request. The request shall be adjudicated by a ruling of the judge or presiding judge.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 159. Court judgment**

(1) A court judgment is a decision on the merits of a criminal matter made in the name of the Republic of Estonia as a result of a court proceeding.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A court judgment shall be prepared pursuant to §§ 311-314 of this Code.

### **§ 160. Restoration of document**

(1) If a procedural document or another document relevant to the adjudication of a criminal matter is destroyed, lost or removed and restoration thereof is impossible, a copy of the document which has been authenticated by a court or notary is deemed to be equal to the original.

(2) If a procedural document cannot be replaced by an authenticated copy, the procedural document shall be restored on the basis of a draft of the document if such draft exists. A restored procedural document is deemed to be valid if the person conducting the proceedings who initially prepared the document confirms by his or her signature that the restored document corresponds to the original.

## **§ 160<sup>1</sup>. Criminal file**

(1) Criminal file means a set of documents collected in a criminal matter.

(2) A court maintains a court file on every criminal matter which proceedings are conducted by the court and which includes, in chronological order, all the procedural documents and other documentation related to the matter. In the cases prescribed by law, other objects relevant to the proceedings shall be included in the court file.

(3) A court file is kept in the form of a collection of written documents.

(4) A court file may be maintained, in whole or in part, in digital form.

(5) If a court file is maintained in digital format, paper documents are scanned and saved in the E-File system under the relevant proceeding. The E-File system shall automatically record the time of saving a document and the data of the person saving it. Documents saved in the E-File system substitute for paper documents.

(6) The time and procedure for transfer to mandatory maintaining of digital court files, technical requirements for maintaining of digital court files and access thereto and preservation of electronic documents shall be established by a regulation of the Minister of Justice.

(7) More specific requirements for archiving of digital court files and access to archived files and procedural documents shall be established by a regulation of the Minister of Justice.  
[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

## **§ 160<sup>2</sup>. Forwarding of digital documents**

(1) Digital applications, appeals and other documents in criminal proceedings shall be forwarded directly or through the E-File system unless otherwise provided for in this Code. A body conducting proceedings shall enter directly sent digital documents in the E-File system.  
[RT I 2008, 28, 180 - entry into force 15.07.2008]

(2) For a digital document to be appended to a criminal file, the document shall be printed and included in the file. A body conducting proceedings shall certify the authenticity of the printed document and the correspondence thereof to the digital document by his or her signature and add the identification number of the document in the E-File system thereto.  
[RT I 2008, 28, 180 - entry into force 15.07.2008]

(3) Advocates, notaries, bailiffs, trustees in bankruptcy and state or local government agencies shall submit applications, complaints and other documents to a body conducting proceedings by electronic means, unless there is good reason to submit procedural documents in another format.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 160<sup>3</sup>. Requirements for documents**

(1) The form of documents of pre-trial procedure of criminal matters shall be established by the Minister of Justice.

(2) The procedure for the preparation, forwarding and preservation of documents signed digitally in criminal proceedings and other digital documents shall be established by the Minister of Justice.

[RT I 2008, 28, 180 - entry into force 15.07.2008]

### **§ 160<sup>4</sup>. Making of excerpts and obtainment of copies**

(1) If a person has the right to examine procedural documents on the basis of this Code, he or she shall be allowed to make excerpts therefrom and receive a copy thereof for a fee, unless otherwise regulated by this Code.

(2) In the interests of the criminal proceedings, a Prosecutor's Office may restrict the right to make excerpts and receive copies by a reasoned ruling for a certain period of time.

(3) The amount of the fee specified in subsection (1) of this section shall be established by the Minister of Justice pursuant to the procedure provided for in this Code subsection 156<sup>1</sup> (7) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Division 2 Translation and Interpretation**

### **§ 161. Translators and interpreters**

(1) If a text in a foreign language needs to be interpreted or translated or if a participant in a criminal proceeding is not proficient in Estonian, an interpreter or translator shall be involved in the proceeding.

(2) An interpreter or translator is a person proficient in language for specific purposes or a person interpreting for a deaf or dumb person. Other subjects to a criminal proceeding shall not perform the duties of an interpreter or translator.

(3) An interpreter or translator to whom the oath of interpreters and translators has not been administered shall be warned that he or she may be punished pursuant to criminal procedure for a knowingly false interpretation or translation.

(4) If an interpreter or translator does not participate in a procedural act where the participation of an interpreter or translator is mandatory, the act is null and void.

(5) In order to ensure the correctness of interpretation or translation, an interpreter or translator has the right to pose questions to participants in the proceedings, examine the minutes of



procedural acts and make statements concerning the report, and such statements shall be recorded in the minutes.

(6) An interpretation or translation of any aspect of a procedural act rendered by an interpreter or translator shall be precise and complete and the interpreter or translator shall maintain the confidentiality of the information which became known to him or her in the course of the translation. If a non-staff interpreter or translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(7) A suspect or accused or his or her counsel may file an appeal against the provision of a false translation or interpretation by a translator or interpreter pursuant to the procedure provided for in § 228 of this Code.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

### **§ 162. Bases for interpreters and translators to remove themselves and removal of translators or interpreters**

(1) An interpreter or translator is required to remove himself or herself from a criminal proceeding on the bases provided for in subsections 49 (1) and (6) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If an interpreter or translator does not remove himself or herself on a bases provided for in subsections 49 (1) and (6) of this Code, the prosecutor, suspect, accused, counsel, victim or civil defendant may submit a petition of challenge against the interpreter or translator.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2<sup>1</sup>) A body conducting the proceedings may remove an interpreter or translator if the interpreter or translator does not perform his or her duties as required or if the quality of the interpretation or translation may impair the exercise of the right of defence of the suspect or accused.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(3) Petitions of challenge shall be adjudicated pursuant to the procedure prescribed in subsections 59 (5)-(6) of this Code.

### **Division 3 Summoning and publication of time of court session**

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 163. Summons**

(1) A summons shall set out:

- 1) the name of the person summoned;
- 2) the official title, name and details of the person issuing the summons;
- 3) the reason for summoning the person, and the capacity in which the person is summoned;
- 4) if a legal person is summoned, whether the summons is addressed to a legal representative or

a representative;

- 5) whether appearance is mandatory;
- 6) the place and time of appearance;
- 7) the number of the criminal matter;
- 8) the obligation to give notice of failure to appear and of the reasons for such failure;
- 9) the consequences of failure to appear.

(2) The final part of a summons shall contain a notice which shall be completed if the summons is served on the person against signature. The notice shall set out the name of the person who received the summons, his or her signature confirming the receipt of the summons, the date of receipt of the summons and the obligation of the person who receives the summons in the absence of the summoned to deliver the summons to the summoned at the earliest opportunity or give notification to the person who issued the summons if forwarding the summons is impossible. If a person refuses to accept the summons, the person serving the summons shall make a notation on the notice in the final part of the summons and confirm the notation by his or her signature.

(3) If a person is summoned to a body conducting proceedings pursuant to the procedure provided for in § 164 of this Code, the notice provided for in subsection (2) of this section shall set out the number of the telephone, facsimile or other means of communication to which the summons was sent.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 163<sup>1</sup>. Summoning pursuant to general procedure in county court**

(1) Summoning of a witness, qualified person and expert in proceedings in a criminal matter conducted pursuant to general procedure in a county court shall be organised by the party to the court proceedings who applies for the hearing of the respective person in court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Summoning of a victim, civil defendant, third party and the representatives thereof in proceedings in a criminal matter conducted pursuant to general procedure in a county court shall be organised by the Prosecutor's Office.

(3) Summoning of an accused in proceedings in a criminal matter conducted pursuant to general procedure in a county court shall be organised by the counsel or the Prosecutor's Office as agreed in a preliminary hearing. Failing agreement, summoning of the accused shall be organised by the Prosecutor's Office.

(4) At the request of the parties to the court proceeding the court shall issue summonses to the parties in a preliminary hearing and set out the information listed in subsection 163 (1) of this Code in the summonses. The court shall indicate the details of the parties to the court proceeding above the official title and details of the person issuing the summons.

(5) The court shall issue to the counsel, at his or her request, the address of the person in the population register who is summoned to court as a witness at the request of the counsel.

(6) A summons shall be served on a witness, qualified person and expert by a party to the court proceedings or by a third party at the request of a party to the court proceedings.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) If a Prosecutor's Office performs the duties prescribed in this section, the rights specified in clauses 213 (1) 5) and 10) of this Code extend to the Prosecutor's Office. A Prosecutor's Office has the right to summon independently persons in court proceedings whose summoning has been decided in a preliminary hearing.  
[RT I 2008, 32, 198 - entry into force 01.01.2009]

#### **§ 164. General procedure for service of summonses**

(1) A person shall be summoned to an investigative body, Prosecutor's Office or court by a summons communicated by telephone, facsimile or other means of communication.

(2) If there is reason to believe that a person absconds appearance at a body conducting proceedings or a person has expressed a wish to receive a written summons, the person shall be summoned to an investigative body, Prosecutor's Office or court by a written summons.

(3) The notices read by an official of an investigative body, prosecutor or court to the persons present are deemed to be equal to summonses served against signature within the meaning of subsection 165 (2) of this Code if a corresponding notation is made in the report.

(4) A summons shall be communicated to or served on a person in sufficient time for the appearance.

(5) Summonses may be served on any day and at any time.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 165. Procedure for service of written summonses**

(1) A written summons may be served against signature on a notice, as a postal item sent by post or by electronic means.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A written summons shall be served on an adult or minor of at least 14 years of age against signature on a notice. The written summons addressed to a person who is less than 14 years of age or suffers from a mental disorder shall be served on his or her parent or any other legal representative or guardian against signature on a notice. If a summons cannot be served on the person summoned, the summons shall be served against signature on a notice on an adult family member living together with the summoned or shall be sent to the place of employment or educational institution of the summoned for forwarding to him or her.

(3) A summons sent by post is deemed to be received by the person on the date indicated in the notice of delivery of the postal service provider.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A summons may be served on participants in the proceedings by electronic mail at the electronic mail addresses disclosed by the participants in the proceedings to a body conducting the proceedings or by the employer of a participant in the proceedings or published on a personal website. The summons served by electronic mail shall include a notation stating the obligation to confirm the receipt of the summons electronically. In the case no confirmation of receipt of the summons is received within three working days as of serving the summons at the electronic mail address ascertained by the body conducting the proceedings, the summons shall be served as a postal item served against signature or shall be served on the person summoned against signature.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4<sup>1</sup>) If a summons is made accessible through the E-File system, the person summoned shall be notified of the existence of the summons at his or her electronic mail address indicated in a procedural document or published on the Internet. The notice shall include a reference to the digital summons in the E-File system and the term for accessing thereof which is three days as of the moment of sending the summons. A summons shall not be accompanied by digital signature if the sender and the time of sending thereof can be identified through the E-File system. A summons made accessible through the E-File system is deemed delivered if the recipient opens it in the information system or confirms the receipt thereof in the information system without opening the document and in the case this is done by another person to whom access to the documents in the information system is enabled by the recipient. If the summons is not accessed through the E-File system within three days as of the date of sending thereof, the summons shall be sent as a postal item served against signature or it shall be served on the person summoned against signature.

[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

(5) Notices concerning the serving of a summons against signature, notices of delivery issued by postal service providers, the printouts of electronic mails concerning the issue of the summons and the printouts of electronic mails confirming the receipt of the summons shall be included in the criminal file. The fact of the receipt of a summons through the E-File system shall be registered in the E-File system and no printout shall be included in the criminal file.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) The Minister of Justice may establish by a regulation more specific requirements for electronic delivery of procedural documents in court proceedings through the E-File system.

[RT I, 22.03.2013, 9 - entry into force 01.04.2013]

## **§ 166. Sending of summonses to prisoners**

A summons shall be sent to a person held in custody or imprisoned person through the head of the custodial institution who shall arrange for the appearance of the summoned.

### **§ 167. Sending of summonses to persons serving in Defence Forces**

A summons shall be sent to a person serving in the Defence Forces through the direct commander who shall arrange for the appearance of the summoned.

[RT I 2008, 35, 212 - entry into force 01.01.2009]

### **§ 168. Communication of summonses through notice in newspaper**

(1) If there are several victims or civil defendants or if their identities cannot be established, an investigative body, Prosecutor's Office or court may summon such persons through a notice in a newspaper. A summons published in such manner is deemed to be served as of the publication of the notice.

(2) A notice in a newspaper shall set out the information listed in subsection 162 (2) of this Code.

(3) A notice shall be published in the newspaper prescribed for the publication of court notices at least twice with an interval of at least one week.

(4) The text of a notice published in a newspaper shall be included in the criminal file.

### **§ 169. Communication of summons to persons whose whereabouts are unknown**

If a summons cannot be served on a person pursuant to the procedure provided for in §§ 164-167 of this Code, he or she shall be declared a fugitive by an order of an investigative body or Prosecutor's Office or by a court ruling pursuant to the provisions of § 140 of this Code.

### **§ 169<sup>1</sup>. Publication of time of court session on website of court**

The time of a court session is published on the website of a court indicating the number of the criminal matter, the name of the accused who is an adult and the initials of the accused who is a minor and the legal assessment of the criminal offence in which the person is accused pursuant to the corresponding section, subsection or clause of the Penal Code. In the case of a court session in camera, only the time of the session, number of the criminal matter and a notation that the court session is held in camera shall be published. The time of the court session shall be removed from the website when seven days have passed from the court session.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 170. Good reason for failure to appear when summoned**

(1) If a person summoned cannot appear on the specified date, he or she shall immediately give notice thereof.

(2) Good reason for failure to appear is:

- 1) absence which is not related to absconding from the criminal proceeding;
- 2) failure to receive a summons or belated receipt of the summons;

3) a serious illness of the person summoned or a sudden serious illness of a person close to him or her which prevents the person from appearing at the body conducting the proceedings;

3<sup>1</sup>) participation in a court session prescribed earlier;

[RT I 2008, 32, 198 - entry into force 15.07.2008]

4) other circumstances which the investigative body, Prosecutor's Office or court deems to be a good reason.

(3) If an eyewitness to a criminal offence who has not been identified refuses to participate in a criminal proceeding as a witness, an official of the investigative body may detain the person for identification for up to twelve hours and a report shall be prepared thereon.

(4) A person shall submit a certificate concerning the occurrence of an impediment specified in clause (2) 3) of this section to the body conducting proceedings. The form and the procedure for the issue of certificates shall be established by the Minister of Social Affairs.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **Chapter 6 TIME-LIMITS OF PROCEEDINGS**

### **§ 171. Calculation of time-limit**

(1) Time-limits shall be calculated in hours, days and months. A time-limit shall not include the hour or day as of which the beginning of the time-limit is calculated.

(2) If a person is detained as a suspect or taken into custody, the time-limit shall be calculated as of the moment of his or her detention. If a person is sentenced to imprisonment, the time-limit shall be calculated as of the moment of his or her arrival at the prison for serving the punishment unless the time of commencement of the service of the sentence arises from a court judgement.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3) Upon the calculation of a time-limit in days, the time-limit shall end on the last working day at twenty-four hours. If the end of a time-limit calculated in days falls on a day off, the first working day following the day off shall be deemed to be the last day of the time-limit.

(4) Upon the calculation of a time-limit in months, the time-limit shall end on the corresponding date of the last month. If the ending of a time-limit falls on a calendar month which lacks a corresponding date, the time-limit shall end on the last date of the month.

(5) If the end of a time-limit calculated in months falls on a day off, the first working day following the day off shall be deemed to be the last day of the time-limit.

(6) If an act is performed by an investigative body, Prosecutor's Office or court, the time-limit shall end at the time of the end of the working hours in the corresponding agency.

(7) A time-limit shall be deemed not to have been allowed to expire, if an appeal is posted or forwarded by commonly used technical communication channels before the expiry of the time-limit. A time-limit shall be deemed not to have been allowed to expire, if a person held in

custody submits an appeal to the administration of the custodial institution before the expiry of the time-limit.

### **§ 172. Restoration of term for appeal**

(1) A term for appeal expired with good reason shall be restored by an order of the investigative body or Prosecutor's Office or a ruling of the court which conducts proceedings in the criminal matter.

(2) The following are good reasons for allowing a term for appeal to expire:

- 1) absence which is not related to absconding from the criminal proceeding;
- 2) other circumstances which the investigative body, Prosecutor's Office or court deems to be a good reason.

## **Chapter 7 EXPENSES RELATING TO CRIMINAL PROCEEDINGS**

### **Division 1 Types of Expenses Relating to Criminal Proceedings**

#### **§ 173. Expenses relating to criminal proceedings**

(1) Expenses relating to criminal proceedings are:

- 1) procedure expenses;
- 2) specific expenses;
- 3) additional expenses.

(2) Procedure expenses shall be compensated for by the obligated person pursuant to this Code to the extent determined by the body conducting proceedings.

(3) Specific expenses shall be compensated for by the person by whose fault the expenses are incurred.

(4) Additional expenses shall be borne by the person who incurs such expenses.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 174. Compensation for expenses of persons not subject to proceedings**

**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

Expenses incurred by a person not subject to proceedings, except the procedure expenses specified in clauses 175 (1) 1)-3) of this Code, shall not be deemed to be procedure expenses.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 175. Procedure expenses**

(1) The following are procedure expenses:

- 1) reasonable remuneration paid to the chosen counsel or representative and other necessary expenses incurred by a participant in a proceeding in connection with the criminal proceeding;

2) amounts paid to victims, witnesses, experts and qualified persons pursuant to § 178 of this Code, except expenses specified in clause 176 (1) 1) of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

3) expenses incurred by a state forensic institution or any other state agency or legal person in connection with conducting expert assessment or establishment of intoxication;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

4) remuneration established for an appointed counsel and the expenses thereof to the justified and necessary extent thereof;

[RT I 2009, 1, 1 - entry into force 01.01.2010]

5) expenses incurred in the making of copies of the materials of the criminal file for a counsel in accordance with subsection 224 (5) of this Code;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

6) storage fees and expenses relating to the forwarding and destruction of evidence;

7) expenses relating to the storage, transfer and destruction of confiscated property;

8) expenses incurred as a result of securing a civil action;

9) compensation levies paid upon a judgment of conviction;

10) other expenses incurred by a body conducting proceedings in the course of conducting criminal proceedings, except expenses considered to be specific or additional expenses pursuant to this Code.

(2) If a participant in a proceeding has several counsels or representatives, procedure expenses shall cover remuneration paid to the counsels or representatives in an amount not exceeding reasonable remuneration normally paid to one counsel or representative.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(3) If a suspect or the accused defends himself or herself, necessary defence expenses shall be included in procedure expenses. Excessive expenses which would not have occurred if a counsel had participated shall not be included in procedure expenses.

(4) Expenses related to the conduct of expert analyses incurred by persons not subject to proceedings shall be compensated for under the conditions and pursuant to the procedure provided for in the Forensic Examination Act.

[RT I 2010, 8, 35 - entry into force 01.03.2010]

## **§ 176. Specific expenses**

(1) The following are specific expenses:

1) expenses incurred as a result of the adjournment of a court session due to the failure of a participant in the proceeding to appear;

2) expenses relating to compelled attendance.

(2) The procedure for the calculation and the amount of specific expenses shall be determined by the Government of the Republic.



## **§ 177. Additional expenses**

The following are additional expenses:

- 1) remuneration payable to a person not subject to proceedings for information concerning facts relating to a subject of proof;
- 2) the costs of keeping a suspect or the accused in custody;
- 3) amounts paid to interpreters or translators pursuant to § 178 of this Code;
- 4) amounts paid in criminal proceedings pursuant to the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act;  
[RT I 2004, 46, 329 - entry into force 01.07.2004]
- 5) expenses which have been incurred by state and local government agencies in connection with a criminal proceeding and which are not specified in clauses 175 (1) 1) and 10) of this Code;  
[RT I 2004, 46, 329 - entry into force 01.07.2004]
- 6) amounts paid to representatives of witnesses pursuant to § 67 of this Code.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 178. Compensation for expenses of victims, witnesses, interpreters, translators, experts and qualified persons**

**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) The following expenses incurred in connection with a criminal proceeding shall be reimbursed to a victim, witness, non-staff interpreter or translator and an expert or qualified person not employed by a state forensic institution:

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 1) unreceived income in accordance with subsection (4) of this section;
- 2) daily allowance;
- 3) travel and overnight accommodation expenses.

(2) Translators and interpreters, experts and qualified persons shall receive remuneration for the performance of their duties, unless they performed their duties as official duties. The hourly fee paid to experts, qualified persons and interpreters or translators shall not be less than the minimum hourly fee promised to be paid to a person in employment relationship and shall not exceed it more than 50 times.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) Expenses specified in subsection (1) of this section shall also be compensated for in case the court session is adjourned. Neither remuneration nor compensation shall be paid to the person who causes the adjournment.

(4) Victims, witnesses, translators and interpreters, experts and qualified persons whose salaries or wages are not retained shall receive compensation in the amount of their average wages, on the basis of a certificate from the employer, for the full time of their absence from work when summoned by the body conducting the proceedings. If a victim, witness, interpreter or translator, expert or qualified person fails to submit a certificate from the employer, compensation for the

time of absence from work shall be calculated based on the established minimum wage.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) By its regulation, the Government of the Republic shall establish the following:  
[RT I 2006, 21, 160 - entry into force 25.05.2006]

1) the amount of and the procedure for payment of remuneration payable to victims, witnesses, interpreters and translators, experts and qualified persons;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) the amount of and the procedure for payment of the compensations specified in subsection (1) of this section;

[RT I 2006, 21, 160 - entry into force 25.05.2006]

3) where necessary, specifications upon payment of remuneration or compensation to experts, qualified persons and interpreters and translators residing in a foreign state.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 179. Compensation levies**

(1) The amount of compensation levies paid upon a judgment of conviction is:

1) in the case of conviction in a criminal offence in the first degree, 2.5 times the amount of the minimum monthly wage;

[RT I 2008, 19, 132 - entry into force 23.05.2008]

2) in the case of conviction in a criminal offence in the second degree, 1.5 times the amount of the minimum monthly wage.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2) If a person is convicted on the basis of several sections of the Penal Code, the person shall pay compensation levies corresponding to the degree of the most serious criminal offence.

### **Division 2 Compensation for Expenses Relating to Criminal Proceedings**

#### **§ 180. Compensation for procedure expenses in case of conviction**

(1) In the case of a conviction, procedure expenses shall be compensated for by the convicted offender. In such case, the exceptions provided for in § 182 of this Code shall be taken into consideration.

(2) If several persons are convicted in a criminal matter, the distribution of expenses shall be decided by the court, taking into account the extent of the liability and financial situation of each convicted offender.

(3) When determining procedure expenses, a court shall take into account the financial situation and chances of re-socialisation of a convicted offender. If a convicted offender is obviously unable to reimburse procedure expenses, the court shall order a part of the expenses to be borne by the state. A court may order that the expenses relating to criminal proceedings shall be compensated for in instalments.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 181. Compensation for procedure expenses in case of acquittal**

(1) In the case of an acquittal, procedure expenses shall be compensated for by the state, taking into account the exceptions provided for in § 182 of this Code.

(2) A person who has been acquitted shall reimburse any procedure expenses caused by the person's wrongful failure to perform his or her obligations or false admission of guilt.

### **§ 182. Compensation for procedure expenses related to civil action**

(1) If a civil action is dismissed, procedure expenses related to the securing of the civil action shall be compensated for by the victim.

(2) If a civil action is satisfied in full, procedure expenses related to the securing of the civil action shall be compensated for by the convicted offender or civil defendant.

(3) If a civil action is satisfied in part, the court shall divide the procedure expenses related to the securing of the civil action between the victim and the convicted offender or civil defendant, taking into consideration all the circumstances.

(4) Upon refusal to hear a civil action, procedure expenses related to the securing of the civil action shall be compensated for by the state.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 183. Compensation for procedure expenses upon termination of criminal proceedings**

If criminal proceedings are terminated, procedure expenses shall be compensated for by the state, unless otherwise provided for in this Code.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 184. Compensation for procedure expenses in case of false report of criminal offence**

If criminal proceedings are commenced on the basis of a knowingly false report of a criminal offence, procedure expenses shall be reimbursed by the person who reported the criminal offence.

### **§ 185. Compensation for procedure expenses in appeal proceedings**

(1) If a decision specified in clauses 337 (1) 2)-4) or subsection 337 (2) of this Code is made in appeal proceedings, procedure expenses shall be borne by the state.

(2) If a decision specified in clause 337 (1) 1) of this Code is made in appeal proceedings, procedure expenses shall be borne by the person who incurred the expenses. If the appeal was filed by a Prosecutor's Office, procedure expenses shall be borne by the state.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 186. Compensation for procedure expenses in cassation proceedings and review procedure**

(1) If a decision specified in clauses 361 2)-4) of this Code is made in cassation proceedings, procedure expenses shall be borne by the state.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If a decision specified in clause 361 1) of this Code is made in cassation proceedings, procedure expenses shall be borne by the person who incurred the expenses. If the appeal in cassation was filed by a Prosecutor's Office, procedural expenses shall be borne by the state.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) If a petition for review is dismissed, the reimbursement of procedure expenses may be imposed on the petitioner.

### **§ 187. Compensation for procedure expenses in proceedings for adjudication of appeals against court rulings**

(1) If a court ruling is annulled in the course of proceedings for the adjudication of an appeal against the court ruling, procedure expenses shall be borne by the state.

(2) If an appeal against a court ruling is dismissed, procedure expenses shall be borne by the person who incurred the expenses.

### **§ 187<sup>1</sup>. Compensation for procedure expenses in confiscation proceedings**

(1) If a confiscation request is satisfied, the procedure expenses related to the proceedings of the confiscation of property which was obtained by the criminal offence shall be compensated for by the convicted offender. If a confiscation request is satisfied in part, the court may decide that part of the procedure expenses will be borne by the state.

(2) In case of refusal to satisfy a confiscation request, procedure expenses shall be compensated for by the state.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 188. Obligation of minor to compensate for expenses relating to criminal proceedings**

If a minor is required to reimburse the expenses relating to a criminal proceeding, the body conducting the proceedings may impose the reimbursement of expenses on his or her parent, guardian or child care institution.

## **Division 3 Decision Concerning Compensation for Expenses Relating to Criminal Proceedings**

### **§ 189. Decision concerning compensation for expenses relating to criminal proceedings**

(1) In pre-trial proceedings, compensation for expenses relating to criminal proceedings shall be decided by an order of the investigative body or Prosecutor's Office.

(2) In court proceedings, compensation for expenses relating to criminal proceedings shall be decided by a court ruling or judgment.

(3) If compensation for expenses relating to criminal proceedings is prescribed by a court judgment, this may be contested separately from the court judgment in accordance with Chapter 15 of this Code.

(4) A request for the payment of a fee based on acts to an appointed counsel is adjudicated digitally in the information system of an investigative body, a prosecutor's office or a court. A body conducting proceedings may adjudicate a paper request as an inscription on the request submitted for ordering the payment of the fee for counselling in the cases established by the Minister of Justice.

[RT I, 22.03.2013, 9 - entry into force 01.01.2014]

### **§ 190. Content of decision concerning compensation for expenses relating to criminal proceedings**

In a decision concerning compensation for the expenses relating to criminal proceedings, a body conducting the proceedings shall determine:

1) who shall reimburse the procedure expenses and the size of each part of the procedure expenses required to be paid and expressed as an absolute amount or, if this is impossible, as a fraction;

2) the amount of specific expenses and the person required to reimburse the specific expenses;

3) the number of days during which a person was held in custody without bases, the justification of and bases for the receipt of compensation.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 191. Contestation of decision concerning compensation for expenses relating to criminal proceedings**

(1) A Prosecutor's Office or participant in a proceeding who is required to compensate for the expenses relating to the criminal proceeding on the basis of a decision concerning compensation for the expenses relating to criminal proceedings may contest the decision in accordance with the provisions of §§ 228 or 229 of this Code, by an appeal or appeal in cassation or pursuant to Chapter 15 of this Code.

(2) When hearing an appeal filed against a court ruling ordering compensation for the expenses relating to a criminal proceeding, a court may extend the limits of the hearing of the appeal to the

entire decision concerning compensation for the expenses relating to the criminal proceeding regardless of the content of the appeal.

(3) When hearing an appeal or an appeal in cassation filed against a court judgment, a circuit court or the Supreme Court may make a new decision concerning compensation for the expenses relating to criminal proceedings regardless of contestation.

### **§ 192. Determination of compensation for expenses**

(1) Compensation for expenses is a sum of money payable by a person on the basis of a decision concerning compensation for the expenses relating to criminal proceedings.

(2) A body conducting proceedings shall determine the amount of compensation for expenses on the basis of a decision concerning compensation for the expenses relating to a criminal proceeding and at the request of a participant in the proceeding or the Prosecutor's Office if:

1) the distribution of procedure expenses is expressed in fractions in the decision concerning compensation for the expenses relating to the criminal proceeding;

2) the distribution of expenses as set out in the decision concerning compensation for the expenses relating to the criminal proceeding is contradictory;

3) expenses the amount of which is not known at the time of determination of the expenses are to be compensated according to the decision concerning compensation for the expenses relating to the criminal proceeding.

(3) A ruling specified in subsection (1) of this section may be contested pursuant to the procedure provided for in subsection 191 (1) of this Code.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **Chapter 8 PRE-TRIAL PROCEDURE**

### **Division 1 Commencement and Termination of Criminal Proceedings**

#### **§ 193. Commencement of criminal proceedings**

(1) An investigative body or a Prosecutor's Office commences criminal proceedings by the first investigative activity or other procedural act if there is reason and grounds therefor and the circumstances provided for in subsection 199 (1) of this Code do not exist.

(2) If criminal proceedings are commenced by an investigative body, the body shall immediately notify the Prosecutor's Office of the commencement of the proceedings.

(3) If criminal proceedings are commenced by a Prosecutor's Office, the Office shall forward the materials of the criminal matter pursuant to investigative jurisdiction.

#### **§ 194. Reasons and grounds for criminal proceedings**

(1) The reason for the commencement of criminal proceedings is a report of a criminal offence or other information indicating that a criminal offence has taken place.

(2) The grounds for a criminal proceeding are constituted by ascertainment of criminal elements in the reason for the criminal proceeding.

#### **§ 195. Report of criminal offence**

(1) A report of a criminal offence shall be submitted to an investigative body or a Prosecutor's Office orally or in writing.

(2) A report in which a person is accused of a criminal offence is a complaint of crime.

(3) An oral report of a criminal offence which is submitted directly on site of the commission of the offence shall be recorded in a report, and a report of a criminal offence communicated by telephone shall be recorded in writing or audio recorded.

#### **§ 196. Report of violent death**

(1) If there is reason to believe that a person has died as a result of a criminal offence or if an unidentifiable body is found, an investigative body or a Prosecutor's Office shall be immediately notified thereof.

(2) If a health care professional conducting an autopsy suspects that the person died as a result of a criminal offence, he or she is required to notify an investigative body or Prosecutor's Office of such suspicion immediately.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 197. Other information referring to criminal offence**

(1) If a Prosecutor's Office or an investigative body receives information released in the press indicating that a criminal offence has taken place, such information may be the reason for the commencement of criminal proceedings.

(2) If an investigative body or a Prosecutor's Office, in the performance of the duties thereof, receives information indicating that a criminal offence has taken place, such information may be the reason for the commencement criminal proceedings.

#### **§ 198. Response to report of criminal offence**

(1) An investigative body or Prosecutor's Office shall, within ten days as of receipt of a report of a criminal offence, notify the person who submitted the report of the refusal to commence criminal proceedings in accordance with subsection 199 (1) or (2) of this Code.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(1<sup>1</sup>) The term specified in subsection (1) of this section may be extended by ten days if demanding of additional information from the person who submitted the report on a criminal offence is necessary for deciding on commencement of or refusal to commence criminal proceedings. The person who submitted the report on a criminal offence shall be informed of extension of the term for response, and of the reasons for extension.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If a complaint of crime is submitted, the investigative body or Prosecutor's Office shall also notify the person concerning whom the complaint was submitted of refusal to commence criminal proceedings, except in the case confidentiality of the fact of notification of a criminal offence is ensured pursuant to law or non-notification is required for prevention of crime.

[RT I, 29.06.2012, 1 - entry into force 01.04.2013]

### **§ 199. Circumstances precluding criminal proceedings**

(1) Criminal proceedings shall not be commenced if:

- 1) there are no grounds for criminal proceedings;
- 2) the limitation period for the criminal offence has expired;
- 3) an amnesty precludes imposition of a punishment;
- 4) the suspect or the accused is dead or the suspect or accused who is a legal person has been dissolved;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

5) a decision or a ruling on termination of criminal proceedings has entered into force in respect of a person in the same charges on the bases provided for in § 200 of this Code;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

6) a suspect or accused is terminally ill and is therefore unable to participate in the criminal proceedings or serve a sentence;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

7) these criminal offences are specified in §§ 414, 415, 418 and 418<sup>1</sup> of the Penal Code and the person voluntarily surrenders the firearms, explosive devices in illegal possession or the substantial part, ammunition or explosive thereof.

[RT I, 16.04.2013, 1 - entry into force 26.04.2013]

(2) Criminal proceedings shall not be commenced if detention of the suspect is substituted for pursuant to § 219 of this Code.

(3) Criminal proceedings shall be continued if commencement of the proceedings is requested for the purposes of rehabilitation by:

[RT I 2004, 46, 329 - entry into force 01.07.2004]

- 1) a suspect or accused in the cases provided for in clause (1) 2) or 3) of this section;
- 2) the representative of a deceased suspect or accused in the case provided for in clause (1) 4) of this section;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

3) a suspect, accused or his or her representative in the case provided for in clause (1) 6) of this section.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]



## **§ 200. Termination of criminal proceedings upon occurrence of circumstances precluding criminal proceedings**

If circumstances specified in § 199 of this Code which preclude criminal proceedings become evident in pre-trial proceedings, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office.

## **§ 200<sup>1</sup>. Termination of criminal proceedings due to failure to identify person who committed criminal offence**

(1) If, in pre-trial proceedings, a person who committed a criminal offence has not been identified and it is impossible to collect additional evidence, the proceedings shall be terminated on the basis of an order of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office. The proceedings may also be terminated partially in respect of a suspect or a criminal offence.

(2) Where the bases prescribed in subsection (1) cease to exist, proceedings shall be resumed pursuant to the procedure prescribed in § 193 of this Code.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 201. Referral of materials to juvenile committee**

(1) If commencement of criminal proceedings is refused or a criminal proceeding is terminated for the reason that the unlawful act was committed by a minor who was incapable of guilt on the grounds of his or her age, the investigative body or Prosecutor's Office shall refer the materials of the criminal matter to the juvenile committee of the place of residence of the minor.

(2) If a Prosecutor's Office finds that a minor who has committed a criminal offence in the age of 14 to 18 can be influenced without imposition of a punishment or a sanction prescribed in § 87 of the Penal Code, the Prosecutor's Office shall terminate the criminal proceeding by a ruling and refer the criminal file to the juvenile committee of the place of residence of the minor.

(3) Prior to referral of materials to a juvenile committee, the nature of the act with the elements of a criminal offence and the grounds for termination of the criminal proceeding shall be explained to the minor and his or her legal representative.

## **§ 202. Termination of criminal proceedings in case of lack of public interest in proceedings and in case of negligible guilt**

(1) If the object of criminal proceedings is a criminal offence in the second degree and the guilt of the person suspected or accused of the offence is negligible, and he or she has remedied or has commenced to remedy the damage caused by the criminal offence or has paid the expenses relating to the criminal proceedings, or assumed the obligation to pay such expenses, and there is no public interest in the continuation of the criminal proceedings, the Prosecutor's Office may

request termination of the criminal proceedings by a court with the consent of the suspect or accused.

(2) In the event of termination of criminal proceedings, the court may impose the following obligation on the suspect or accused at the request of the Prosecutor's Office and with the consent of the suspect or the accused within the specified term:

1) to pay the expenses relating to the criminal proceedings or compensate for the damage caused by the criminal offence;

[RT I 2007, 11, 51 - entry into force 18.02.2007]

2) to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public;

3) to perform 10 to 240 hours of community service. The provisions of subsections 69 (2) and (5) of the Penal Code apply to community service.

4) not to consume narcotics and to undergo the prescribed addiction treatment.

[RT I, 23.02.2011, 2 - entry into force 05.04.2011]

(3) The term for the performance of the obligations listed in subsection (2) of this section shall not exceed six months, except in the case of the obligation specified in clause 4) which performance shall be based on the minimum term of addiction treatment provided for in subsection 69<sup>2</sup> (2) of the Penal Code.

[RT I, 23.02.2011, 2 - entry into force 05.04.2011]

(4) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the prosecutor and the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.

(5) If a judge does not consent to the request submitted by a Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(6) If a person with regard to whom criminal proceedings have been terminated in accordance with subsection (2) of this section fails to perform the obligation imposed on him or her, a court, at the request of a Prosecutor's Office, shall resume the criminal proceedings by an order. In imposition of a punishment, the part of the obligations performed by the person shall be taken into consideration.

[RT I 2007, 11, 51 - entry into force 18.02.2007]

(7) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, a Prosecutor's Office may terminate the criminal proceedings and impose the obligations on the bases provided for in subsections (1) and (2) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the bases provided for in subsection (6) of this section.

### **§ 203. Termination of criminal proceedings due to lack of proportionality of punishment**

(1) If the object of criminal proceedings is a criminal offence in the second degree, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim if:

- 1) the punishment to be imposed for the criminal offence would be negligible compared to the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence;
- 2) imposition of a punishment for the criminal offence cannot be expected during a reasonable period of time and the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence is sufficient to achieve the objectives of the punishment and satisfy the public interest in the proceeding.

(2) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the prosecutor and the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.

(3) If a judge does not consent to the request submitted by a Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(4) If criminal proceedings were terminated taking into consideration a punishment imposed on the suspect or the accused for another criminal offence and the punishment is subsequently annulled, the court may, at the request of the Prosecutor's Office, resume the criminal proceedings by an order.

(5) If criminal proceedings were terminated taking into consideration a punishment which will presumably be imposed on the suspect or the accused for another criminal offence, the court may, at the request of the Prosecutor's Office, resume the criminal proceedings if the punishment imposed does not meet the criteria specified in clauses (1) 1) and 2) of this section.

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor's Office may terminate the criminal proceedings on the bases provided for in subsection (1) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the bases provided for in subsections (4) and (5) of this section.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 203<sup>1</sup>. Termination of criminal proceedings on the basis of conciliation**

(1) If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the criminal proceedings and the suspect or the accused has reconciled with the victim pursuant to the procedure provided for in § 203<sup>2</sup> of this Code, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim.

Termination of criminal proceedings is not permitted:

1) in criminal offences specified in §§ 122, 133, 134, 136, 138, 139, 141-143, 214 and 263 of the Penal Code;

2) in criminal offences committed by an adult person against a victim who is a minor;

3) if the criminal offence resulted in the death of a person;

4) in crimes against humanity and international security, against the state, criminal official misconduct, crimes dangerous to the public and criminal offences directed against the administration of justice.

(2) A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the conciliator, the prosecutor, the victim, the suspect or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor's Office.

(3) In the case of termination of criminal proceedings, the court shall impose, at the request of the Prosecutor's Office and with the consent of the suspect or the accused, the obligation to pay the expenses relating to the criminal proceedings and to meet some or all of the conditions of the conciliation agreement provided for in subsection 203<sup>2</sup> (3) of this Code on the suspect or accused. The term for the performance of the obligation shall not exceed six months. A copy of the ruling shall be sent to the conciliator.

(4) If a judge does not consent to the request submitted by a Prosecutor's Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(5) If a person with regard to whom criminal proceedings have been terminated in accordance with subsection (1) of this section fails to perform the obligations imposed on him or her, the court, at the request of the Prosecutor's Office, shall resume the criminal proceedings by an order.

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, a Prosecutor's Office may terminate the criminal proceedings and impose the obligations on the bases provided for in subsections (1) and (3) of this section. The Prosecutor's Office may resume terminated criminal proceedings by an order on the grounds specified in subsection (5) of this section.

(7) A victim has the right to file an appeal against a ruling on termination of the criminal proceeding made on the basis of this section within ten days as of receipt of a copy of an order on termination of the criminal proceedings pursuant to the procedure provided for in §§ 228-232 or §§ 383-392 of this Code.

[RT I 2007, 11, 51 - entry into force 18.02.2007]

## **§ 203<sup>2</sup>. Conciliation proceedings**

(1) A Prosecutor's Office or court may, on the bases provided for in subsection 203<sup>1</sup> (1) of this Code, send a suspect or accused and the victim to conciliation proceedings with the objective of

achieving conciliation between the suspect or accused and the victim and remedying of the damage caused by the criminal offence. The consent of the suspect or accused and the victim is necessary for application of conciliation proceedings. In the case of a minor or a person suffering from a mental disorder, the consent of his or her parent or another legal representative or guardian is also required.

(2) A Prosecutor's Office or court shall send the order or ruling on application of conciliation proceedings to the conciliator for organisation of conciliation.

(3) A conciliator shall formalise the conciliation as a written conciliation agreement which shall be signed by the suspect or accused and the victim and the legal representative or guardian of a minor or a person suffering from a mental disorder. A conciliation agreement shall contain the procedure for and conditions of remedying of the damage caused by the criminal offence. A conciliation agreement may contain other conditions.

(4) A conciliator shall send a report with a description of the course of conciliation to the Prosecutor's Office. In the case of conciliation, a copy of the conciliation agreement shall be appended to the report.

(5) After the termination of the criminal proceedings, the conciliator shall verify whether or not the conditions of the conciliation agreement approved as an obligation pursuant to the procedure provided for in subsection 203<sup>1</sup> (3) of this Code are met. A conciliator has the right to request submission of information and documents for confirmation of the performance of the obligation. The conciliator shall notify the Prosecutor's Office of performance of the obligation failure to perform the obligation.

(6) A conciliator has the right, in performing his or her duties, to examine the materials of the criminal matter with the permission of and to the extent specified by the court. The conciliator shall maintain the confidentiality of facts which have become known to him or her in connection with the conciliation proceedings. A court or a Prosecutor's Office may summon a conciliator for oral questioning in order to clarify the content of the agreement of the conciliation proceedings. [RT I 2007, 11, 51 - entry into force 18.02.2007]

#### **§ 204. Termination of criminal proceedings concerning criminal offences committed by foreign citizens or in foreign states**

(1) A Prosecutor's Office may terminate criminal proceedings by an order if:

- 1) the criminal offence was committed outside the territorial applicability of this Code;
- 2) the criminal offence was committed by a foreign citizen on board a foreign ship or aircraft located in the territory of the Republic of Estonia;
- 3) an accomplice to the criminal offence committed the criminal offence in the territory of the Republic of Estonia but the consequences of the criminal offence occurred outside the territorial applicability of this Code;
- 4) a decision concerning extradition of the alleged criminal offender to a foreign state has been made;
- 5) [repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A Prosecutor's Office may, by an order, terminate criminal proceedings concerning a criminal offence which was committed in a foreign state but the consequences of which occurred in the territory of the Republic of Estonia if the proceedings may result in serious consequences for the Republic of Estonia or are in conflict with other public interests.

(3) Termination of criminal proceedings on the basis of economic interests, interests in the field of foreign policy or other considerations is not permitted if this is contrary to an international agreement binding to Estonia.

[RT I 2008, 33, 200 - entry into force 28.07.2008]

### **§ 205. Termination of criminal proceedings in connection with assistance received from person upon ascertaining facts relating to subject of proof**

(1) The Public Prosecutor's Office may, by its order, terminate criminal proceedings with regard to a person suspected or accused with his or her consent if the suspect or the accused has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence which is important from the point of view of public interest in the proceedings and if, without the assistance, detection of the criminal offence and taking of evidence would have been precluded or especially complicated.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The Public Prosecutor's Office may, by its order, resume proceedings if the suspect or the accused has discontinued facilitating the ascertaining of facts relating to a subject of proof of a criminal offence or if he or she has intentionally committed a new criminal offence within three years after termination of the proceedings.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 205<sup>1</sup>. Termination of criminal proceedings concerning criminal offences related to competition**

(1) The Public Prosecutor's Office shall, by its order, terminate criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency provided for in the Competition Act and who is the first to submit a leniency application that contains information which indicates the commission of a criminal offence provided for in § 400 of the Penal Code and makes it possible to commence criminal proceedings. This subsection does not apply if criminal proceedings concerning the criminal offence referred by the leniency applicant have been commenced before submission of the leniency application.

(2) If criminal proceedings concerning a criminal offence provided for in § 400 of the Penal Code have been commenced before the submission of a leniency application, the Public Prosecutor's Office shall, by its order, terminate criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency and who is the first to submit a leniency application together with evidence which, according to the Prosecutor's Office, contribute significantly to bringing charges. This subsection applies only if subsection (1) of this section is not applicable with regard to any leniency applicant.

(3) If, pursuant to subsection (1) or (2) of this section, there are no basis for termination of criminal proceedings with regard to a leniency applicant who complies with the conditions for application of leniency, the punishment imposed to the person for a criminal offence provided for in § 400 of the Penal Code shall be reduced in proportion to the assistance received from the person in criminal proceedings.

(4) The Prosecutor's Office, having received a notice from the Competition Authority about leniency application, shall coordinate further activities of the leniency applicant with the investigative body and the leniency applicant. The Prosecutor's Office may grant the leniency applicant a deadline of one month for submission of evidence. If the investigative body and the Prosecutor's Office find after the evaluation of the evidence received through the leniency applicant that there are no basis for the application of leniency pursuant to subsection (1), (2) or (3) of this section, the Prosecutor's Office shall notify the leniency applicant of the rejection of the application.

(5) If circumstances become evident after the order specified in subsection (1) or (2) of this section is made which prevent application of leniency, the Public Prosecutor's Office may, by its order, resume proceedings with regard to the leniency applicant.

[RT I 2010, 8, 34 - entry into force 27.02.2010]

### **§ 205<sup>2</sup>. Termination of criminal proceedings in connection with expiry of reasonable time of processing**

If it becomes evident in pre-trial procedure that a criminal matter cannot be adjudicated within a reasonable time of proceedings, the Public Prosecutor's Office may terminate the criminal proceedings by an order with the consent of the suspect taking into account the gravity of the criminal offence, complexity and extent of the criminal matter, current course of the criminal proceeding and other circumstances.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 206. Order on termination of criminal proceedings**

(1) An order on the termination of criminal proceedings shall set out:

1) the basis for termination of the criminal proceedings pursuant to §§ 200-205<sup>1</sup> of this Code;

[RT I 2010, 8, 34 - entry into force 27.02.2010]

2) annulment of the preventive measure applied or other means of securing criminal proceedings;

[RT I 2006, 63, 466 - entry into force 01.02.2007]

3) how to proceed with the physical evidence or objects taken over or subject to confiscation;

[RT I 2007, 2, 7 - entry into force 01.02.2007]

3<sup>1</sup>) deletion of the information collected in the criminal matter from the state register of fingerprints and the state DNA register upon termination of criminal proceedings on the basis of § 200 of this Code;

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

4) duration of holding in custody;

- 5) a decision concerning compensation for the expenses relating to the criminal proceedings;
- 6) the procedure for appeal against the order on termination of the criminal proceedings.

(1<sup>1</sup>) Upon termination of the criminal proceeding, the reasons listed in clause 145 (3) 1) of this Code need not be stated in the order. A simplified order shall set out the right of the victim to submit a request to a body conducting proceedings within ten days as of receipt of the order for receipt of a reasoned order. The body conducting the proceedings prepares a reasoned order within fifteen days as of receipt of the request.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A copy of an order on termination of criminal proceedings shall be immediately sent to:

- 1) the person who reported the criminal offence;
- 2) the suspect or accused and the counsel thereof;
- 3) the victim or the representative thereof;
- 4) the civil defendant or the representative thereof.

(2<sup>1</sup>) If any information was collected in the criminal matter which shall be deleted from the state register of fingerprints or the state DNA register, a body conducting proceedings shall notify the Estonian Forensic Science Institute of termination of the criminal proceedings in a format which can be reproduced in writing.

[RT I, 04.07.2012, 1 - entry into force 01.08.2012]

(3) A victim has the right to examine the criminal file within ten days as of receipt of a copy of the order on termination of the criminal proceedings.

(4) A copy of an order on termination of criminal proceedings may be sent, by way of subordination, to a relevant agency which is to decide on the commencement of a misdemeanour or disciplinary proceeding.

(5) An order on termination of criminal proceedings on the basis of § 202 or 203 of this Code shall be published pursuant to the procedure provided for in § 408<sup>1</sup> of this Code and the names and personal data of the suspect shall be replaced with initials or characters.

[RT I 2008, 32, 198 - entry into force 01.01.2010]

## **§ 207. Contestation of refusal to commence or termination of criminal proceedings in Public Prosecutor's Office**

(1) A victim may file an appeal with a Prosecutor's Office on the bases provided for in subsection 199 (1) or (2) of this Code against refusal to commence criminal proceedings.

(2) A victim may file an appeal with the Public Prosecutor's Office against termination of criminal proceedings or dismissal of an appeal provided for in subsection (1) of this section by a Prosecutor's Office.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]



(3) An appeal specified in subsection (1) or (2) of this section may be filed within ten days as of receipt of a notice on refusal to commence criminal proceedings, a copy of an order prepared by a Prosecutor's Office on adjudication of an appeal or a copy of a reasoned order on termination of the criminal proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A Prosecutor's Office shall adjudicate an appeal specified in subsection (1) of this section within fifteen days as of receipt of the appeal. The Public Prosecutor's Office shall adjudicate an appeal specified in subsection (2) of this section within one month as of receipt of the appeal.

(5) A Prosecutor's Office or the Public Prosecutor's Office shall prepare a reasoned order on dismissal of an appeal and shall send a copy of the order to the appellant.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 208. Contestation of refusal to commence or termination of criminal proceedings in circuit court**

(1) If an appeal or request specified in subsections 207 (1) or (2) of this Code for termination of criminal proceedings on the grounds specified in § 205<sup>2</sup> of this Code is dismissed by an order of the Public Prosecutor's Office, the person who submitted the appeal or request may contest the order in a circuit court through an advocate within one month as of receipt of a copy of the order.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) An appeal filed with a circuit court shall set out:

- 1) the facts relating to the criminal offence;
- 2) the legal assessment of the criminal offence;
- 3) the evidence collected in support of the suspicion of criminal offence;
- 4) a short description of termination of criminal proceedings or the current proceedings in the case of refusal to terminate thereof on the basis of § 205<sup>2</sup> of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

5) the procedural acts which performance was refused without basis according to the appellant or the reasons why the appellant finds that the appellant's right to proceeding within a reasonable period of time is violated.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) A circuit court shall prepare the court hearing of an appeal specified in subsection (2) of this section pursuant to the provisions of § 326 of this Code, taking into account the specifications provided for in this section.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(4) An appeal specified in subsection (2) of this section shall be adjudicated by a circuit court judge sitting alone within ten days as of receipt of the appeal. Before making a decision, the judge has the right to:

- 1) demand that the materials of the criminal file be submitted;
- 2) issue orders to the Public Prosecutor's Office to perform additional procedural acts.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(5) If a judge finds that commencement or continuation of criminal proceedings is unfounded, he or she shall make a ruling which shall set out:

- 1) the reasons for dismissal of the appeal;
- 2) an order requiring payment of the procedure expenses by the appellant.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(6) If a judge concludes that commencement or continuation of the criminal proceedings is justified, he or she shall annul the order of the Public Prosecutor's Office and require the Public Prosecutor's Office to commence or continue criminal proceedings.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(7) If a judge finds that the right of a suspect to proceedings within a reasonable period of time is violated, he or she shall annul the order of the Public Prosecutor's Office and terminate the criminal proceedings. The judge shall terminate the criminal proceedings in compliance with the requirements of § 206 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(8) The positions set out in a decision of the Supreme Court on annulment of the order of the Public Prosecutor's Office on the interpretation and application of a provision of law are mandatory for the Prosecutor's Office in this criminal proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(9) In the case specified in subsection (5) of this section, a court may amend the order on termination of criminal proceedings by its ruling.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 209. Archiving of criminal file**

**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) If criminal proceedings are terminated on the bases provided for in §§ 200-205<sup>1</sup> of this Code, the criminal file shall be archived.

[RT I 2010, 8, 34 - entry into force 27.02.2010]

(1<sup>1</sup>) In criminal matters sent to court pursuant to general procedure, the criminal file shall be archived upon entry into force of a decision.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The procedure for archiving criminal files and the terms for preservation of the files shall be established by a regulation of the Government of the Republic.

### **§ 210. E-File processing information system**

(1) The E-File processing information system (hereinafter E-File system) is a database belonging to the State Information Systems maintained for the processing of procedural information and personal data the objective of which is to:

- 1) provide an overview of criminal matters in which proceedings are conducted by investigative

bodies, Prosecutors' Offices or courts as well as criminal proceedings which were not commenced;

- 2) reflect information concerning acts performed in the course of criminal proceedings;
- 3) enable organisation of the activities of the bodies conducting proceedings;
- 4) collect statistics related to crime which are necessary for making of the decisions concerning criminal policy;
- 5) enable electronic forwarding of data and documents.

(2) The following information shall be entered in the database:

- 1) information concerning the criminal matters in which proceedings are conducted, criminal matters not commenced and terminated criminal matters;
- 2) information concerning acts performed in the course of criminal proceedings;
- 3) digital documents in the cases provided by this Code;
- 4) information concerning the bodies conducting proceedings, participants in the proceedings, convicted offenders, experts and witnesses;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

5) the decisions.

(3) The E-File system shall be established and the statutes of the register shall be approved by the Government of the Republic.

(4) The chief processor of the E-File system is the Ministry of Justice. The authorised processor of the E-File system is the person appointed by the Minister of Justice.

(5) The Minister of Justice may issue regulations for organisation of the activities of the E-File system.

(6) On the basis of the data in the E-File system, the Ministry of Justice shall publish, by 1 March each year, a report on crime during the previous year.

(7) Crime statistics shall be published by the Ministry of Justice.

(8) The Government of the Republic shall establish the procedure for publication of crime statistics.

[RT I 2008, 28, 180 - entry into force 15.07.2008]

## **Division 2 General Conditions for Pre-trial Procedure**

### **§ 211. Objective of pre-trial procedure**

(1) The objective of pre-trial procedure is to collect evidentiary information and create other conditions necessary for court procedure.

(2) In pre-trial procedure, an investigative body and a Prosecutor's Office shall ascertain the facts vindicating or accusing the suspect or accused.

## **§ 212. Investigative jurisdiction**

(1) Pre-trial proceedings shall be conducted by a Police and Border Guard Board and the Security Police Board, unless otherwise provided for in subsection (2) of this section.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(2) In addition to the investigative bodies specified in subsection (1) of this section, pre-trial proceedings are conducted by:

1) [Repealed - RT I 2009, 27, 165 - entry into force 01.01.2010]

2) the Tax and Customs Board in the case of tax fraud and criminal offences involving violation of customs rules;

3) the Military Police in the case of criminal offences relating to service in the Defence Forces and war crimes;

[RT I 2008, 35, 212 - entry into force 01.01.2009]

4) [Repealed - RT I 2003, 88, 590 - entry into force 01.07.2004]

5) the Competition Board in the case of criminal offences relating to competition;

6) the Prisons Department of the Ministry of Justice and prisons in the case of criminal offences committed in prisons and criminal offences committed by imprisoned persons;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

7) the Environmental Inspectorate in the case of criminal offences relating to violation of the requirements for the protection and use of the environment and the natural resources.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) The division of investigative jurisdiction between the Police and Border Guard Board and the Security Police Board shall be established by a regulation of the Government of the Republic.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(5) For reasons of expediency, a Prosecutor's Office may alter the investigative jurisdiction provided for in subsections (1) or (2) of this section by an order in a particular criminal matter.

[RT I 2009, 27, 165 - entry into force 01.01.2010]

## **§ 213. Prosecutor's Office in pre-trial proceedings**

(1) Prosecutors' Offices shall direct pre-trial proceedings and ensure the legality and efficiency thereof and are competent to:

1) perform procedural acts if necessary;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

2) be present at the performance of procedural acts and intervene in the course thereof;

3) terminate criminal proceedings;

4) demand that the materials of a criminal file and other materials be submitted for examination and verification;

5) issue orders to investigative bodies;

6) annul and amend orders of investigative bodies;

7) remove an official of an investigative body from a criminal proceeding;

- 8) alter the investigative jurisdiction over a criminal matter;
- 9) declare a pre-trial proceeding completed;
- 10) demand that an official of an investigative body submit oral or written explanations concerning the circumstances relating to a proceeding;
- 11) assign the head of the probation supervision department with the duty to appoint a probation officer;
- 12) perform other duties arising from this Code in pre-trial proceedings.

(2) When exercising the rights specified in clauses (1) 1) and 2) of this section, a Prosecutor's Office has the rights of an investigative body.

(3) If a Prosecutor's Office finds elements of a disciplinary offence in the conduct of an official of an investigative body in a pre-trial proceeding, the Prosecutor's Office shall submit a written proposal to the person entitled to impose disciplinary penalties that disciplinary proceedings be commenced against the official of the investigative body. The person entitled to impose disciplinary penalties is required to notify the Prosecutor's Office in writing of the results of resolution of the proposal and of the bases for the resolution within one month as of the receipt of the proposal.

(4) In the case of a suspect who is a minor, a Prosecutor's Office is required to assign the head of the probation supervision department with the duty to appoint a probation officer.

(5) The Chief Public Prosecutor may give general instructions for Prosecutors' Offices and investigative bodies in order to ensure the legality and efficacy of pre-trial procedure. Instructions for an investigative body shall be approved by the head of the investigative body at which the instructions are directed.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(6) A higher ranking prosecutor may demand that a prosecutor submit oral or written explanations concerning the circumstances relating to a proceeding and revoke an unlawful or unjustified ruling, order or demand of a prosecutor by his or her order. The positions set out in the order of a higher ranking prosecutor on the interpretation and application of a provision of law are mandatory for the Prosecutor's Office in the criminal proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) If an investigative body finds that compliance with an order issued by a Prosecutor's Office is inexpedient due to lack of funds or for another good reason, the head of the investigative body shall inform the Chief Public Prosecutor who decides on compliance with the order thereof and shall notify the Minister of Justice thereof.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 214. Conditions for disclosure of information concerning pre-trial proceedings**

(1) Information concerning pre-trial proceedings shall be disclosed only with the permission of and to the extent specified by a Prosecutor's Office and under the conditions provided for in subsection (2) of this section.

(2) Disclosure of information concerning pre-trial proceedings is permitted in the interests of criminal proceedings, the public or the data subject if this, in avoidance of excess:

- 1) does not induce crime or prejudice the detection of a criminal offence;
- 2) does not damage the interests of the Republic of Estonia or the criminal matter;
- 3) does not endanger a business secret or violate the activities of a legal person;
- 4) does not violate the rights of the data subject or third parties, particularly in the case of disclosure of sensitive personal data.

[RT I 2007, 12, 66 - entry into force 25.02.2007]

(3) In the event of violation of the prohibition on disclosure of information concerning pre-trial proceedings, a preliminary investigation judge may impose a fine on the basis of a court ruling on the participants in the proceedings, other persons subject to the criminal proceedings or persons not subject to the proceedings. The suspect and the accused shall not be fined.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 215. Obligation to comply with orders and demands of investigative bodies and Prosecutors' Offices**

(1) The orders and demands issued by investigative bodies and Prosecutors' Offices in the criminal proceedings conducted thereby are binding on everyone and shall be complied with throughout the territory of the Republic of Estonia. The orders and demands issued by investigative bodies and Prosecutor's Offices are binding on the members of Defence Forces engaged in missions abroad, if the object of the criminal proceeding is an act of a person serving in the Defence Forces.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) An investigative body conducting a criminal proceeding has the right to submit written requests to other investigative bodies for the performance of specific procedural acts and for other assistance. Such requests of investigative bodies shall be complied with immediately.

(3) A preliminary investigation judge may impose a fine on a participant in a proceeding, other persons participating in criminal proceedings or persons not participating in the proceedings who have failed to perform an obligation provided for in subsection (1) of this section by a court ruling at the request of a Prosecutor's Office. The suspect and the accused shall not be fined.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 216. Joinder and severance of criminal matters**

(1) Several criminal matters may be joined for a joint proceeding if persons are suspected or accused of committing a criminal offence together.

(2) A criminal matter may be severed, concerning one suspect or accused, from criminal matters in which persons are suspected or accused of committing a criminal offence together, or joining of such criminal matter may be refused, if:

- 1) the location of a person is unknown or he or she absconds the criminal proceedings or he or she serves a custodial sentence abroad or other circumstances exist why he or she cannot be

subjected to procedural acts within a reasonable period of time;

2) the person is a citizen of or stays in a foreign state;

3) the person requests, after the completion of pre-trial proceedings, adjudication of the criminal matter pursuant to alternative proceedings or settlement proceedings and application of alternative proceedings or settlement proceedings is impossible due to circumstances respectively referred to in clause 233 (2) 2) or 239 (2) 3).

(3) Several criminal matters may be joined for a joint proceeding if persons are suspected or accused of:

1) commission of several criminal offences;

2) concealment of a criminal offence without prior authorisation or of failure to report a criminal offence.

(4) A criminal matter may be severed from a criminal matter with regard to one or more criminal offences, if this is necessary to avoid the expiry of the limitation period of a criminal offence or to ensure reasonable time of proceedings.

(5) If a minor is suspected or accused of committing a criminal offence together with an adult, the criminal matter of the minor may be severed in the interests of the minor for a separate criminal proceeding regardless of the existence of the conditions for severance specified in this section.

(6) Criminal matters shall be joined and severed by an order of an investigative body or Prosecutor's Office or by a court ruling. A copy of an order or ruling on the severance of a criminal matter shall be included in the new file.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **Division 3 Detention of Suspect**

#### **§ 217. Detention of suspect**

(1) Detention of a suspect is a procedural act whereby a person is deprived of liberty for up to 48 hours. A report shall be prepared on a detention.

(2) A person shall be detained as a suspect if:

1) he or she is apprehended in the act of committing a criminal offence or immediately thereafter;

2) an eyewitness to a criminal offence or a victim indicates such person as the person who committed the criminal offence;

3) the evidentiary traces of a criminal offence indicate that he or she is the person who committed the criminal offence.

(3) A suspect may be detained on the basis of other information referring to a criminal offence if:

1) he or she attempts to escape;

2) he or she has not been identified;

3) he or she may continue to commit criminal offences;  
4) he or she may abscond criminal proceedings or impede the criminal proceedings in any other manner.

(4) A person who is apprehended in the act of committing a criminal offence or immediately thereafter in an attempt to escape may be taken to the police by anyone for detention as a suspect.

(5) An advocate may be detained as a suspect under the circumstances relating to his or her professional activities only at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(6) Section 377 of this Code applies to the detention of the President of the Republic, a member of the Government of the Republic, a member of the *Riigikogu*, the Auditor General, the Chancellor of Justice, or the Chief Justice or a justice of the Supreme Court as a suspect.

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

(8) If a Prosecutor's Office is convinced of the need to take a person into custody, the Prosecutor's Office shall prepare an application for an arrest warrant and, within forty-eight hours as of the detention of the person as a suspect, organise the transport of the detained person before a preliminary investigation judge for the adjudication of the application.

(9) If the basis for the detention of a suspect ceases to exist in pre-trial proceedings, the suspect shall be released immediately.

(10) A person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. If the notification prejudices a criminal proceeding, the opportunity to notify may be refused with the permission of a Prosecutor's Office.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 218. Report on detention of suspect**

(1) A report on the detention of a suspect shall set out:

- 1) the basis for the detention and a reference to subsection 217 (2) or (3) of this Code;
- 2) the date and time of the detention;
- 3) the facts relating to the criminal offence of which the person is suspected and the legal assessment of the criminal offence pursuant to the relevant section, subsection and clause of the Penal Code;

[RT I 2006, 15, 118 - entry into force 14.04.2006]

- 4) explanation of the rights and obligations provided for in § 34 of this Code to the suspect;
- 5) the names and characteristics of the objects confiscated from the suspect upon detention;
- 6) a description of the clothing and bodily injuries of the detained person;



7) the petitions and requests of the detained person;  
8) in the case the detained person is released, the grounds, date and time of release.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A Prosecutor's Office is immediately informed of the detention of a suspect.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 219. Substitution of detention of suspect**

(1) If a person has committed a criminal offence in the second degree for which a pecuniary punishment may be imposed and the person does not have a permanent or temporary place of residence in Estonia, an investigative body may, with the consent of the person, substitute the detention of the person as a suspect by a payment covering the procedure expenses, the potential pecuniary punishment and the damage caused by the criminal offence into the public revenues.

(2) A statement, a copy of which is sent to the Prosecutor's Office, shall be prepared on the substitution of the detention of a suspect and on the receipt of a payment into the public revenues.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **Division 4 Completion of Pre-trial Proceedings**

#### **§ 220. Demand to submit information necessary for calculating average daily income**

(1) Before the completion of pre-trial proceedings, an investigative body shall demand that the Tax and Customs Board or, if necessary, an employer or another person or agency submit information necessary for calculating the average daily income of a suspect or accused.

(2) If necessary, Prosecutors' Offices and courts may demand submission of additional information necessary for calculating average daily income.

(3) A person or agency from whom a body conducting proceedings demands information necessary for calculation of average daily income shall respond to the inquiry within seven days as of the receipt thereof.

(4) A suspect or accused has the right to submit information concerning his or her income and debts to the body conducting the proceedings.  
[RT I 2003, 88, 590 - entry into force 01.07.2004]

#### **§ 221. Demand to submit information necessary for imposing fines to extent of assets and for confiscation of property which was obtained by criminal offence**

(1) If a person is suspected or accused of a criminal offence for which a fine to the extent of the assets of the person may be imposed pursuant to law or confiscation may be applied on the basis of § 83<sup>2</sup> of the Penal Code, an investigative body may assign the collecting of the necessary data by an order to a bailiff.

(2) If necessary, Prosecutors' Offices and courts may demand submission of additional information necessary for calculation of the amount of a fine to the extent of the assets of a person or relating to confiscation.

(3) A bailiff shall ascertain the assets of a suspect, accused or third party and assess the value thereof. Within thirty days as of the receipt of the order, the bailiff shall prepare a statement concerning the financial situation of the person and shall submit the statement together with the evidence on the basis of which the statement was prepared to the body conducting the proceedings.

(4) A suspect, accused or third party has the right to submit information concerning his or her income and debts to the body conducting the proceedings.  
[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 221<sup>1</sup>. Demand to submit information for administration of addiction treatment of drug addicts and complex treatment of sex offenders**

(1) If a person is a suspect or accused in a criminal offence for which imprisonment may be imposed pursuant to law and the imprisonment may be replaced by addiction treatment of drug addicts or replaced in part by complex treatment of sex offenders, an investigative body and a Prosecutor's Office may request, by an examination ruling, the opinion of a forensic psychiatric expert on the need for the administration of addiction treatment or complex treatment to the suspect or accused.

(2) If necessary, a court may demand the submission of additional information required for administration of addiction treatment to drug addicts or complex treatment to sex offenders. If it is necessary based on such information or opinion received from a forensic psychiatric expert, the body conducting the proceedings may request conduct of a forensic medical examination.

(3) A forensic psychiatric expert shall ascertain the state of health of a suspect or accused and prepare an expert's report on it. The expert's report shall be submitted to a body conducting proceedings within thirty days as of the receipt of a ruling.

(4) An investigative body and Prosecutor's Office may contact the probation supervision department of the prison of the residence of a suspect or accused with the request to provide an opinion on the possibility of administration of addiction treatment to drug addicts based on the person of the suspect or accused, his or her living conditions and economic situation.

(5) A probation officer shall prepare an opinion within thirty days as of receipt of the request. To present an opinion, the probation officer has the right to examine the expert's report specified in subsection (3) of this section.

(6) A suspect and accused has the right to obtain information on his or her mental disorder, methods of treatment and diagnosis being used, and the organisation of addiction treatment of drug addicts or complex treatment of sex offenders, and to access his or her medical file.  
[RT I, 15.06.2012, 2 - entry into force 01.06.2013]

**§ 222. Acts performed by investigative body upon completion of pre-trial proceeding**  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) If an official of an investigative body is convinced that the evidentiary materials necessary in a criminal matter have been collected, he or she shall immediately send the criminal file which materials have been systematised and the pages thereof numbered, to a Prosecutor's Office together with the physical evidence, recordings and a sealed envelope containing the personal data of anonymous witnesses. On the order of the Prosecutor's Office, he or she shall submit a summary to a court of the pre-trial proceedings which complies with the requirements of § 153 of this Code. The summary of the criminal proceedings shall be also sent to the Prosecutor's Office by electronic means together with the criminal file on paper.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If there are several suspects in one and the same criminal matter, a joint summary of the pre-trial proceedings shall be prepared setting out the personal data of each suspect separately.

(3) A statement concerning the expenses relating of the criminal proceedings shall be included in the criminal file sent to a Prosecutor's Office.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 223. Acts performed by Prosecutor's Office upon receipt of criminal files**

(1) A Prosecutor's Office which receives a criminal file shall declare the pre-trial proceedings completed, require the investigative body to perform additional acts or terminate the criminal proceeding on the bases and pursuant to the procedure provided for in §§ 200-205<sup>1</sup> of this Code.

[RT I 2010, 8, 34 - entry into force 27.02.2010]

(2) If necessary, a Prosecutor's Office which receives a criminal file shall perform additional acts after the receipt of the file. The Prosecutor's Office has the right to eliminate materials insignificant from the point of view of the criminal matter from the criminal file and, if necessary, re-systemise the criminal file.

(3) If a Prosecutor's Office declares a pre-trial proceeding completed, the Prosecutor's Office shall submit the criminal file for examination pursuant to § 224 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If necessary, a Prosecutor's Office shall perform the acts provided for in § 240 of this Code for the application of settlement procedure.

**§ 224. Submission of criminal file to criminal defence counsel, victim and civil defendant for examination**

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) A Prosecutor's Office shall submit a copy of a criminal file to a criminal defence counsel on electronic data media or, based on a reasoned written request of the counsel, on paper. The counsel may waive the copy of the file. The counsel shall sign to confirm receipt of the copy or

waiver thereof.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A Prosecutor's Office shall submit a criminal file to a victim or civil defendant for examination at the request thereof.

(3) A recording made in a criminal proceeding or physical evidence shall be submitted to the counsel, victim or civil defendant for examination at the request thereof.

(4) If examination of a criminal file, recording or physical evidence is manifestly delayed, the Prosecutor's Office shall set a term for the examination.

(5) A victim and civil defendant have the right to make excerpts from the materials of the criminal file and request that copies be made of the materials of the criminal file by the Prosecutor's Office for a charge.

(6) A notation shall be made in a criminal file concerning examination of the criminal file, a recording made in the criminal matter or physical evidence by the counsel, victim or civil defendant.

(7) At the request of a defendant, media containing a state secret or classified information of a foreign state which are used as evidence in a criminal matter and which are not added to the criminal file shall be submitted to him or her for examination pursuant to the procedure provided for in the State Secrets and Classified Information of Foreign States Act. A notation shall be made in a criminal file concerning examination of the media containing a state secret or classified information of a foreign state.

[RT I 2007, 16, 77 - entry into force 01.01.2008]

(8) At the request of a counsel, the material eliminated pursuant to subsection 223 subsection (2) of this Code shall be submitted to him or her for examination and he or she shall be allowed to make copies thereof for a fee.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(9) The amount of the fee specified in subsection (8) of this section shall be established by the Minister of Justice pursuant to the procedure provided for in this Code subsection 156<sup>1</sup> (7) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(10) A Prosecutor's Office shall decide upon submission of a file and materials eliminated therefrom to a counsel whether and to what extent the counsel is permitted to make additional copies of the file or materials submitted, taking into account the need to protect personal data. The Prosecutor's Office shall indicate the prohibition to make copies on the documents or files on the copy thereof submitted to the counsel.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 224<sup>1</sup>. Submission of file to suspect or accused**

(1) A counsel shall submit the materials specified in § 224 of this Code to a suspect or accused at the request of thereof. Materials in the case of which a Prosecutor's Office has prohibited the making of copies shall be presented by the counsel only in his or her office premises.

(2) A counsel is prohibited to hand the copies of the materials specified in § 224 of this Code to other persons, with the exception of a suspect or accused in the case and to the extent permitted in subsection 224 (10) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 225. Submission and adjudication of requests**

**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) Participants in a proceeding may submit requests to a Prosecutor's Office within ten days as of the date of submission of the criminal file to the participants for examination. If a criminal matter is especially extensive or complicated, a Prosecutor's Office may extend this term at a written request of a participant in the proceedings. Refusal to extend the term shall be formalised by an order of the Prosecutor's Office. Submission of an application for making a written translation of the materials of a criminal file shall not suspend the preparation of a statement of charges or sending thereof to a court.

[RT I, 04.10.2013, 3 - entry into force 27.10.2013]

(1<sup>1</sup>) A Prosecutor's Office shall return a civil action filed after the expiry of the term provided for in subsection (1) of this section by an order and explain to the victim the right of the victim to file an action pursuant to civil procedure.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A Prosecutor's Office shall review a request within ten days as of the receipt of the request.

(3) Dismissal of a request shall be formalised by an order a copy of which shall be sent to the person who submitted the request. Dismissal of a request specified in subsection (1) of this section in pre-trial procedure shall not prevent re-submission of the request in court procedure.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) The materials of a criminal matter which are collected by additional acts shall be submitted for examination pursuant to § 224 of this Code.

(5) The request of a suspect or accused for application of alternative proceedings shall be reviewed pursuant to the procedure provided for in § 235 of this Code.

### **§ 226. Preparation of statement of charges and sending statement of charges to court**

(1) If a Prosecutor's Office has submitted a criminal file for examination and is thereafter convinced that the necessary evidence in the criminal matter has been taken, the Prosecutor's Office shall prepare the statement of charges pursuant to § 154 of this Code.

(2) A list of the persons to be summoned to a court session at the request of the Prosecutor's Office shall be appended to a statement of charges. The list shall contain the given names, surnames of the persons to be summoned and places of residence or seat of the victim, civil defendant, third party and their representatives, the criminal defence counsel and the accused. In the case of an anonymous witness, his or her fictitious name shall be indicated in the list. An extract of the list shall contain only the given names and surnames of the persons to be summoned.

[RT I 2008, 32, 198 - entry into force 01.01.2009]

(3) A Prosecutor's Office shall send extracts of a statement of charges and of a list provided for in subsection (2) of this section to the accused and the counsel and the statement of charges to the court. The statement of charges shall be also sent to the court by electronic means.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(4) The following shall be appended to a statement of charges sent to a court:

1) a copy of the report of the criminal offence or another document listed in § 195 or 197 of this Code on the basis of which criminal proceedings were commenced. A copy of a document shall not be appended if the document includes information concerning a leniency application or a fact of notification of an offence and if confidentiality of the fact of notification of a criminal offence is ensured pursuant to law;

[RT I 2010, 8, 34 - entry into force 27.02.2010]

2) an extract from the punishment register containing the information concerning the accused;

3) a copy of an order on application or alteration of preventive measures;

4) a notation concerning appointment of a probation officer.

(5) If a statement of charges is sent to a court, an envelope specified in subsection 67 (4) of this Code shall remain in the Prosecutor's Office. The envelope shall be submitted to the court at the request thereof.

(6) If taking into custody is applied as a preventive measure in a criminal matter and the prosecutor deems it necessary to continue the application of the preventive measure, the Prosecutor's Office shall perform the acts specified in subsection (3) of this section not later than fifteen days before the end of the term provided for in subsection 130 (3) or (3<sup>1</sup>) of this Code.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

(7) If a civil action was filed in pre-trial procedure, a Prosecutor's Office shall send it to a court together with the statement of charges. The Prosecutor's Office shall send a copy of the civil action to the accused, the counsel thereof and the civil defendant. No evidence shall be appended to a civil action in a criminal matter sent to a court pursuant to general procedure.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 227. Acts performed by counsel upon completion of pre-trial proceeding**

**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) After receipt of a copy of a statement of charges, a counsel shall submit his or her statement of defence to a court and a copy thereof to a Prosecutor's Office not later than three working days

before the preliminary hearing. In the case of particular complexity or extent of a criminal matter, the court by extend the specified term at a reasoned request of the counsel.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) [Repealed - RT I 2008, 32, 198 - entry into force 15.07.2008]

(3) A statement of defence shall set out:

1) the opinions of the defence concerning the charges and the damage set out in the statement of charges, and which statements and opinions set out in the statement of charges are contested and which admitted;

2) the evidence which the counsel wishes to submit to the court and a reference to the facts which are intended to be proven with each piece of evidence;

(3) a list of the persons to be summoned to a court session at the request of the counsel;

4) other requests of the counsel.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) The standard form of a statement of defence shall be established by a regulation of the Minister of Justice.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If a counsel fails to submit a statement of defence by the term prescribed in this section, the court shall notify the leadership of the Bar Association immediately thereof and propose to the accused to select a new counsel by the date determined by the court, or contact the leadership of the Estonian Bar Association for appointment of a new counsel pursuant to clause 43 (2) 3) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Division 5 Appeal against Activities of Investigative Body or Prosecutor's Office**

### **§ 228. Appeal against activities of investigative body or Prosecutor's Office**

(1) Before a statement of charges is prepared, a participant in a proceeding or a person not subject to the proceedings has the right to file an appeal with the Prosecutor's Office against a procedural act or order of the investigative body if he or she finds that violation of the procedural requirements in the performance of the procedural act or preparation of the order has resulted in the violation of his or her rights.

(2) Before preparation of a statement of charges, a person specified in subsection (1) of this section has the right to file an appeal with the Public Prosecutor's Office against an order or procedural act of the Prosecutor's Office.

(3) An appeal specified in subsection (1) or (2) of this section shall be filed directly with the body who is to adjudicate the appeal or through the person whose order or procedural act is contested.

(4) An appeal shall set out:

- 1) the name of the Prosecutor's Office with which the appeal is filed;
- 2) the given name and surname, status in the proceedings, residence or seat and address of the appellant;
- 3) the order or procedural act contested, the date of the order or procedural act, and the name of the person with regard to whom the order or procedural act is contested;
- 4) which part of the order or procedural act is contested;
- 5) the content of and reasons for the requests submitted in the appeal;
- 6) a list of the documents appended to the appeal.

(5) An appeal filed against the activities of an investigative body or Prosecutor's Office shall not suspend the execution of the contested order or performance of the procedural act.

(6) If a Prosecutor's Office receives an appeal specified in subsections (1) and (2) of this section after the statement of charges have been sent to a court according to subsection 226 (3) of this Code, the appeal shall be communicated to the court which hears the criminal matter.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

**§ 229. Adjudication of appeals by Prosecutor's Office or Public Prosecutor's Office**

(1) An appeal filed with a Prosecutor's Office or the Public Prosecutor's Office shall be adjudicated 30 thirty days as of the receipt of the appeal.

(2) In the adjudication of an appeal filed against an order or procedural act of an investigative body or a Prosecutor's Office, a Prosecutor's Office or the Public Prosecutor's Office may, by an order:

- 1) dismiss the appeal;
- 2) satisfy the appeal in full or in part and recognise violation of the rights of the person if the violation can no longer be eliminated;
- 3) annul the contested order or suspend the contested procedural act in full or in part, thereby eliminating the violation of the rights.

(3) An appellant shall be notified of the right to file an appeal with the county court pursuant to § 230 of this Code.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

(4) An order prepared in the adjudication of an appeal shall be immediately sent to the investigative body or a Prosecutor's Office which prepared the contested order or performed the contested procedural act and a copy of the order shall be sent to the appellant.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 230. Filing of appeals with county court**

(1) If the activities of an investigative body or Prosecutor's Office in violation of the rights of a person are contested and the person does not agree with the order prepared by the Public Prosecutor's Office who reviewed the appeal, the person has the right to file an appeal with the



preliminary investigation judge of the county court in whose territorial jurisdiction the contested order was prepared or the contested procedural act was performed.

(2) An appeal shall be filed within ten days as of the date when the person became or should have become aware of the contested ruling.

(3) Appeals shall be filed in writing in accordance with the requirements of clauses 228 (4) 2)-6) of this Code.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

### **§ 231. Adjudication of appeals by county courts**

(1) A preliminary investigation judge shall hear an appeal within 30 days as of the receipt of the appeal.

(2) An appeal shall be heard by way of written proceedings within the limits of the appeal and with regard to the person in respect of whom the appeal was filed.

(3) In the adjudication of an appeal, a court may:

- 1) dismiss the appeal;
- 2) satisfy the appeal in full or in part and admit violation of the rights of the person if the violation can no longer be eliminated;
- 3) annul the contested order or suspend the contested procedural act in full or in part, thereby eliminating the violation of the rights.

(4) A court which receives an appeal may suspend the execution of the contested order or procedural act.

(5) A ruling of a preliminary investigation judge is final and not subject to appeal, with the exception of rulings made upon adjudication of appeals against the course of surveillance activities, non-notification thereof or refusal to submit information collected thereby.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

### **§ 232. Withdrawal of appeal**

An appeal filed against the activities of an investigative body, Prosecutor's Office or the Public Prosecutor's Office may be withdrawn until the adjudication of the appeal.

## **Chapter 9 SIMPLIFIED PROCEEDINGS**

### **Division 1 Alternative Proceedings**

### **§ 233. Grounds for application of alternative proceedings**

(1) At the request of an accused and a Prosecutor's Office, the court may adjudicate a criminal matter by way of alternative proceedings on the basis of the materials of the criminal file without

summoning the witnesses or qualified persons.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) An accused and a prosecutor may submit a request for the application of alternative proceedings to the court until the commencement of examination by the court in a county court.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Alternative proceedings shall not be applied:

1) in the case of a criminal offence for which life imprisonment is prescribed as punishment by the Penal Code;

2) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of alternative proceedings.

3) [repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

(3) Alternative proceedings shall be applied pursuant to the provisions of Divisions 2, 3, 5 and 6 of Chapter 10 of this Code, taking into account the specifications provided for in this Division.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 234. Request for application of alternative proceedings**

(1) A suspect or accused may submit a request to a Prosecutor's Office for the application of alternative proceedings.

(2) If a Prosecutor's Office refuses to apply alternative proceedings, the criminal proceeding shall be continued pursuant to general procedure.

(3) If a suspect or accused, counsel and Prosecutor's Office consent to the application of alternative proceedings before the performance of the acts listed in § 226 of this Code, the Prosecutor's Office shall prepare the statement of charges pursuant to § 154 of this Code and set out in the statement of charges that application of alternative proceedings is requested in the criminal matter. The request of the suspect or accused and the statement of charges shall be included in the criminal file and the file shall be sent to the court.

(4) If a suspect or accused, counsel and Prosecutor's Office consent to the application of alternative proceedings in the course of court proceedings, the Prosecutor's Office shall present the request of the accused and the criminal file to the court during a court session.

(5) The accused may withdraw the request for the application of alternative proceedings until the completion of examination by the court. If the accused withdraws the request for application of alternative proceedings in the course of the court hearing, the court shall make the decision provided for in clause 238 (1) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 235. [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

**§ 235<sup>1</sup>. Prosecution in alternative proceedings**  
**[RT I 2006, 21, 160 - entry into force 25.05.2006]**

(1) A judge who receives a criminal file shall verify the jurisdiction over the criminal matter pursuant to the provisions of §§ 24-27 of this Code and make a ruling on:

- 1) the prosecution of the accused pursuant to the provisions of § 263 of this Code;
- 2) the return of the criminal file to the Prosecutor's Office if there are no grounds for application of alternative proceedings;
- 3) the return of the criminal file to the Prosecutor's Office and continuation of the proceedings if the court does not consent to the adjudication of the criminal matter by way of alternative proceedings.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(2) If the bases provided for in § 258 of this Code become evident, the court shall organise a preliminary hearing which shall be held pursuant to the provided for in subsection 257<sup>1</sup> (2) and §§ 259-262 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 236. Participants in court session**

(1) A prosecutor, accused, his or her counsel, victim and civil defendant shall be summoned to a court session.

(2) The failure of a victim or civil defendant to appear in a court session shall hinder neither the court hearing of the criminal matter nor the hearing of the civil action.

(3) A court may organise the participation of the participants in a court session in the court hearing in alternative proceedings by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A prosecutor is not required to participate upon the pronouncement of a court judgment.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 237. Examination by court in alternative proceedings**

(1) A judge announces the commencement of examination by the court and makes a proposal to the prosecutor to make an opening speech. The prosecutor gives an overview of the charges and the evidence which corroborates the charges and which the prosecutor requests to be examined by the court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) After the opening speech of a prosecutor, the judge shall ask whether the accused understands the charges, whether he or she confesses to the charges and whether he or she

consents to the adjudication of the criminal matter by way of alternative proceedings.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The judge shall make a proposal to the counsel to submit his or her opinion as to whether the charges are justified. Thereafter, the victim and the civil defendant or their representatives shall be given the floor.

(4) In court hearing, the participants in the court session shall rely only on the materials of the criminal file. The court shall intervene if the participants in the proceedings refer to circumstances outside the criminal file.

(5) The accused may request that he or she be interrogated. The interrogation of the accused shall comply with the provisions of § 293 of this Code. If the accused has waived counsel pursuant to clause 45 (4) 3) of the Code, the prosecutor is the first to question the accused, followed by the other participants in the proceedings in the order specified by the judge.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) The judge may question the participants in the proceedings.

(7) At the end of examination by the court, the judge shall ask the participants in the proceedings whether they would like to submit requests. The court shall adjudicate the requests pursuant to § 298 of this Code.

### **§ 237<sup>1</sup>. Commencement of alternative proceedings in court proceedings**

(1) If a judge receives the request specified in subsection (4) of this Code, he or she shall continue the court hearing pursuant to the procedure provided for in § 237 of this Code.

(2) If application of alternative proceedings is refused on the basis of clause 235<sup>1</sup> (1) 2) or 3) of this Code, the court shall continue the proceeding pursuant to general procedure.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 238. Decisions in alternative proceedings**

(1) The court shall make one of the following decisions in chambers:

1) a ruling on the return of the criminal file to the Prosecutor's Office if there are no grounds for the application of alternative proceedings;

2) a ruling on the return of the criminal file to the Prosecutor's Office if the materials of the criminal file are not sufficient for the adjudication of the criminal matter by way of alternative proceedings;

3) a ruling on termination of the criminal proceeding if the grounds listed in clauses 199 (1) 2)-6) of this Code become evident;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

4) a judgment of conviction or acquittal with regard to the accused.

(2) If a judgment of conviction is made by way of alternative proceedings, the court shall reduce the principal punishment to be imposed on the accused by one-third after considering all the facts relating to the criminal offence. If a punishment is imposed pursuant to § 64 of the Penal Code, the aggregate punishment to be imposed on the accused shall be reduced by one-third.

## **Division 2 Settlement Proceedings**

### **§ 239. Grounds for application of settlement proceedings**

(1) A court may adjudicate a criminal matter by way of settlement proceedings at the request of the accused or the Prosecutor's Office.

(2) Settlement proceedings shall not be applied:

1) in criminal offences prescribed in §§ 89-91, 95-97, 99-103, subsections 110 (2), 111 (2), 112 (2), §§ 113-114, 118, 125, 135, subsection 141 (2), clauses 151 (2) 1) and (4), clause 200 (2) 5), clause 214 (2) 3), §§ 237, 244, 246, clauses 251 (3) 3), subsection 252 (3), clause 258 (2) 2), subsections 259 (3), 266 (3), § 302, subsections 327 (3), 405 (3), 422 (2), § 435, clauses 441 1), 442 1), 443 1) and clauses 445 (2) 1) and (3) of the Penal Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) if the accused, his or her counsel or the Prosecutor's Office does not consent to the application of settlement proceedings;

3) in the case of a criminal matter where several persons are accused and at least one of the accused does not consent to the application of settlement proceedings;

4) if the victim or the civil defendant does not consent to the application of settlement proceedings.

5) [repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

(3) An accused and prosecutor may submit a request for the application of settlement proceedings to a court until the completion of examination by the court in a county court.

(4) Settlement proceedings shall be applied pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Division.

### **§ 240. Settlement proceedings commenced by Prosecutor's Office**

If a Prosecutor's Office considers application of settlement proceedings possible, the Office shall perform the following acts:

1) explain the option of applying settlement proceedings, the rights of the suspect or accused and the counsel in settlement proceedings and the consequences of application of settlement proceedings to the suspect or accused and the counsel;

2) prepare a report pursuant to § 243 of this Code concerning the consent of the civil defendant to the application of settlement proceedings;

3) ascertain the opinions of the victim about the possibility of settlement proceedings and the civil action, unless the victim has expressed his or her opinion about these issues earlier in the course of criminal proceedings, and explains that the victim has no right to withdraw from the

consent granted for settlement proceedings.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 241. [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

**§ 242. Commencement of settlement proceedings at request of suspect or accused**

(1) If a suspect or accused wishes that settlement proceedings be applied, he or she shall submit a written request pursuant to § 225 of this Code to the Prosecutor's Office.

(2) If a Prosecutor's Office consents to the application of settlement proceedings, the Office shall perform the acts provided for in §§ 240-241 and 243 of this Code. If a Prosecutor's Office refuses to apply settlement proceedings, the criminal proceeding shall be continued pursuant to general procedure.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 243. Report concerning consent granted by civil defendant to application of settlement proceedings**

(1) A report concerning the consent granted by a civil defendant to the application of settlement proceedings shall set out:

- 1) the time and place of preparation of the report;
- 2) the official title and name of the person preparing the report;
- 3) the name of the suspect or accused;
- 4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship and the place of work or educational institution of the civil defendant;
- 5) a notation with regard to whether the rights of the civil defendant in settlement proceedings and the consequences of settlement proceedings have been explained to him or her;
- 6) the consent of the civil defendant to the application of settlement proceedings.

(2) The report shall be signed by the prosecutor and civil defendant.

(3) A civil defendant does not have the right to withdraw from a consent granted.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 244. Negotiations in settlement proceedings**

(1) After preparation of the report specified in 243 of this Code, the Prosecutor's Office shall commence negotiations with the suspect or accused and his or her counsel in order to conclude a settlement. At the beginning of negotiations, the Prosecutor's Office explains the rights of the suspect or accused in settlement proceedings and the consequences of settlement proceedings to the suspect or accused.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If a Prosecutor's Office and the suspect or accused and his or her counsel reach a settlement concerning the legal assessment of the criminal offence and the nature and extent of the damage caused by the criminal offence, negotiations shall be commenced concerning the type and the category or term of the punishment which the prosecutor requests in court for the commission of the criminal offence.

(3) If a Prosecutor's Office and the suspect or accused and his or her counsel fail to reach a settlement concerning the legal assessment of the criminal offence and the nature and extent of the damage caused by the criminal offence or the type or the category or term of the punishment, the criminal proceeding shall be continued pursuant to general procedure.

(4) No settlement shall be concluded on a more severe punishment than 18 years' imprisonment.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 245. Settlement**

(1) A settlement shall set out:

- 1) the time and place of conclusion of the settlement;
- 2) the official title and name of the prosecutor;
- 3) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;
- 4) the name of the counsel;
- 5) the criminal record of the accused;
- 6) the preventive measures applied with regard to the accused and the duration thereof;
- 6<sup>1</sup>) a notation that the rights of the suspect or accused in settlement proceedings and the consequences of settlement proceedings have been explained to him or her;
- 7) the facts relating to the criminal offence;
- 8) the legal assessment of the criminal offence and the nature and extent of the damage caused by the criminal offence;
- 9) the type and the category or term of the punishment;
- 10) property subject to confiscation.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(2) If a punishment is imposed on an accused for several criminal offences, the settlement shall set out the type and the category or term of each of the punishments and the type and the category or term of the aggregate punishment.

(3) If punishments are imposed on an accused pursuant to several court judgments, the settlement shall also set out the type and the category or term of the aggregate punishment.

(4) A settlement is deemed to be concluded when a prosecutor, accused and his or her counsel have signed the settlement.

(5) A Prosecutor's Office shall send copies of a settlement to the accused and his or her counsel and the criminal file to the court.

**§ 245<sup>1</sup>. Prosecution in settlement proceedings**  
**[RT I 2006, 21, 160 - entry into force 25.05.2006]**

(1) A judge who receives a criminal file shall verify the jurisdiction over the criminal matter pursuant to the provisions of §§ 24-27 of this Code and make a ruling on:

- 1) the prosecution of the accused pursuant to the provisions of § 263 of this Code;
- 2) the return of the criminal file to the Prosecutor's Office if there are no grounds for application of settlement proceedings;
- 3) the return of the criminal file to the Prosecutor's Office granting the possibility to conclude a new settlement if the court does not consent to the legal assessment of the criminal offence, the amount of the civil action or the type or the category or term of the punishment;
- 4) the return of the criminal file to the Prosecutor's Office and continuation of the proceedings if the court does not consent to the adjudication of the criminal matter by way of settlement proceedings.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(2) If the bases provided for in § 258 of this Code become evident, the court shall organise a preliminary hearing which shall be held pursuant to the provided for in subsection 257<sup>1</sup> (2) and §§ 259-262 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 246. Participants in court session**

(1) A prosecutor, accused and his or her counsel shall be summoned to a court session.

(2) A court may organise the participation of the participants in a court session in the court hearing in settlement proceedings by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

(3) A prosecutor is not required to participate upon the pronouncement of a court judgment.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 247. Court hearing in settlement proceedings**

(1) A judge shall announce the commencement of the hearing of a settlement and make a proposal to the prosecutor to give an overview of the settlement.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) After hearing the overview of a settlement, the judge shall ask whether the accused understands the settlement and consents thereto. The judge shall make a proposal to the accused to explain the circumstances relating to the conclusion of the settlement and shall ascertain whether conclusion of the settlement was the actual intention of the accused.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]



(3) A judge shall ask the opinions of the counsel and the prosecutor concerning the settlement and whether they will adhere to the settlement.

(4) The judge may question the participants in the proceedings.

(5) After completion of the hearing of a settlement, the court shall announce the time of pronouncement of the decision.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 248. Decisions in settlement proceedings**

(1) The court shall make one of the following decisions:

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

1) a ruling on the return of the criminal file to the Prosecutor's Office if there are no grounds for application of settlement proceedings;

[RT I 2006, 21, 160 - entry into force 25.05.2006]

2) a ruling on the return of the criminal file to the Prosecutor's Office granting the possibility to conclude a new settlement if the court does not consent to the legal assessment of the criminal offence, the amount of the civil action or the type or the category or term of the punishment;

3) a ruling on refusal to apply settlement proceedings and on the return of the criminal file to the Prosecutor's Office if the court has doubts regarding the circumstances specified in § 306 of this Code;

4) a ruling on termination of the criminal proceeding if the grounds listed in clauses 199 (1) 2)-6) of this Code become evident;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

5) a court judgment on the conviction of the accused and on imposition of the punishment agreed upon in the settlement on the accused.

(2) After a court has made a ruling specified in clause (1) 1) or 2) of this section, the court shall return the criminal file to the Prosecutor's Office for continuation of the criminal proceeding.

#### **§ 249. Main part of judgment of conviction in settlement proceedings**

The main part of a court judgment shall set out:

1) the charges on which the court convicts the accused;

2) the content of the settlement.

#### **§ 250. Commencement of settlement proceedings during court hearing**

(1) If a judge receives the reports specified in § 243, the opinions specified in clause 240 3) and the settlement specified in § 245 of this Code, he or she shall continue the court hearing pursuant to the procedure provided for in clause § 247. If the court hearing has been commenced before the submission of the settlement, only the settlement shall be presented.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If application of settlement proceedings is refused on the basis of clause 248 (1) 1) or 2) of this Code, the court shall continue the proceeding pursuant to the general procedure.

### **Division 3 Summary Proceedings**

#### **§ 251. Grounds for application of summary proceedings**

(1) If the facts relating to a subject of proof are explicit in the case of a criminal offence in the second degree and the prosecutor considers application of a pecuniary punishment as the principal punishment, the court may adjudicate the criminal matter by way of summary proceedings at the request of the Prosecutor's Office.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(2) Summary proceedings shall not be applied if the suspect is a minor.

(3) Summary proceedings shall not be applied if addiction treatment of drug addicts or complex treatment of sex offenders can be administered to the suspect.

[RT I, 15.06.2012, 2 - entry into force 01.06.2013]

#### **§ 252. Main part of statement of charges in summary proceedings**

(1) In summary proceedings, a Prosecutor's Office shall prepare a statement of charges the main part of which shall set out:

- 1) the facts relating to the criminal offence;
- 2) the legal assessment of the criminal offence;
- 3) the nature and extent of the damage caused by the criminal offence;
- 4) the evidence in proof of the charges;
- 5) a proposal concerning the type and the category or term of the punishment.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(2) A statement of charges and the materials of the criminal matter shall be sent to a court and copies of the statement of charges to an accused and his or her counsel.

(3) An accused and counsel may submit a written opinion to a court within thirty days as of receipt of the statement of charges on adjudication of a criminal matter.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 253. Decisions in summary proceedings**

Upon receipt of a criminal matter by a court but not earlier than fifteen days after submission of the statement of charges to an accused and counsel, a judge shall verify the jurisdiction over the criminal matter and make one of the following decisions:

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 1) a court judgment in summary proceedings pursuant to § 254 of this Code;
- 2) a ruling on termination of the criminal proceeding if the grounds provided for in clauses 199 (1) 2)-6) of this Code become evident;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

3) a ruling on refusal to apply summary proceedings and on the return of the criminal file to the Prosecutor's Office.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

## **§ 254. Court judgment in summary proceedings**

(1) If a judge consents to the conclusions presented in a statement of charges concerning the proof of the charges and the category or term of the punishment, he or she shall prepare a court judgment.

(2) The introduction of a court judgment made by way of summary proceedings shall set out:

- 1) that the court judgment is made on behalf of the Republic of Estonia;
- 2) the date and place of making the court judgment;
- 3) the name of the court which made the judgment and the name of the judge;
- 4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth and the place of work or educational institution of the accused;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

- 5) the criminal record of the accused.

(3) The main part of a court judgment made by way of summary proceedings shall set out:

- 1) the facts relating to the criminal offence;
- 2) the legal assessment of the criminal offence;
- 3) the nature and extent of the damage caused by the criminal offence;
- 4) the reasons for the punishment to be imposed on the accused.

(4) The conclusion of a court judgment made by way of summary proceedings shall set out:

- 1) the conviction of the accused pursuant to the corresponding section, subsection or clause of the Penal Code;
- 2) the category or term of the punishment;
- 3) a decision concerning the expenses relating to the criminal procedure;
- 4) the procedure and term for appeal against the summary judgment.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(5) A copy of a court judgment made by way of summary proceedings shall be delivered to the accused and the Prosecutor's Office in accordance with the provisions of subsections 164 (3) and (5) of this Code within three days as of the making of the judgment.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) Within fifteen days as of the receipt of a court judgment made by way of summary proceedings, the accused and the counsel have the right to request that the court hear the criminal matter pursuant to general procedure.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) If the accused or the counsel does not request that the court hear the criminal matter pursuant to general procedure, the court judgment made by way of summary proceedings shall enter into

force.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 255. Contestation of court judgment made by way of summary proceedings and court hearing pursuant to general procedure**

(1) If a convicted offender contests a court judgment made by way summary proceedings and requests that the court hear the criminal matter pursuant to the general procedure, the judge shall prepare a ruling on the return of the criminal file to the Prosecutor's Office and the ruling shall serve as a basis for preparation of a new statement of charges pursuant to § 154 of this Code and for continuation of the proceeding pursuant to general procedure.

(2) A court hearing shall be conducted pursuant to general procedure in accordance with the provisions of Chapter 10 of this Code.

### **§ 256. Commencement of summary proceedings during court hearing**

(1) In the cases provided for in clause 269 (2) 2) of this Code, a prosecutor may submit a request for application of summary proceedings to the court and make a proposal concerning the category or term of the punishment to be imposed on the accused.

(2) If a request is satisfied, the court shall conduct the summary proceedings pursuant to §§ 253 and 254 of this Code.

(3) If a request is dismissed, the court hearing shall be continued pursuant to the general procedure.

### **Division 4 Expedited Procedure**

[RT I 2006, 15, 118 - entry into force 14.04.2006]

### **§ 256<sup>1</sup>. Basis for application of expedited procedure**

[RT I 2006, 15, 118 - entry into force 14.04.2006]

If a person is suspected of a criminal offence in the second degree and the facts relating to the subject of proof of which are explicit and all necessary evidence concerning which have been taken, the Prosecutor's Office may request that the court adjudicate that criminal matter pursuant to expedited procedure. The request shall be made within 48 hours after the person has been interrogated as a suspect after commission of the criminal offence or after the person has been detained as a suspect.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 256<sup>2</sup>. Minutes for expedited procedure and statement of charges upon expedited procedure**

(1) The minutes for expedited procedure shall set out:

1) statements of the suspect and other data relating to the interrogation pursuant to subsection 76

(1) of this Code or reference to separate minutes concerning the interrogation of the suspect;  
2) whether the suspect wishes the hearing of the criminal matter to be conducted without summoning the witnesses;  
3) testimony of the witness and other data relating to the questioning pursuant to § 74 of this Code or reference to separate minutes concerning questioning of the witness;  
4) a list of other evidence;  
5) the data provided for in subsection 218 (1) of this Code if the person has been detained as a suspect.

(2) The minutes for expedited procedure shall be immediately forwarded to the Prosecutor's Office. Other evidence and the documents provided for in clauses 222 (3) 1), 3) and 4) of this Code shall be appended to the minutes of expedited procedure.

(3) If necessary, the Prosecutor's Office shall perform the acts necessary for the conduct of simplified proceedings. In such case, the data specified in §§ 245 or 252 of this Code shall be added to the minutes. The acts specified in clauses 240 2) and 3) of this Code may be performed with regard to the victim only by an investigative bodies.

(4) The Prosecutor's Office shall prepare the statement of charges and add the data provided by § 154 of this Code to the minutes for expedited procedure, taking account of the differences of the minutes for expedited procedure.

(5) The accused and his or her criminal defence counsel shall be given a copy of the minutes for expedited procedure. If the accused is not proficient in Estonian, he or she may request that the minutes be translated into his or her native language or a language in which he or she is proficient. If, instead of the minutes for expedited procedure, separate procedural documents are prepared, the accused and criminal defence counsel shall be given copies of the statement of charges and the materials of the criminal matter.

(6) Criminal defence counsel has the right to examine all the materials related to the criminal matter after the interrogation of the suspect until the beginning of the trial. The Prosecutor's Office shall receive and settle petitions and complaints until a request for application of expedited procedure is submitted to the court.

[RT I 2006, 15, 118 - entry into force 14.04.2006]

### **§ 256<sup>3</sup>. Summoning to court session**

(1) The participants in the proceeding and witnesses shall be summoned to court by the investigative body or the Prosecutor's Office pursuant to the procedure provided for in subsection 164 (3) of this Code with the approval of the court.

(2) The accused and criminal defence counsel shall be summoned to court by the Prosecutor's Office pursuant to the procedure provided by subsection (1) of this section.

[RT I 2006, 15, 118 - entry into force 14.04.2006]

**§ 256<sup>4</sup>. Judicial proceedings upon expedited procedure**  
**[RT I 2006, 15, 118 - entry into force 14.04.2006]**

(1) The prosecutor shall make an oral request to the court for hearing a matter by expedited procedure and submit the materials related to the criminal matter to the court.  
[RT I 2006, 15, 118 - entry into force 14.04.2006]

(2) The judge shall verify the jurisdiction pursuant to the procedure provided for in subsection 257 (1) of this Code and shall open the court session. A notation concerning the opening of the court session shall be made in the minutes of the court session. After declaring the commencement of examination by court, the court shall make a proposal to the prosecutor to present the statement of charges.  
[RT I 2006, 15, 118 - entry into force 14.04.2006]

(3) If the court hearing of the criminal matter is impossible, the court shall organise a preliminary hearing pursuant to the procedure provided for in §§ 258-263 of this Code.  
[RT I 2006, 15, 118 - entry into force 14.04.2006]

(4) Judicial proceedings upon expedited procedure shall be carried out pursuant to the procedure provided for in §§ 233-238 or 239-250 or 251-256 or 266-317 of this Code, taking account of the differences provided for in this Division.  
[RT I 2006, 15, 118 - entry into force 14.04.2006]

(5) A prosecutor is not required to participate upon the pronouncement of a court judgment.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 256<sup>5</sup>. Decision upon expedited procedure**  
**[RT I 2006, 15, 118 - entry into force 14.04.2006]**

(1) The court shall make one of the following decisions:  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

1) a ruling on return of the materials of the criminal matter to the Prosecutors Office if there are no grounds for application of expedited procedure, except due to insufficient evidence;  
[RT I 2006, 15, 118 - entry into force 14.04.2006]

2) a judgment of conviction or acquittal with regard to the accused.  
[RT I 2006, 15, 118 - entry into force 14.04.2006]

(2) If the court makes a judgment of conviction by expedited procedure, the court shall reduce the amount of compensation levies specified in subsection 179 (1) of this Code but not more than by a half.  
[RT I 2006, 15, 118 - entry into force 14.04.2006]

**Chapter 10 COURT PROCEDURE IN COUNTY COURTS**  
**[RT I 2005, 39, 308 - entry into force 01.01.2006]**

**Division 1 Pre-Trial Proceedings**

**§ 257. Prosecution**

(1) A judge who receives a statement of charges shall verify the jurisdiction over the criminal matter pursuant to the provisions of §§ 24-27 of this Code and shall prosecute the accused by a ruling.

(2) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) In criminal matters sent to court pursuant to general procedure where holding in custody is applied as a preventive measure, a judge shall decide prosecution not later than on the working day preceding the end of the term of holding in custody.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

**§ 257<sup>1</sup>. Preliminary hearing**

(1) A court shall adjudicate organisational issues in a preliminary hearing before the commencement of a court hearing, if any of the grounds specified in § 258 of this Code exists.

(2) If any of the grounds specified in clause 258 (1) 2) or 3) of this Code becomes evident, a judge shall hold a preliminary hearing for deciding on the prosecution of the accused.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 258. Grounds for holding preliminary hearings**

(1) A preliminary hearing shall be held in order to:

1) decide on alteration or annulment of preventive measures or to review a request for application of preventive measures;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) decide on return of the statement of charges to the Prosecutor's Office if the statement is not in compliance with the requirements of § 154 of this Code;

3) decide on termination of the criminal proceedings on the bases provided for in clauses 199 (1) 2)-6) of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

4) planning of a court hearing of a criminal matter sent to court pursuant to the general procedure and adjudication of the requests of the parties to a court proceeding;

[RT I 2008, 32, 198 - entry into force 15.07.2008]

5) resolving other issues if a judge deems it necessary to hold a preliminary hearing.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

(2) Summonses to a preliminary hearing shall be served on the parties to the court proceedings pursuant to the procedure provided for in §§ 163-169 of this Code.

(3) If necessary, a court shall examine the materials of a criminal file.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 259. Participants in preliminary hearing**

(1) A preliminary hearing shall be held by a judge sitting alone.

(2) The participation of a prosecutor and a criminal defence counsel in a preliminary hearing is mandatory.  
[RT I 2008, 32, 198 - entry into force 15.07.2008]

(3) If necessary, other participants in the proceeding may be summoned to a preliminary hearing. If the preliminary hearing is held in order to decide on acceptance of a civil action or to prepare for the hearing of a civil action, the victim and the civil defendant or the representatives thereof are summoned to the preliminary hearing.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) Minutes shall be taken of a preliminary hearing by a court session clerk.

(5) A judge may organise the participation of the persons specified in this subsection in a preliminary hearing by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 260. Consequences of failure to appear at preliminary hearing**

(1) If a prosecutor fails to appear at a preliminary hearing, the hearing shall be adjourned and the Prosecutor's Office shall be notified of the failure of the prosecutor to appear.

(1<sup>1</sup>) If a criminal defence counsel fails to appear at a preliminary hearing, the hearing shall be adjourned. If the counsel is an advocate, the leadership of the Bar Association shall be notified of the counsel's failure to appear.  
[RT I 2008, 32, 198 - entry into force 15.07.2008]

(2) The failure of other parties to the court proceedings to appear shall not hinder the preliminary hearing, unless the court decides otherwise. If the victim or his or her representative summoned to the preliminary hearing fail to appear at the preliminary hearing, the court may refuse to hear the civil action by a ruling. In such case the court shall primarily take into consideration to what extent postponement of a preliminary hearing would delay the hearing of the criminal matter and the reasons of the failure of the victim or his or her representative to appear at the preliminary hearing.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]



**§ 261. Procedure for conduct of preliminary hearings**  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) After opening a preliminary hearing, the judge shall:

- 1) announce the title of the criminal matter prepared for a court hearing and the issues to be adjudicated at the preliminary hearing and, in the case of involvement of an interpreter or translator, perform the acts required in subsection 161 (3) of this Code;
- 2) ascertain who has appeared at the preliminary hearing and, if necessary, identify of the persons who have appeared;
- 3) adjudicate the petitions of challenge.

(2) Following the application of a preliminary hearing, the judge shall explain the grounds for holding the hearing and hear the opinions of the parties who have appeared regarding the issues to be adjudicated in the preliminary hearing.

(3) For prosecution, a judge shall plan the court hearing in cooperation with the parties to the court proceedings in such a manner which helps to avoid unnecessary loss of time, repeated summoning of persons to court and adjournment of a court session.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

**§ 262. Competence of judge in preliminary hearing**

In a preliminary hearing, a judge may make rulings on:

- 1) the prosecution of the accused;
- 2) the return of the statement of charges to the Prosecutor's Office if the statement of charges is not in compliance with the requirements of § 154 of this Code;  
[RT I 2004, 46, 329 - entry into force 01.07.2004]
- 3) the termination of the criminal proceeding in the cases specified in clauses 199 (1) 2-6) of this Code;  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
- 4) the application or alteration of preventive measures;
- 4<sup>1</sup>) the acceptance of the civil action or for grant of a term for the elimination of deficiencies of the civil action or refusal to hear the civil action;  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
- 5) the adjudication of the requests of a participant in the proceedings.  
[RT I 2008, 32, 198 - entry into force 15.07.2008]

**§ 263. Ruling on prosecution**

A ruling on prosecution shall set out:

- 1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth, citizenship, education, native language and the place of work or educational institution of the accused;  
[RT I 2004, 46, 329 - entry into force 01.07.2004]
- 2) the number of the criminal matter;
- 3) the time and place of the court session, if known. If a court session is planned to be held on

several days, all the days of court hearing shall be indicated as the time of the court session;  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 4) whether the criminal matter will be heard in a public court session or in camera;
- 5) the given names and surnames of the persons to be summoned to the court session and the time of appearance of the persons in the court hearing, if known;  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
- 6) hearing of a witness or victim under a fictitious name pursuant to subsection 67 (5) of this Code;
- 7) application or alteration of preventive measures;
- 8) adjudication of requests.

### **§ 263<sup>1</sup>. Decision on acceptance of civil action**

(1) If a civil action is sent to a court together with the statement of charges, the court shall make a ruling on acceptance of the civil action or for grant of a term for the elimination of deficiencies of the civil action or refusal to hear the civil action. If necessary, the court shall grant a term for the accused, counsel and civil defendant for submission of a written response to the civil action.

(2) Regardless of whether any other grounds provided by law exist for refusal to hear a civil action, a court shall refuse to hear a civil action if the person in whose interests the civil action was filed is not a victim in the criminal matter or if the civil action was not filed through a Prosecutor's Office.

(3) If a court refuses to hear a civil action, the court shall explain to the victim pursuant to which procedure the victim can file his or her claim.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 264. Involvement of probation officers**

(1) If necessary, a judge shall assign the head of the probation supervision department with the duty to appoint a probation officer.

(2) A judge shall verify whether a pre-trial report has been prepared in the criminal matter of the accused who is a minor. At the order of the judge, a probation officer shall amend a pre-trial report.

(3) At the order of a judge, a probation officer shall ascertain the facts relevant to the imposition of duties or community service and submit to the court a pre-trial report which shall be included in the materials of the criminal matter.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

**§ 265. Summoning of prosecutor, participants in proceedings, witnesses, qualified persons and experts to court session**

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) A prosecutor and participants in the proceedings shall be summoned to a court session by a summons pursuant to the procedure provided for in §§ 163-169 of this Code.

(2) A court shall send a copy of a ruling on prosecution to the accused, the Prosecutor's Office and the counsel together with a summons.

(3) Upon summoning of a witness, a qualified person or an expert the court shall take into account the course of court hearing determined in a preliminary hearing.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 265<sup>1</sup>. Continuation of preliminary hearing by court hearing**

(1) The court hearing of a criminal matter sent to court pursuant to general procedure may be conducted immediately after the preliminary hearing if all the persons connected to the court proceedings are able to appear in court by the time of the preliminary hearing, if this would ensure uninterrupted and immediate court proceedings and if the parties to the court proceedings and the court consent thereto.

(2) The parties to the court proceedings and the court may agree upon the court hearing immediately following the preliminary hearing before the preliminary hearing or in the preliminary hearing.

(3) In the case specified in this section, the victim, civil defendant, third party, their representatives and the accused shall be summoned to court by the Prosecutor's Office pursuant to the procedure provided for in §§ 163-169 of this Code.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

**Division 2 General Conditions for Court Hearing**

**§ 266. Chairing of and order in court sessions**

(1) A court session shall be chaired by a judge. In the criminal matters specified in subsections 18 (1) and (3) of this Code, the session shall be chaired by a presiding judge.

(2) The parties to a court proceeding and other persons present in a courtroom shall comply with the orders of the judge without argument. When the court panel enters or leaves the courtroom, the persons present in the room shall rise.

(3) All persons shall rise when addressing the court. With the permission of the judge, a person may sit when addressing the court.

(4) A judge has the right to limit the number of the persons present in the courtroom if the room is overcrowded.

(5) Witnesses, qualified persons and experts not yet interrogated or heard in the examination by a court may stay in the courtroom only with the permission of the court. The court may issue orders in order to prevent communication between persons who have been heard or interrogated and who have not been heard or interrogated.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 267. Measures applicable to persons who violate order in court session**

(1) If an accused violates order in a court session and fails to comply with the orders of a judge, the following measures may be applied on the basis of a court ruling:

1) removal of the accused from the courtroom temporarily or for the duration of the whole session;

2) imposition of detention for up to ten days or a fine on the accused.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) When an accused is asked to return to the courtroom, he or she shall be notified of the court activities performed in his or her absence.

(3) If an accused is removed from the courtroom for the duration of a whole session due to violation of order, a copy of the court judgment or, in the case provided for in subsection 315 (4) of this Code, of the conclusion of the court judgment shall be served on the accused immediately after pronouncement of the court judgment.

(4) If a prosecutor, representative or counsel violates order in a court session, fails to comply with the orders of a judge or acts in contempt of the court, a fine may be imposed on him or her based on a court ruling.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4<sup>1</sup>) A court may remove a counsel, representative or prosecutor from the proceedings, if the person is not able to act in accordance with the requirements in court or, in the course of the court proceeding, has shown himself or herself as dishonest, incompetent or irresponsible, and if he or she obstructs, in bad faith, the just and expeditious hearing of a matter or repeatedly fails to comply with the order of the court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4<sup>2</sup>) Upon application of the provisions of subsections (4) and (4<sup>1</sup>) of this section, a court shall immediately propose to the party to the court proceedings to select a new representative or counsel or to the Prosecutor's Office to appoint a new prosecutor by the date determined by the court. The court shall inform respectively the leadership of the Bar Association or the Prosecutor's Office of application of the provisions of subsections (4) and (4<sup>1</sup>) of this section to an advocate and prosecutor.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If any other participant in a proceeding or a person present in a courtroom violates order in a court session, fails to comply with the orders of the judge or acts in contempt of court, he or she may be removed from the courtroom, or a fine or detention for up to five days may be imposed on him or her on the basis of a court ruling.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) If there are elements of a criminal offence in the conduct of a person who violates order, the prosecutor shall initiate criminal proceedings with regard to him or her, or the court shall send a report on the criminal offence to the police. If necessary, the court shall detain such person as a suspect on the basis of the minutes.

(7) A judge performing his or her functions in the court outside a court session may, by a court ruling, impose detention for up to five days or a fine on a person who fails to comply with the orders of the judge or acts in contempt of court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(8) At the request of a person who has violated order, the court ruling in the form of an excerpt from the minutes of the court session shall be submitted to him or her.

### **§ 268. Limits of court hearing**

(1) A court shall hear a criminal matter with regard to the accused only pursuant to the statement of charges, unless otherwise provided for in this section.

(2) A prosecutor may amend or supplement the charges until the completion of examination by court in a court hearing by submitting the amendments and supplements to a court and other parties to the court proceedings in writing. If the text of the charges or the statement of charges proves to lack clarity due to amendment or supplementation of the charges, the court may require, on its own if, or at the request of a party to the court proceeding a new consolidated text of the charges or the statement of charges.

(3) Amendment of charges for the purposes of subsection (2) of this section is not the amendment or correction of presented factual or judicial allegations without amending the main facts which constitute the charges or the legal assessment of the criminal offence or partial withdrawal of charges.

(4) In the case of amendment or supplementation of the charges, the court shall call a recess or adjourn the court hearing at the request of the accused or the counsel in order to ensure the right of defence. If this is necessary for ensuring the right of defence, the court may, at the request of the accused or the counsel, call a recess or adjourn the court hearing even in the case of making the supplements and corrections specified in subsection (3) of this section.

(5) In convicting the accused, the court shall not rely on facts which substantially differ from the facts relating to the subject of proof described in the charges or amended or supplemented charges. In making a judgment, the court shall not rely on facts which have not been discussed in the proceedings.

(6) A court may amend the legal assessment of a criminal offence based on the facts established during examination by the court, if the accused has been sufficiently able to defend himself or herself against such legal assessment. If necessary, the court shall propose to the parties to the court proceeding to state their positions on the legal assessment not contained in the statement of charges. The court shall also give the parties an opportunity to present their positions in the case aggravating circumstances not specified in the statement of charges or circumstances which cause the application of non-punitive sanctions become evident. At the request of the accused or the counsel, the court shall call a recess in order to ensure the right of defence.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **§ 268<sup>1</sup>. Prohibition to hear several criminal matters simultaneously**

(1) Members of the court panel of a county court hearing a criminal matter pursuant to the general procedure shall not participate in the court hearing of another criminal matter sent to court pursuant to the general procedure before a judgement is made in this matter.

(2) A court may derogate from the provisions of subsection (1) of this section in the following cases:

1) the court hearing of the criminal matter shall be inevitably adjourned for more than two months in the cases specified in subsection (3) of this section and the hearing of another criminal matter pursuant to the general procedure does not prevent the continuation of the adjourned court hearing pursuant to the procedure provided for in § 15<sup>1</sup> of this Code;

2) in a criminal matter referred to the court later, a person is accused of commission of a criminal offence at the time he or she was a minor;

3) in a criminal matter referred to the court later, taking into custody is applied with regard to the accused as a preventive measure and the court deems it necessary to continue the application of the above-mentioned preventive measure;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

4) in order to join a criminal matter accepted for hearing previously for a joint proceeding;

5) the court hearing of a criminal matter referred to the court later shall be commenced pursuant to § 265<sup>1</sup> of this Code;

6) the criminal matter was sent to court in the proceedings for administration of coercive psychiatric treatment;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

7) in the case provided for in subsection 276<sup>1</sup> or 276<sup>2</sup> of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

8) with a written permission of the chairman of the court in the case of increased public interest, if the derogation from the provisions of subsection (1) of this section in the interests of administration of justice.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) In the case specified in clause (2) 1) of this section, the hearing of another criminal matter may be commenced, if the court hearing of the criminal matter commenced previously is adjourned on at least one of the following bases:

1) due to a long-term illness of a person summoned to court if it is impossible to hear the matter without his or her participation;

2) the accused has failed to appear in a court hearing, it is impossible to take the accused to the court within a reasonable period of time and there are no bases provided for in § 269 of this Code for hearing the criminal matter in the absence of the accused;

3) international legal assistance shall be used for taking evidence in the criminal matter;

4) if an expert assessment is ordered in the criminal matter;

5) a ruling on application of conciliation proceedings has been prepared in the criminal matter.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) Court hearing for the purposes of this section is the activity of a court provided for in Divisions 2-6 of Chapter 10 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 269. Participation of accused in court hearing**

(1) A criminal matter shall be heard in the presence of the accused, taking into account the exceptions specified in this section and § 276<sup>1</sup> of this Code. If the accused fails to appear, the court hearing shall be adjourned. Participation of the accused in the pronouncement of the court judgment is not mandatory.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) As an exception, a criminal matter may be heard in the absence of the accused if:

1) he or she has been removed from the courtroom on the basis and pursuant to the procedure provided for in subsection 267 (1) of this Code;

2) his or her whereabouts in the Republic of Estonia cannot be established, there is sufficient reason to believe that he or she is outside the territory of the Republic of Estonia and absconds court proceedings, reasonable efforts have been made for finding him or her and court hearing is possible without the him or her;

3) after his or her interrogation at a court session, the accused has caused himself or herself to be in a state which precludes his or her participation in the court hearing, and court hearing is possible without him or her;

4) it is complicated to take him or her to the court, and he or she has consented to participation in the court hearing in audio-visual form pursuant to clause 69 (2) 1) of this Code.

5) he or she has submitted a reasoned request to the court to hear the matter without his or her participation and the court is convinced that it is possible to defend the rights of the accused without his or her participation in the court hearing and the absence of the accused from a court session is not contrary to the public interests.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2<sup>1</sup>) In satisfying the request of the accused on the basis specified in clause (2) 5) of this subsection, the court shall determine in which part of the court hearing the participation of the accused is not mandatory. Participation of the accused in the acts specified in §§ 285 and 298-304 of this Code is mandatory.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) If the accused absconds court proceedings or if the hearing of the criminal matter is hindered by a serious illness of the accused due to which he or she is not able to appear in court, the court

may make a ruling on the conduct of separate proceedings concerning his or her charges, adjourn the hearing of the severed charges until apprehension or recovery of the accused, and continue the court hearing of the criminal matters concerning the other accused.

(4) In court hearing of a criminal matter involving several accused persons, the hearing of those criminal offences included in the criminal matter which do not involve a specific accused may be conducted without the presence of such accused and his or her criminal defence counsel.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

### **§ 270. Participation of prosecutors and counsels in court sessions**

(1) The participation of a prosecutor in a court session is mandatory. If a prosecutor fails to appear, the court hearing shall be adjourned and the Prosecutor's Office shall be notified of such failure.

(2) If a counsel fails to appear in a court session, the court hearing shall be adjourned. If the counsel is an advocate, the leadership of the Bar Association shall be notified of the counsel's failure to appear.

### **§ 271. Court hearing in absence of witness, victim, qualified person or expert**

(1) If a witness, victim, qualified person or expert fails to appear in a court session, the court shall hear the opinions of the parties to the court proceeding and thereafter make a ruling on the continuation or adjournment of the court hearing.

(2) If a court finds that a civil action cannot be heard in the absence of the victim, the hearing of the civil action in the criminal proceeding shall be refused and the victim shall be explained his or her rights to file the same action pursuant to civil procedure.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 272. Court hearing in absence of civil defendant**

(1) The failure of a civil defendant to appear in a court session shall hinder neither the court hearing nor the hearing of the civil action.

(2) If a court finds that a civil action cannot be heard in the absence of the civil defendant, the hearing of the civil action in the criminal proceeding shall be refused.

### **§ 273. Adjournment of court hearing**

(1) The court hearing of a criminal matter shall be adjourned by a ruling if:

1) a person not specified in §§ 269-271 of this Code has failed to appear in the court session and the participation of such person is necessary;

2) it is necessary to take additional evidence;

2<sup>1</sup>) comprehensive, thorough and objective hearing of the criminal matter is complicated due to suspicion of another criminal offence which became evident in the court session;



[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

3) continuation of the court session is impossible for another reason.

(2) Before the adjournment of a court hearing, the witnesses, victims, qualified persons, experts and civil defendants who have appeared in the court session may be heard and they need not be summoned to another court session.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) If the court hearing of a criminal matter is adjourned due to the failure of a participant in the proceedings or another person to appear and the court does not establish any of the good reasons specified in subsection 170 (2) of this Code, the court shall apply the measures provided for in § 138 of this Code. A court may decide not to apply the measures provided for in § 138 if it deems necessary to apply the measures provided for in § 139 or 140 of this Code.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

(4) If a counsel is not familiar with the criminal matter, the court may adjourn the court session for up to ten days, order that the expenses relating to the criminal proceedings due to the adjournment of the session be paid by the counsel, and notify the leadership of the Bar Association of such conduct of the counsel.

(5) In the case specified in subsection (1) of this section, the court shall, if possible, specify immediately the time for continuation of the court hearing. The court hearing of a criminal matter shall be adjourned for as short term as possible and the hearing of the adjourned criminal matter shall be continued in compliance with the principle of uninterrupted proceeding.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

#### **§ 274. Termination of criminal proceedings in court session**

(1) If circumstances which pursuant to clauses 199 (1) 2)-6) of this Code preclude criminal procedure are ascertained in the court hearing of a criminal matter, if the criminal proceedings shall be terminated in connection with expiry of reasonable time of proceedings on the basis provided for in § 274<sup>2</sup> of this Code or if, in the case specified in clause 199 (1) 1) of this Code, the act of the accused comprises the necessary elements of a misdemeanour, the court shall terminate the criminal proceedings by a ruling. In other cases on the grounds specified in subsection 199 (1) 1) of this Code, a judgment of acquittal shall be made.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Criminal proceedings shall not be terminated if continuation of the proceedings is for the purposes of rehabilitation requested by:

1) the accused in the cases provided for in clause 199 (1) 2), 3) or 6) of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) a person close to the accused, in the case provided for in clause 199 (1) 4) of this Code.

(3) If criminal proceedings are terminated with regard to a minor who at the time of commission of the unlawful act was not capable of guilt on the grounds of age or who can be influenced without the imposition of a punishment or the application of a sanction prescribed in § 87 of the

Penal Code, subsection 201 (1) or (2) of this Code is applied respectively.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

(4) If the hearing of a civil action is refused due to termination of the criminal proceedings, the action may be filed pursuant to the procedure provided for in the Code of Civil Procedure.

(5) A court may terminate criminal proceedings on the bases provided for in § 202 or 203<sup>1</sup> of this Code at the request of the prosecutor or the accused.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(6) A court may terminate criminal proceedings on the bases provided for in § 204 of this Code at the request of the prosecutor.

### **§ 274<sup>1</sup>. Request to expedite court proceedings**

(1) If proceedings have been conducted by a court in a criminal matter for at least nine months and the court fails to perform a necessary procedural act without a good reason, and also fails to appoint a session in due time to ensure the conducting of the court proceedings within a reasonable period of time, or if it is evident that the time planned for hearing the matter does not ensure the hearing without interruptions, a party to the court proceeding may request that the court implement a suitable measure in order to expedite the conclusion of the criminal proceedings.

(2) If a court considers the request to be justified, the court shall rule within thirty days as of receipt of the request on implementation of such measure which presumably allows to conclude the court proceedings within a reasonable period of time. The court shall not be bound by the request in choosing the measure.

(3) Dismissal of a request or implementation of a measure which is different from the one set out in the request to expedite court proceedings shall be formalized by a reasoned ruling within the term specified in subsection (2) of this section. The ruling by which implementation of the measures set out in the request to expedite the court proceedings is dived need not be reasoned.

(4) A new request may be submitted six months after the entry into force of a court ruling made concerning the previous request, except in the case the request is submitted for the reason that the court conducting the proceedings in the matter failed to implement on time the measures prescribed in the ruling.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 274<sup>2</sup>. Termination of criminal proceedings in court session in connection with expiry of reasonable time of processing**

(1) If it is established in a court hearing that a criminal matter cannot be adjudicated within a reasonable time of proceedings and violation of the right of the accused to hearing of the criminal matter within a reasonable period of time cannot be cured in any other manner, the court

may, with the consent of the accused, terminate the criminal proceedings, taking into account the circumstances provided for in § 205<sup>2</sup> of this Code.

(2) The chairman of the court shall be informed of the ruling specified in subsection (1) of this section by which the criminal proceedings are terminated in connection with expiry of the reasonable time of proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 275. Decision concerning application of preventive measures**

(1) In the court hearing of a criminal matter, the court has the right to choose, by a ruling, a preventive measure or alter or annul the preventive measures previously chosen with regard to the suspect or accused.

(2) If the accused is held in custody in the proceedings conducted by a county court, the court shall verify the reasons for holding in custody on its own initiative at least once within six months and prepare a written ruling on it.

(3) When verifying the reasons for holding in custody on its own initiative, the court shall ascertain, before making a ruling, in a court session or in a written proceeding the positions of a prosecutor, counsel and, if necessary, of the accused.

(4) The chairman of the court shall be informed of the ruling specified in subsection (2) of this section by which the holding in custody of the accused is declared continually justified.

(5) If a court has chosen, during a court hearing, holding in custody as a preventive measure with regard to a person who has been declared a fugitive or with regard to the accused who stays outside the territory of the Republic of Estonia, without interrogating the person, the person held in custody shall be taken immediately and not later than within 72 hours from the apprehension of the fugitive or bringing of the accused to Estonia for interrogation before the court hearing the matter or, if this is impossible, before a preliminary investigation judge.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 276. Formalisation of court rulings**

**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A court shall formalise the termination of criminal proceedings, compelled attendance, the choice, alteration or annulment of preventive measures, petitions of challenge, ordering of expert assessments and removal of the accused from the courtroom by a ruling made pursuant to the provisions of § 145 of this Code.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(3) Other court rulings shall be formalised as procedural documents and included in the criminal file, or shall be made orally and recorded in the minutes of the court session.  
[RT I 2004, 54, 387 - entry into force 01.07.2004]

### **§ 276<sup>1</sup>. Preliminary hearings**

A court may hold, in order to decide on alteration or annulment of preventive measures, hearing of a request for application of preventive measures, hearing of a request to expedite court proceedings, to decide on other organisational issues of court proceedings or to adjourn a request of a party to the court proceeding, a preliminary hearing pursuant to the provisions in this Code concerning preliminary hearings, if such issues cannot be adjudicated within a reasonable period of time in court session in the course of a court hearing.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 276<sup>2</sup>. Deposition of testimony after sending statement of charges to court**

(1) If circumstances become evident, after sending the statement of charges to court, which allow to conclude that later hearing of a witness in the court hearing of a criminal matter may be impossible or the witness may be influenced to give false testimony, a prosecutor, counsel or accused may request from the court, before examination by the court or during recess of court sessions, deposition of the testimony of the witness.

(2) The testimony shall be deposited at the court hearing the matter pursuant to the procedure prescribed in subsections 69<sup>1</sup> (2)-(6) of this Code.

(3) If a party to the court proceeding wishes to deposit the testimony of a witness who is not specified in the statement of charges or statement of defence as the person summoned to court or questioned in pre-trial procedure, the court may satisfy the request under the conditions specified in § 286<sup>1</sup> of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 276<sup>3</sup>. Preparation for cross-examination**

A party to the court proceeding, when preparing for cross-examination, may communicate with the person whom such party wants to hear or interrogate in a court session with the consent of the latter.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Division 3 Application of Court Session**

### **§ 277. Opening of court session**

(1) After opening a court session, the judge shall:

- 1) announce the title of the criminal matter to be heard;
- 2) ascertain who of the parties to the court proceeding have appeared in the session;

3) ascertain whether the persons absent have received their summonses and why they have failed to appear.

(2) The clerk of the court session shall report to the court on whether the witnesses, experts, qualified persons, translators and interpreters summoned have appeared in the court session.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) A court may request that a party to the court proceedings submit the documents specified in subsection 165 (5) of this Code in order to prove the service of a summons. The service of a summons may be also proved by an oral or written confirmation of a person who is not the party who served the summons.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

### **§ 278. Translators and interpreters in court sessions**

(1) If an interpreter or translator participates in a court session, the court shall announce his or her name. In the case of a staff interpreter or translator, it shall be explained that he or she has taken the oath of office and is aware of a criminal punishment for a knowingly false interpretation or translation.

(2) The judge shall explain the rights provided for in subsection 161 (5) of this Code to a non-staff interpreter or translator.

(3) Before a non-staff interpreter or translator commences interpretation or translation, he or she shall be warned about a criminal punishment for a knowingly false interpretation or translation.

### **§ 279. Identification of accused and explanation of rights and obligations to accused**

(1) A judge shall identify the accused and ascertain whether he or she has received a copy of the statement of charges.

(2) If the accused has not received a copy of the statement of charges or of the ruling on prosecution, the court shall serve such documents on the accused and, at the request of the accused or the counsel, grant a term for examination of the documents or, if necessary, adjourn the court session.

(3) The rights and obligations provided for in subsection 35 (2) of this section shall be explained to the accused.

### **§ 280. [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

### **§ 280<sup>1</sup>. Identification of civil defendant and third party**

A judge shall identify a civil defendant and third party and ascertain their relationships with the accused and victim.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 281. Explanation of rights and obligations to victims, civil defendants and third parties**

A judge shall explain the rights and obligations provided for in §§ 38, 40 and 40<sup>2</sup> of this Code to victims, civil defendants and third parties.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 282. Verification of authority of counsels and representatives**

A judge shall verify the authority of counsels and representatives participating in a court hearing.

### **§ 283. Explanation of rights and obligations to experts**

If an expert assessment is arranged outside a state forensic institution, the judge shall explain the rights and obligations provided for in subsections 98 (1) and (2) of this Code to the expert. An expert who has not been sworn in shall be warned about a criminal punishment for rendering a knowingly false expert opinion and his or her signature shall be obtained in proof thereof unless this has been done already in the same criminal matter.

### **§ 284. Announcing composition of court, explanation of right to file petitions of challenge, and adjudication of requests**

(1) A judge shall announce the composition of the panel of the court and the names of the prosecutor, counsels, representatives, experts, qualified persons, translators, interpreters and the clerk of the court session and explain the right to file petitions of challenge on the bases and pursuant to the procedure provided for in §§ 49-59, 97, 157 and 162 of this Code to the parties to the court proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) After adjudication of petitions of challenge, a judge shall ask whether the parties have other requests before examination by the court.

(3) The court shall adjudicate requests by a ruling.

## **Division 4 Examination by Court**

### **§ 285. Commencement of examination by court**

(1) A judge announces the commencement of examination by the court and makes a proposal to the prosecutor to make an opening speech.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

(2) The prosecutor gives an overview of the charges and the evidence which corroborates the charges and which the prosecutor requests to be examined by the court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) After the presentation of the prosecutor, the judge shall ask whether the accused has understood the charges and whether he or she confesses thereto. Thereafter, the judge shall make a proposal to the counsel to present his or her opinion as to whether the charges are justified.

(4) If a civil action was filed in the criminal matter, the court shall announce the claim filed in it.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 286. Order of examination of evidence**

(1) Examination of evidence is commenced by examination of the evidence submitted by the prosecutor, followed by the evidence submitted by the counsel and other parties to the court proceeding.

(2) The parties to a court proceeding may agree between themselves that evidence is examined in a different order than the order prescribed in subsection (1) of this section. In such case, the court shall determine the order of examination of evidence according to the agreement of the parties to the court proceeding by a ruling which shall be recorded in the minutes of the court session.

### **§ 286<sup>1</sup>. General conditions for acceptance of evidence**

(1) The court shall accept and organise the taking of only such evidence which has relevance to the matter.

(2) In addition to the cases provided for in subsection (1) of this section, the court may refuse to accept evidence and return the evidence, or refuse to take evidence, if:

1) the evidence is not accessible and, above all, if the witness's data or location of a document is unknown, or if the relevance of the evidence is disproportionate to the time necessary for taking the evidence or other difficulties related thereto;

2) the evidence is not listed in the statement of charges or statement of defence and the party to the court proceeding fails to state a good reason why the person was unable to submit the request earlier;

3) the need for the presenting or taking of evidence is not substantiated;

4) any of the bases for refusal to accept evidence specified in this section exists.

(3) A court makes a ruling on refusal to accept evidence or refusal to take evidence which shall be recorded in the minutes of the court session.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 286<sup>2</sup>. Earlier cross-examination in this or another criminal matter**

(1) Testimonies given by a person in earlier court hearing in the same criminal matter is admissible as evidence under the same circumstances as testimonies that the person would give in a court session in proceedings in a criminal matter.

(2) Testimonies given by a person in court hearing in another criminal matter is admissible as evidence under the same circumstances as deposited testimonies or in the case specified in § 294 of this Code.

(3) Testimony given during earlier cross-examination is admissible as evidence, except in the case a higher court has excluded it due to violations of cross-examination or other procedural provisions.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 287. Hearing of witnesses**

(1) Section 288 of this Code applies to the hearing of witnesses.

(2) A witness shall be heard in the absence of the witnesses who have not been heard.

(3) [Repealed - RT I 2008, 32, 198 - entry into force 15.07.2008]

(4) A witness bearing a fictitious name shall be heard by telephone pursuant to the procedure provided for in subsection 67 (5) and clause 69 (2) 2) of this Code. The participants in the proceeding shall submit their questions to the person bearing a fictitious name through the judge.

(5) At the request of a party or on its own initiative, the court may allow a telehearing to be conducted pursuant to the procedure provided for in § 69 of this Code or use a partition to hide the witness from the accused.

(6) Witnesses who have been heard shall leave the courtroom only with the permission of the court.

### **§ 287<sup>1</sup>. Application of hearing**

(1) A judge shall identify a witness and ascertain the relationship between the witness and the accused and the victim and the relationship between the victim and the accused.

(2) The personal data of a witness shall not be disclosed if the witness has been declared anonymous pursuant to § 67 of this Code in order to ensure the safety of the witness.

(3) At the beginning of hearing a witness, the court explains to the witness the legal bases for refusal to give testimony, the obligation to speak the truth in court, and obtains the signature of the witness to this effect.

(4) A judge shall warn a witness of at least fourteen years of age that he or she shall be punished pursuant to criminal procedure for his or her refusal to give testimony without any legal basis or for giving knowingly false testimony.

(5) A witness who has been acquitted or convicted in the same criminal offence as a joint principal offender or an accomplice shall not be warned about a criminal punishment and he or



she shall be explained his or her right to refuse to give testimony.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 288. Cross-examination**

(1) In a cross-examination, the party to the court proceeding at whose request the witness has been summoned to the court is the first to examine the witness. If several participants in the proceeding have requested a witness to be summoned and they fail to reach an agreement concerning the right of first examination, the court shall determine who is the first to examine the witness.

(2) It is prohibited to pose leading questions during a first examination without the permission of the court. A first examination is followed by the second examination by the counter-party.

(3) Leading questions may be posed in the second examination in order to verify the testimony given in the first examination. In the second examination, leading questions shall not be posed concerning new facts without the permission of the court.

(4) The person who was the first to examine a witness may examine the witness again in order to clarify the answers given in the second examination. Leading questions may be posed without the permission of the court only concerning the new facts treated in the second examination.

(5) A court may, at the request of a party to the court proceeding, overrule prohibited or irrelevant questions posed to a witness during cross-examination. The court may, on its own initiative, overrule questions which harm the witness' dignity.

(6) The court has the right to pose questions to a witness who has been cross-examined.

(7) Taking into consideration the mental or physical condition of a witness, the court may prohibit cross-examination and examine the witness on its own initiative or on the basis of the written questions prepared by the parties to the court proceeding.

(8) § 66 and subsections (3) and (6) of this Code apply to cross-examination.

(9) During cross-examination, a party to the court proceeding may:

- 1) use visual aids which are not evidence but help to present the testimony of the witness without being misleading;
- 2) submit evidence and documents to the court and question the witness about their authenticity, origin and interconnection thereof;
- 3) allow the witness who does not remember the facts relating to a subject of proof to examine a document or another object which may help the witness to recall the facts regardless of the admissibility of such documents or objects as evidence.

(10) If a witness refuses during cross-examination to answer the question of a party to the court proceeding, with the exception of the case prescribed in subsection (5) of this section, the court interrupts the cross-examination and decides on the use of the earlier testimony given by the

witness as evidence at the request of the party on the basis of clause 291 (1) 2) of this Code regardless of the content of the testimony hitherto given in the cross-examination. In the case specified in this subsection, testimonies obtained in interrupted cross-examinations are evidence only with the consent of the parties.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 288<sup>1</sup>. Leading questions**

(1) A court may allow to pose leading questions during the first examination if the witness is clearly hostile with respect to the person who examines the witness first, clearly tries to hide the truth or absconds from replying to questions.

(2) For the purpose of a smoother progress of the hearing of a witness, a court may allow to pose leading questions in other cases if:

- 1) the parties consent to thereto;
- 2) the question pertains to a fact or contains a statement which is not contested;
- 3) the question is necessary to for making an introduction to the object of questioning;
- 4) due to the age or state of health of the witness it is difficult for him or her to understand questions which are not leading;
- 5) the witness states that he or she does not remember well the circumstances which are the object of the questioning.

(3) If a party has not applied from the court the exclusion of a question before commencement of replying to it, the party shall be deemed to have agreed to the question and the court need not give a separate permission for leading questions.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 288<sup>2</sup>. Rights of victims, civil defendants, third parties and accused in cross-examination**

(1) A victim, civil defendant, third party and accused are the first to examine a witness requested by them if the prosecutor or a counsel has not requested the summoning of the same person.

(2) In the cases not specified in this section, a victim, civil defendant, third party and accused may pose questions to a witness after the cross-examination with the permission of the court, if dismissal of the request would significantly damage the interests of the participant in the proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 289. Verification of credibility of witnesses**

(1) In order to verify the credibility of the testimony of a witness, the court may, at the request of a party to the court proceeding, order that the testimony given by the witness in pre-trial procedure be disclosed during the cross-examination if such testimony is in conflict with the testimony given in the cross-examination.

(2) Testimony given by a witness in pre-trial procedure concerning which the witness has already given testimony in cross-examination may be disclosed.

(3) In order to verify credibility, other documents or data recordings which contain earlier statements of the witness and which are in conflict with the testimony given during cross-examination may be also disclosed during cross-examination.

(4) For verification of credibility of a witness, persons to whom the witness has previously made a statement which is in conflict with the testimony given in cross-examination may be heard or interrogated.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 289<sup>1</sup>. Earlier testimony of witness in court as evidence with possibility of cross-examination**

(1) A court may accept the earlier testimony of a witness used on the basis specified in subsection 288 (9) of this Code for proving the facts relating to the subject of proof, if:

- 1) the testimony is deposited; or
- 2) the testimony concerns the damage caused to the witness by the criminal offence subject to proceedings, the testimony was given immediately after the commission of the criminal offence and there is reason to believe that the person remembered such facts considerably better at the time of giving the testimony than during the court proceedings.

(2) A court shall accept the earlier testimony disclosed on the basis specified in § 289 of this Code for establishment of the facts relating to a subject of proof, if such testimony has been deposited.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 290. Specifications concerning hearing of witnesses who are minors**

(1) In the hearing of a witness under 14 years of age, he or she shall not be cross-examined.

(2) A court may involve a child protection official, social worker, teacher or psychologist in the hearing of a witness under fourteen years of age who may question the witness with the permission of the judge.

[RT I, 11.07.2013, 1 - entry into force 01.09.2013]

(3) A judge shall make a proposal to a witness who is a minor of less than 14 years of age to tell the court everything he or she knows concerning the criminal matter.

(4) After a witness who is a minor of less than 14 years of age has given testimony, he or she shall be examined by the prosecutor and counsel in the order determined by the court. The accused may pose questions to the witness through the counsel.

(5) The court shall overrule inadmissible and irrelevant questions. With the permission of the court, leading questions may be posed to a witness.

(6) Taking into consideration the mental or physical condition and the age of a witness, the court may suspend the questioning by the parties and examine the witness on its own initiative or on the basis of the written questions prepared by the parties to the court proceeding.

(7) If the presence of a minor is not necessary after he or she has been heard, the court shall ask him or her to leave the courtroom.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 290<sup>1</sup>. Specifications concerning testimony given in pre-trial procedure by witnesses who are minors**

(1) A court may not summon a minor at the request of a party to the court proceeding and allow to submit the testimony given by the minor in pre-trial procedure as evidence, provided the testimony was video recorded, and the counsel has had the opportunity to pose questions to the witness in pre-trial procedure about the facts relating to the subject of proof, if:

- 1) the witness is up to ten years of age and repeated hearing may have a harmful effect on the mind of a minor;
- 2) the witness is up to fourteen years of age and the hearing is related to domestic violence or sexual abuse;
- 3) the witness is with speech impairments, sensory or learning disabilities or mental disorders.

(2) If a court finds after examination of the evidence specified in subsection (1) of this section that it is necessary to question a minor about additional circumstances, the court may question the witness on its own initiative or on the basis of a written questions prepared by the parties to the court proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 291. Earlier testimony of witness in court without possibility of cross-examination**

(1) At the request of a party to the court proceeding, a court may accept the testimony earlier given by a witness as evidence if the witness:

- 1) is dead;
- 2) refuses to give testimony in the course of examination by the court;
- 3) is unable to give testimony due to his or her state of health;
- 4) the whereabouts of the witness cannot be ascertained regardless of reasonable efforts;
- 5) fails to appear in court due to other impediment which is permanent or which elimination costs would be disproportionately large, and the party which submitted the request has made all reasonable efforts for taking him or her to court.

(2) In the case provided for in subsection (1) of this section, a court allows to submit earlier testimony as evidence, if the testimony is deposited pursuant to the procedure provided for in § 69<sup>1</sup> of this Code or if the earlier hearing was conducted by a competent authority of a foreign state on the basis of a request for assistance and the person cannot be heard by way of telehearing.

(3) In the cases provided for in clauses (1) 1)-3) of this section, a court may accept, as an exception, a person's earlier testimony which are not deposited, if all of the following criteria are met:

- 1) the circumstances relating to giving of testimony and the witness do not give any reason to doubt the credibility of evidence;
- 2) a party to the court proceeding has requested the acceptance of testimony as evidence for proving a fact relevant to the criminal matter as a whole;
- 3) the opposing party of the person who requests the evidence has had sufficient opportunity to submit objections to such testimony.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 292. Disclosure of expert's report and hearing of expert**

(1) A party to the court proceeding may request a court to accept an expert's report as evidence. The expert's report is submitted as evidence pursuant to subsections 296 (2)-(4) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) At the request of a party to a court proceeding, the court may order the hearing of an expert in order to clarify or supplement the content of the expert's report.

(3) An expert is heard in court pursuant to §§ 286<sup>2</sup>-289<sup>1</sup> and 291 of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 292<sup>1</sup>. Hearing of qualified persons**

(1) A qualified person is heard in court pursuant to §§ 286<sup>2</sup>-289<sup>1</sup> and 291 of this Code.

(2) If the same person gives testimony in the criminal matter both as a qualified person as well as a witness, he or she shall be heard, if possible, in the course of one procedural act.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 293. Interrogation of accused**

(1) An accused shall be interrogated in court pursuant to § 286<sup>2</sup> and §§ 288-289<sup>1</sup> of this Code.

(2) Upon use of the interrogation of the accused, the court establishes the identity of the accused, explains to the accused the legal bases for refusal to give testimony, the obligation to speak the truth in court, and obtains the signature of the accused to this effect.

(3) The counsel is the first to interrogate the accused, unless the parties agree otherwise. After the counsel and the prosecutor have questioned the accused, the other accused and the counsels thereof may pose questions to the accused.

(4) The court may question the accused after the cross-examination.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 294. Earlier testimony of accused without possibility of cross-examination**

If the accused cannot be cross-examined in a court session, a court may, at the request of a party to the court proceeding, allow to submit as evidence the testimony given by the accused in pre-trial procedure or earlier court hearing of this or another criminal matter, if:

- 1) the accused refuses to give testimony in the course of examination by the court;
- 2) the court hearing is held in the absence of the accused.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 295. Expert assessment in court**

(1) A court may order an expert assessment at the request of a party to the court proceeding or on its own initiative.

(2) The parties to a court proceeding shall pose questions to an expert through the court and in writing. The court shall review the questions, overrule the questions which are irrelevant or outside the specific expertise of the expert, and prepare the final questions to be submitted to the expert.

(3) The court shall disclose the final questions to be submitted to the expert and prepare a ruling on the expert assessment pursuant to § 106 of this Code.

(4) An expert may participate in the examination of the evidence relating to the object of an expert assessment in court and, with the permission of the court, pose questions to the participants in the proceeding with regard to the facts relevant to the conduct of the expert assessment.

(5) An expert assessment shall be conducted in accordance with §§ 99-104 and 107-108 of this Code.

#### **§ 296. Submission of data recordings, physical evidence or documents as evidence**

(1) A party to the court proceeding may request a court to accept data recordings, physical evidence or documents as evidence, taking into account the restrictions provided for in §§ 289<sup>1</sup>, 290<sup>1</sup>, 291, 292 and 294 of this Code.

(2) For disclosure of the minutes of investigative activities or any other documents of a criminal file, a prosecutor shall submit it to the court on his or her initiative or at the request of the other party to the court proceeding.

(3) If the court accepts the evidence specified in subsection (1), the party to the court proceeding which submitted the evidence shall read it out in full or in part or disclose it in another way, taking into account the nature of the specific evidence and the purpose of using thereof. Non-disclosure of evidence is allowed by agreement of parties, if the court finds that this is not contrary to the principle of public access to court sessions.

(4) A party to the court proceeding may use, in the course of disclosure of evidence, visual aids which are not evidence but help to present the evidence without being misleading. A party may also submit physical evidence and documents to the court in the course of disclosure of evidence. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 297. Taking of additional evidence in examination by court**

(1) After examination of the evidence submitted by the parties to a court proceeding, the court may order taking of additional evidence at the request of a party to the court proceeding or on its own initiative.

(2) In a request, a party to a court proceeding shall set out the reasons for the need to take additional evidence and for the failure to request taking of additional evidence earlier. The court shall adjudicate taking of additional evidence by a ruling.

(3) The court may dismiss a request for the taking of additional evidence on the bases provided for in § 286<sup>1</sup> of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 298. Completion of examination by court**

(1) At the end of examination by the court, the judge shall ask the participants in the proceedings whether they would like to submit requests to supplement the examination by the court. The court shall adjudicate the requests by a ruling.

(2) After performance of additional court activities, examination by the court shall be completed and the summations shall be commenced.

(3) At the request of a party to a court proceeding, the court shall call a recess before the summations.

## **Division 5 Summations and Final Statement of Accused**

### **§ 299. Procedure for summations**

(1) The summations commence by the prosecution speech of the prosecutor. The victims, civil defendants and counsels shall be given the floor in the summations.

(2) The parties to court proceedings have the right to rebut. The counsel or the accused has the right to the final rebuttal.

### **§ 300. Content of summations**

(1) In summations, the parties to the court proceedings may rely only on evidence examined in the examination by the court.

(2) The duration of the arguments is not limited. The judge may interrupt the closing arguments if the arguments refer to circumstances outside the limits of the criminal matter.

(3) Before the court withdraws to the chambers, the parties to the court proceedings may submit the texts of their closing arguments for appending to the minutes of the court session.

### **§ 301. Withdrawal of charges by prosecutor**

If a prosecutor withdraws the charges during the summations, the court shall make a judgment of acquittal without continuing the proceedings.

### **§ 302. Resumption of examination by court**

(1) If, during the summations, it is necessary to submit new evidence which may have a material effect on the adjudication of the criminal matter, the court may resume the examination by the court by a ruling at the request of a party or on its own initiative.

(2) After completion of a resumed examination by the court, the summations shall be recommenced.

### **§ 303. Final statement of accused**

(1) After the summations, the judge shall give the floor to the accused for his or her final statement.

(2) The duration of the final statement is not limited. The judge may interrupt the speech of the accused if the final statement refers to circumstances outside the limits of the criminal matter.

(3) Questions shall not be posed to the accused during his or her final statement.

(4) If the final statement of the accused reveals new facts relevant to the criminal matter, the court shall resume examination by the court. After completion of the resumed examination by the court and the new summations, the accused has again the right to the final statement.

(5) In the case specified in subsection 267 (3) of this Code, the accused does not have the right to the final statement.

### **§ 304. Withdrawal of court to chambers**

After the final statement of the accused, the court announces the time of pronouncement of the court judgment and withdraws to the chambers.



## **Division 6 Making of Court Judgment**

### **§ 305. Confidentiality of deliberations by court**

(1) During the making of a court judgment, only the court panel which heard the criminal matter and the court official who is to formalise the court judgment may be present in the chambers.

(2) The deliberations held in the chambers during the making of a court judgment shall not be disclosed.

### **§ 305<sup>1</sup>. Lawful and reasoned court judgment**

(1) A court judgment shall be lawful and reasoned.

(2) The court shall base its judgment exclusively on the evidence which was the object of examination by the court, which the parties could examine and on circumstances concerning which the parties could submit their opinion.

(3) Acceptance of evidence shall not preclude declaration of the evidence inadmissible upon making the court judgement.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 306. Issues to be adjudicated upon making of court judgment and signing of court judgment**

(1) When making a court judgment, the court shall adjudicate the following issues:

- 1) whether the act of which the accused is accused occurred;
- 2) whether the act was committed by the accused;
- 3) whether the act is a criminal offence and on which section, subsection and clause of the Penal Code the legal assessment of the act shall be based;
- 4) whether the accused is guilty of the commission of the criminal offence;
- 5) whether mitigating or aggravating circumstances exist;
- 6) the punishment to be imposed on the accused;
- 6<sup>1</sup>) whether commutation shall be granted due to exceeding of the reasonable time of proceedings;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

7) whether the accused is to be released from punishment or whether a substitutive punishment is to be imposed;

(7<sup>1</sup>) [repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

8) whether the accused who is a minor is to be punished for the criminal offence committed or whether non-punitive sanctions are to be applied against him or her;

9) whether new preventive measures are to be chosen or the valid preventive measure is to be maintained, altered or annulled in the case of conviction;

10) the measures to be applied with regard to the minor children of the accused who are left unsupervised, and to his or her property, if he or she is convicted and sentenced to imprisonment;

11) whether and to which extent to satisfy the civil action or compensate for the damage caused by the criminal offence;

12) whether it is necessary to apply measures to secure the civil action;

13) how to proceed with regard to physical evidence and other objects taken over, seized or subject to confiscation in the criminal procedure;

[RT I 2007, 2, 7 - entry into force 01.02.2007]

14) the expenses relating to the criminal proceeding and the person who is to bear the expenses.

(2) The issues listed in subsection (1) of this section shall be adjudicated separately with respect to each of the accused and each criminal offence.

(3) After adjudication of the issues listed in subsection (1) of this section, a court judgment or the conclusion thereof shall be prepared and all the members of the court panel shall sign the judgment. The assistance of a court official may be used in the formalisation of a court judgment.

(4) A judge who maintains a minority position shall submit his or her dissenting opinion in writing and the opinion shall be included in the file but shall not be disclosed upon the pronouncement of the court judgment.

(5) After signing a court judgment, a court may, on its own initiative or at the request of a party to the court proceeding, correct spelling or calculation mistakes or obvious inaccuracies in the court judgment if such corrections do not affect the content of the judgment. The mistakes shall be corrected by a ruling the copy of which is sent to persons to whom a copy of the judgment containing mistakes was issued.

### **§ 307. Resumption of court hearing**

(1) When making a court judgment, a court may resume the examination by the court or the summations by a ruling, if:

1) a need arises to further ascertain facts relevant to the adjudication of the criminal matter;

2) the bases provided for in subsection 268 (6) of this Code become evident;

3) the court establishes an error in the course of the proceeding which is relevant to the making of the court judgment and the error can be corrected.

(2) In the case specified in clause (1) 2) of this section, a court may conduct resumed proceedings in written proceeding by granting a reasonable term to the party to the court proceedings for responding to the questions of the court. A court hearing shall be held at the request of the accused or counsel.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 308. Application of sanctions against minors**

If a court finds as a result of the hearing of a criminal matter that a minor can be influenced without imposing a punishment, the court may, upon the making of the court judgment, release the convicted offender from punishment and apply the sanctions provided for in § 87 of the Penal Code with regard to him or her.

### **§ 309. Types and preparation of court judgment**

- (1) A court judgment is either a judgment of acquittal or a judgment of conviction.
- (2) A judgment of acquittal is made if a criminal act or a criminal offence is not established in the court hearing, commission of the criminal offence by the accused is not proved or the prosecutor withdraws the charges.
- (3) A judgment of conviction is made if the court finds as a result of the court hearing that commission of the criminal offence by the accused is proved.

### **§ 310. Decision concerning civil action**

- (1) If a court makes a judgment of conviction, the court shall satisfy the civil action in full or in part or dismiss or refuse to hear the action.
- (2) If a court makes a judgment of acquittal, the court shall refuse to hear the civil action.
- (3) If the hearing of a civil action is refused, the right to file the same action pursuant to civil procedure shall be explained to the victim.

### **§ 310<sup>1</sup>. Decision concerning restraining order**

(1) At the request of the victim, the court may apply, for protection of private life or other personality rights of the victim on the basis of § 1055 of the Law of Obligation Act, a restraining order with a term of up to three years to an offender convicted of a crime against the person or against a minor.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(2) A court shall adjudicate a request for restraining order pursuant to the procedure provided for in § 310 of this Code.

### **§ 311. Introduction of court judgment**

The introduction of a court judgment shall set out:

- 1) that the court judgment is made on behalf of the Republic of Estonia;
- 2) the date and place of making the court judgment;
- 3) the name of the court which made the judgment, the composition of the panel of the court and the given names and surnames of the prosecutor, counsels, interpreters, translators and the clerk of the court session;
- 4) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth and the place of work or educational institution of the accused;
- 5) the criminal record of the accused;
- 6) the section, subsection or clause of the Penal Code which provides for the criminal offence for which the accused has been prosecuted or of which he or she is accused according to the

charges amended pursuant to § 268 of this Code.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 312. Main part of court judgment**

The main part of a court judgment shall set out:

- 1) the facts found to be proved in the court hearing, and the evidence relied upon;
- 2) the evidence which the court deems to be unreliable and the reasons therefor;
- 3) the facts which the court has deemed to be a matter of common knowledge and on which the court relied when making the judgment;
- 4) the mitigating and aggravating circumstances;
- 5) the reasons for the punishment imposed on the accused;
- 6) the reasons for the amendment of the charges, release from punishment, imposition of a substitutive punishment, imposition of a punishment lesser than the minimum rate or term provided for in the Penal Code or for deferral of the execution of the court judgment;

(6<sup>1</sup>) [repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

- 7) the reasons for application, alteration or annulment of preventive measures;
- 8) the decision concerning the civil action;
- 9) the provisions of procedural law pursuant to which the judgment was made.

### **§ 313. Conclusion of judgment of conviction**

(1) The conclusion of a judgment of conviction shall set out:

- 1) the name of the accused;
- 2) the conviction of the accused pursuant to the corresponding section, subsection or clause of the Penal Code;
- 3) the categories and the rates or terms of the punishments imposed on the accused for each of the criminal offences, and the aggregate punishment to be served;
- 4) in the case of probation, the duration of the period of probation and a list of the duties imposed on the accused;
- 5) reduction of the imposed punishment by one-third pursuant to subsection 238 (2) of this Code in the event of application of alternative proceedings;
- 5<sup>1</sup>) reduction of the punishment in the case of a criminal offence related to competition pursuant to subsection 205<sup>1</sup> (3) of this Code, if applicable;  
[RT I 2010, 8, 34 - entry into force 27.02.2010]
- 6) the time of commencement of the service of the sentence;

(6<sup>1</sup>) [repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

- 7) circumstances relating to the execution of the court judgment;
- 8) the preventive measures chosen by the court, or alteration or annulment of the preventive measures applied previously;
- 9) the measures to be applied with regard to the unsupervised children and property of the convicted offender;
- 10) the decision concerning adjudication of the civil action and the measures to secure the civil action;

- 11) the measures to be applied with regard to the physical evidence and other objects confiscated or seized in the criminal proceedings;
- 12) the decision concerning the expenses relating to the criminal proceedings;
- 13) the procedure and term for appeal against the court judgment.

(2) If charges have been brought against the accused for several criminal offences or pursuant to several sections of the Penal Code, the conclusion of the court judgment shall set out the charges on which the accused is acquitted and the charges on which he or she is convicted.

#### **§ 314. Conclusion of judgment of acquittal**

The conclusion of a judgment of acquittal shall set out:

- 1) the name of the person acquitted;
- 2) the acquittal of the accused pursuant to the relevant section, subsection and clause of the Penal Code;
- 3) annulment of the preventive measures;
- 4) annulment of the measures to secure the civil action;
- 5) the measures to be applied with regard to the physical evidence and other objects confiscated or seized in the criminal proceedings;  
5<sup>1</sup>) deletion of data contained in the state register of fingerprints and the state DNA register.  
[RT I, 04.07.2012, 1 - entry into force 01.08.2012]
- 6) the extent of the damage which the criminal proceeding has caused to the person acquitted;
- 7) the procedure and term for appeal against the court judgment.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 315. Pronouncement of court judgment and explanation of right of appeal**

(1) A judge or, in the case specified in subsection 18 (1) or (3) of this Code, a presiding judge shall pronounce a court judgment at the time announced pursuant to § 304 of this Code.

(2) If the accused is not proficient in the language of the criminal proceeding, the court judgment shall be interpreted or translated for him or her after the pronouncement of the judgment.

(3) The judge shall ask whether the person acquitted or convicted understands the court judgment and explain the content of the judgment to him or her if necessary.

(4) A court may decide to pronounce only the conclusion of the judgment, in which case the court shall explain the main reasons for the court judgment orally upon the pronouncement of the judgment.

(5) After the pronouncement of a court judgment or the conclusion thereof the judge or presiding judge shall:

- 1) upon the pronouncement of the conclusion of the court judgment, give notification of the date on which the court judgment will be accessible in court for examination by the parties to the court proceedings and shall make a corresponding notation in the minutes of the court session;

2) give notification of the term for appeal against the court judgment and explain the procedure for appeal provided for in § 318 of this Code and the possibility to waive the right of appeal;  
3) explain that the county court must be notified of the intention to exercise the right of appeal in writing within seven days as of the pronouncement of the conclusion of the court judgment;  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) Waiver of the right of appeal shall be recorded in the minutes of the court session. A counsel may waive the right of appeal only with the written consent of the person defended.

(7) If all parties to the court proceedings waive the right of appeal or if during the term provided for in clause (5) 2) of this section none of the parties to the court proceedings gives notification of the intention to exercise the right of appeal, only the information provided for in § 311, 313 or 314 of this Code shall be set out in the court judgment.

(8) If the parties to the court proceedings do not waive the right of appeal, the full court judgment shall be prepared within fifteen days as of the date on which the county court is notified of an intention to exercise the right of appeal.  
[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 315<sup>1</sup>. Publication and postponement of time of pronouncement of court judgment and making thereof accessible**

(1) The time of publication of the conclusion of a court judgement and making the court judgement accessible to the parties and the changes thereto shall be published immediately after the determination thereof on the website of a court indicating the number of the criminal matter, the name of the accused who is an adult and the initials of the accused who is a minor and the legal assessment of the criminal offence in which the person is accused pursuant to the relevant section, subsection and clause of the Penal Code. In the case of a judgment made in closed proceedings, the time when the judgment is made public and the changes thereto, the number of the criminal matter and a reference to the fact that the proceeding is closed shall be published. The time of making the judgement public shall be removed from the website when 30 days have passed as of making the judgement public.

(2) Amendment of the time of pronouncement of a court judgment or the conclusion thereof and of making the court judgment accessible to the parties shall be formalised by a ruling which sets out the new time of pronouncement of a court judgment or the conclusion thereof or of making the court judgment accessible to the parties. The ruling shall be accessible to the parties to the court proceeding for examination in court not later than on the date for which the pronouncement of a court judgment or the conclusion thereof or of making the court judgment accessible to the parties was initially determined.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 316. Release of accused held in custody upon making of court judgment**

The accused who is held in custody shall be released immediately in the courtroom if he or she is:

- 1) acquitted;
- 2) released from punishment;
- 3) he or she is not sentenced to imprisonment.

### **§ 317. Service of copies of court judgment**

(1) A court judgment may be examined in court after the judgment has been pronounced or made public. At the request of a party to the court proceedings, a copy of the court judgment shall be submitted to him or her.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If the accused is held in custody, a copy of the court judgment shall be sent to or served on him or her immediately after the court judgment has been pronounced or communicated through the court.

## **Chapter 11 APPEAL PROCEEDINGS**

### **Division 1 Appeal to Circuit Court**

#### **§ 318. Right of appeal**

(1) If a party to a court proceeding does not consent to the judgment of the court of first instance, the party has the right to file an appeal. The party to a court proceeding who files an appeal is the appellant in the appeal proceedings.

(2) A civil defendant may file an appeal concerning the civil action.

(2<sup>1</sup>) The third party may file an appeal against a court judgment with regard to his or her rights or freedoms which are protected by law.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(3) An appeal shall not be filed:

1) by the accused against a judgment of acquittal made by way of alternative proceedings or expedited proceedings;

2) by a Prosecutor's Office against a judgment of conviction made by way of alternative proceedings or expedited proceedings;

3) against a judgment made by way of summary proceedings;

4) against a judgment made by way of settlement proceedings, except in the cases specified in subsection (4) of this section;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

5) by a Prosecutor's Office against a judgment of acquittal made on a basis provided for in § 301 of this Code.

(4) A party to the court proceeding may file an appeal against a judgment made in settlement proceedings in the case of a violation of the provisions of Division 2 of Chapter 9 or subsection 339 (1) of this Code. The accused and the counsel may also file an appeal against a judgment

made in settlement proceedings in the case the act described in the settlement is not a criminal offence, the legal assessment thereof according to the Penal Code is incorrect or if a punishment which is not prescribed by law is imposed on the accused.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 319. Term for appeal**

(1) The court which made the conclusion of a judgment shall be notified in writing of a wish to exercise the right of appeal within seven days as of the pronouncement of the judgment. Notice of the wish to exercise the right of appeal may also be given to the court which made the judgment by facsimile.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) An appeal against a court judgment shall be filed in writing with the court which made the judgment within fifteen days as of the date when the party to the court proceeding had the opportunity to examine the judgment in court. An appeal may also be filed with the court which made the judgment by facsimile.

(3) The accused held in custody or his or her counsel may file an appeal within fifteen days as of the date following the date of service of a copy of the court judgment on the accused.

(4) The hearing of an appeal shall be refused and the appeal shall be returned on the basis of a court ruling if the term for appeal has expired.

(4<sup>1</sup>) A term for appeal shall suspend upon submission of an application for state legal aid. In such case the term of appeal shall recommence as of the delivery of the ruling on adjudication of an application for state legal aid to the counsel or refusal to grant state legal aid.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If, upon adjudication of a criminal matter, a court declares legislation of general application subject to application in the conclusion of a court judgment to be in conflict with the Constitution and refuses to apply the legislation of general application, an appeal shall be filed in writing to the court who made the judgment within fifteen days as of the day following pronouncement of the judgment made concerning the legislation of general application which is not applied by way of constitutional review of the Supreme Court.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(6) A court may restore a term for appeal at the request of the appellant if the court finds that the term was allowed to expire for good reason. The court shall make a ruling on the restoration of or refusal to restore the term.

(7) If the court file has been forwarded to the circuit court before the submission of a request for the restoration of the term for appeal, restoration of the term shall be decided by the circuit court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]



**§ 320. Prohibition on disclosure of court file and access to court file**  
**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) During a term for appeal, the court file shall be kept in the county court and shall not be disclosed.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The accused has the right to examine the court file through his or her counsel.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 321. Appeal**

(1) Appeals shall be prepared in typewritten form. The accused held in custody may also prepare an appeal in clearly legible handwriting. Appeals prepared by a Prosecutor's Office or a counsel shall be also forwarded to a court by electronic means.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(2) An appeal shall set out:

1) the name of the circuit court with which the appeal is filed;

2) the name, status in the proceedings, residence or seat and address and the telephone or fax number of the appellant;

3) the name of the court which made the judgment, the date of the judgment, and the name of the accused with regard to whom the judgment is contested;

4) which part of the court judgment is contested, the content of and reasons for the claims of the appellant, and the requests of the appellant;

5) the evidence to be examined in the circuit court at the request of the appellant, and the name and residence or seat and address of the person requested to be summoned to a session of the court of appeal;

5<sup>1</sup>) whether the appellant requests an oral procedure;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

6) whether the accused wishes to participate in the hearing of the criminal matter in the circuit court or requests that the criminal matter be heard without his or her participation;

7) whether the accused chooses his or her counsel in the appeal proceeding himself or herself or requests the court to appoint a counsel;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

8) a list of the documents appended to the appeal.

(3) An appeal shall be signed and dated by the appellant.

(4) If the accused chooses his or her counsel himself or herself, the address and the telephone or fax number of the counsel shall be indicated in the appeal.

(5) Copies of an appeal for the accused whose interests are concerned by the appeal shall be appended to the appeal. The accused held in custody is not required to append copies of the appeal.

(6) In an appeal, the appellant may rely on evidence not examined in the county court only if he or she submitted the evidence to the county court and it was not accepted or if he or she was unable to submit the evidence to the county court for a good reason not depending on him or her. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 321<sup>1</sup>. Amendments to appeals**

(1) An appellant may amend and supplement a submitted appeal until the end of the term for appeal, and also extend the appeal to the parts of the court judgment which were initially not appealed. Upon amendments to appeals, the provisions concerning appeals shall be observed.

(2) The provisions of subsection (1) of this section do not preclude or restrict the appellant's right to submit allegations concerning the interpretation of law, objections against the submissions of the other party to the appeal procedure in the appeal proceeding, or the right to submit new facts or circumstances which arose or became known to the appellant after the expiry of the term for appeal.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 322. Notification of appeal**

(1) A court of first instance shall give notification of the filing of an appeal to such parties to a court proceeding whose interests are concerned by the appeal within three days as of the receipt of the appeal.

(2) Together with the notice, a copy of the appeal shall be sent to the accused whose interests are concerned by the appeal.

(3) A party to a court proceeding has the right to submit written explanations and objections concerning an appeal to the circuit court within seven days as of the receipt of a notice concerning the filing of the appeal.

(4) An objection of a party to a court proceeding shall set out whether oral procedure is requested.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 323. Refusal to accept or hear appeal by court which made judgment**

(1) If an appeal is not in compliance with the requirements provided for in § 321 of this Code or other significant circumstance hindering the conduct of the appeal procedure becomes evident and such circumstance can be corrected, the court shall, by a ruling, refuse to accept the appeal and set a term for the elimination of deficiencies.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A judge shall prepare a ruling on refusal to hear an appeal and return the appeal to the appellant if:

1) the appeal was filed after the expiry of the term for appeal provided for in § 319 of this Code

and a request for restoration of the term has not been filed or the court has refused to restore the term;

2) the appeal was filed by a person who, pursuant to § 318 of this Code, does not have the right of appeal;

3) the appellant has failed to eliminate the deficiencies contained in the appeal within the specified term or to substantiate such failure.

**§ 324. Referral of court file to circuit court**  
**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

If a term for appeal has expired, the court file and the appeal shall be sent to the circuit court.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**Division 2 Pre-trial Proceedings in Circuit Court**

**§ 325. Preparation for court hearing in circuit court**

(1) In the course of preparations for the court hearing of a criminal matter, a court shall:

1) verify the jurisdiction over the criminal matter and compliance with the requirements provided for in §§ 318, 319, 321 and 322 of this Code;

2) hold a preliminary hearing if the grounds provided for in § 327 of this Code become evident.

(2) If the requirements provided for in §§ 319, 319, 321 and 322 of this Code are complied with and there are no bases for holding a preliminary hearing, the judge shall determine the time of the court session and perform the acts provided for in §§ 329 and 330 of this Code.

**§ 326. Refusal to accept or hear appeal in circuit court**

(1) If an appeal is not in compliance with the requirements provided for in § 321 of this Code, the court shall, by a ruling, refuse to accept the appeal and set a term for the elimination of deficiencies.

(2) A judge shall prepare a ruling on refusal to hear an appeal and return the appeal to the appellant on the bases provided for in clauses 323 (2) 1)-3) of this Code or if the appeal is discontinued before the beginning of the court session. A circuit court may also refuse to hear an appeal if the court panel hearing the criminal matter unanimously finds that the appeal is clearly unfounded.

**§ 327. Grounds for holding preliminary hearings in circuit court**

(1) A preliminary hearing shall be held in order to:

1) if other material violations of the criminal procedural law provided for in subsection 339 of this Code are established which cannot be eliminated in appeal proceedings;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) in other cases where the judge considers the holding of a preliminary hearing necessary.

(2) Preliminary hearings shall be held pursuant to subsections 259 (2)-(4) and §§ 260 and 261 of this Code by a panel of at least three judges.

### **§ 328. Jurisdiction of court in pre-trial proceedings**

(1) A judge or, in a preliminary hearing, a court shall:

1) make a ruling ordering the hearing of the criminal matter subject to appeal proceedings if there are no circumstances which may hinder the proceedings or if such circumstances can be eliminated;

2) annul the court judgment by a ruling and send the criminal matter for a new hearing to the court of first instance on the grounds provided for in § 339 of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

3) adjudicate other issues relating to preparations for the court hearing by a ruling.

(2) Within three days after a court ruling is made, a copy of the ruling shall be sent to the parties to the court proceeding whose interests are concerned by the ruling.

### **§ 329. Ordering of hearing of criminal matter in circuit court**

(1) A ruling ordering the hearing of a criminal matter subject to appeal proceedings shall set out:

1) the date and place of the court session;

2) the names of the persons summoned to the court session;

3) whether the criminal matter is to be heard in a public court session or in camera.

(2) A ruling shall set out any requests that were dismissed. Appeals shall not be filed against the dismissal of a request but the request may be re-submitted in the court hearing.

### **§ 330. Summoning to court session**

The parties to a court proceeding shall be summoned to a session by a summons pursuant to §§ 163-169 of this Code.

## **Division 3 Court Hearing in Circuit Court**

### **§ 331. Procedure and limits for hearing of criminal matter by way of appeal proceedings**

(1) A circuit court shall hear a criminal matter by way of appeal proceedings pursuant to the provisions of Chapter 10 of this Code, taking into account the specifications provided for in this Division. The provisions of §§ 163<sup>1</sup> and 268<sup>1</sup> of this Code do not apply in a court hearing in a circuit court.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

(1<sup>1</sup>) A circuit court shall hear a criminal matter by way of a written proceeding. In such case the circuit court shall set a term during which the parties to the appeal proceeding may submit their positions to the court and the time for making the judgment public, and notify the parties to the

appeal proceeding thereof.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1<sup>2</sup>) A criminal matter shall be heard by way of an oral proceeding if oral procedure has been requested by a party to the appeal proceeding or deemed necessary by the circuit court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1<sup>3</sup>) If a summons cannot be served at the contact details of the appellant indicated in the appeal, a court may refuse to hear the appeal or hear the appeal in a written proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A circuit court shall hear a criminal matter within the limits of the appeal filed.

(3) A circuit court shall extend the limits of hearing a criminal matter to all the persons accused regardless of whether an appeal has been filed with regard to them, if a material violation of criminal procedural law or incorrect application of substantive law which has aggravated the situation of the accused becomes evident.

(4) An appellant or the other parties to a court proceeding do not have the right to exceed the limits of the appeal in the court hearing of the criminal matter.

### **§ 332. Court sessions in circuit courts**

(1) Upon application of a court session in a circuit court, the presiding judge shall:

- 1) open the court session and announce the criminal matter to be heard and the name of the person who filed the appeal;
- 2) ascertain whether the persons summoned have appeared in the session;
- 3) ascertain the reasons for failure to appear when summoned;
- 4) involve an interpreter or translator, if necessary, pursuant to subsection 161 (1) of this Code;
- 5) identify the accused and explain the rights prescribed in § 35 of this Code to him or her and verify whether the accused and his or her counsel have had enough time to prepare for the court session following their receipt of a copy of the appeal;
- 6) perform the procedural acts listed in §§ 280-284 of this Code.

(2) The presiding judge or a member of the court panel shall present the content of the appealed part of the court judgment, the reasons for the appeal, and the requests, and give an overview of the documents received.

(3) After the presentation, the presiding judge shall explain the right to discontinue the appeal and the consequences of discontinuance to the appellant pursuant to § 333 of this Code and ask whether the appellant will proceed with the appeal or discontinue the appeal in full or in part.

### **§ 333. Discontinuance of appeal**

(1) An appellant has the right to discontinue the appeal in full or in part before the end of the summations. Discontinuance of the appeal is binding on the circuit court, except in the cases provided for in subsection (6) of this section.

(2) A counsel may discontinue an appeal of the accused only with the written consent of the person being defended.

(3) An authorised representative may discontinue an appeal only at the written request of the principal.

(4) The accused may discontinue an appeal of the counsel, except in the cases where the participation of a counsel in the criminal proceeding is mandatory pursuant to subsection 45 (2) of this Code.

(5) If an appeal is discontinued before the beginning of the court session, the hearing of the appeal shall be refused by a court ruling. If an appeal is discontinued during the court hearing, the appeal proceeding shall be terminated by a court ruling.

(6) If a circuit court ascertains that a court of first instance has incorrectly applied substantive law in the adjudication of a criminal matter and thereby aggravated the situation of the accused or that a court of first instance has materially violated the criminal procedural law, the hearing of the criminal matter shall be continued regardless of discontinuance of the appeal.

(7) If the hearing of an appeal is refused or the appeal proceeding is terminated due to discontinuance of the appeal, the judgment of the court of first instance shall, in the absence of other appeals, enter into force as of the making of the court ruling.

(8) An appellant who has discontinued the appeal does not have the right to contest the judgment of the circuit court by way of cassation proceedings unless the circuit court has extended the limits of the hearing of the criminal matter pursuant to subsection 331 (3) of this Code.

### **§ 334. Participation of accused and other parties to court proceedings in circuit court sessions**

(1) A circuit court may hear a criminal matter in the absence of the accused with regard to whom the court judgment has been contested if:

- 1) the accused has received the summons and a copy of the appeal and notified the court that he or she does not wish to participate in the court session;
- 2) the accused has received the summons and a copy of the appeal and requested adjournment of the court hearing for a reason which the court does not deem to be good reason;
- 3) the accused has received the summons and a copy of the appeal and has failed to appear at the court session;
- 4) the accused has been removed from the courtroom on the basis of subsection 267 (1) of this

Code;

5) the accused absconds the court.

(2) Participation of the other parties to a court proceeding in a circuit court session shall be decided by the court pursuant to the procedure provided for in §§ 270-273 of this Code.

(3) With the consent of the prosecutor and with the permission of the circuit court, the prosecutor may participate in a session of the circuit court by means of a technical solution which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If an appellant fails to appear at a court session without giving the court a good reason for failure to appear or has not substantiated it, the court may refuse to hear the appeal by a ruling or hear the criminal matter in the absence of the appellant.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 335. Examination by court in circuit court**

(1) In a circuit court, examination by the court shall be conducted pursuant to the provisions of §§ 286-298 of this Code.

(2) In examination by court, a circuit court may disclose the minutes of a session of the court of first instance.

### **§ 336. Summations**

(1) The summations commence by the arguments of the appellant. Thereafter, the other parties to the court proceeding shall be given the floor in the order determined by the court. The parties to the court proceeding have the right to rebut. The counsel or the accused has the right to the final rebuttal.

(2) The duration of the arguments is not limited. The presiding judge may interrupt the arguments if the limits of the appeal are exceeded.

(3) After the summations, the court shall announce the date when the decision will be accessible to the parties to the court proceeding in the circuit court. The court may pronounce the judgment or the conclusion of the judgment immediately after deliberations.

### **§ 337. Jurisdiction of circuit court in making of decision**

(1) A circuit court may, by a judgment:

1) refuse to amend a judgment of a court of first instance, and dismiss the appeal;

2) refuse to make substantive amendments to a judgment of a court of first instance and make corrections thereto;

3) amend the main part of a judgment of a court of first instance and exclude facts presented

therein;

4) annul a judgment of a court of first instance in full or in part and make a new judgment.

(2) A circuit court may, by a ruling:

1) annul a court judgment and terminate the criminal proceeding on the grounds precluding criminal procedure pursuant to clauses 199 (1) 2)-6) of this Code;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

2) annul a court judgment in full or in part and return the criminal matter to the court of first instance for a new hearing;

[RT I 2004, 46, 329 - entry into force 01.07.2004]

3) annul the court judgment made in the settlement proceedings in full and send the criminal file to the Prosecutor's Office.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 338. Grounds for annulment of court judgment by way of appeal procedure**

The grounds for the annulment of a court judgment by way of appeal proceedings are:

1) one-sidedness or insufficiency of examination by the court of first instance;

2) incorrect application of substantive law;

3) material violation of criminal procedural law;

4) non-conformity of the imposed punishment or any other sanction with the degree of the criminal offence or the person of the convicted offender.

### **§ 339. Material violation of criminal procedural law**

(1) Violation of criminal procedural law is material if:

1) the decision is made in a criminal matter by an unlawful court panel;

2) the criminal matter is heard in the absence of the accused although the participation of the accused in the hearing of the matter is mandatory;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

3) a court proceeding is conducted without the participation of a counsel although the participation of the counsel is mandatory;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

4) a court proceeding is conducted without the participation of a prosecutor although the participation of the prosecutor is mandatory;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

5) the confidentiality of deliberations is violated in the making of a court judgment;

6) a court judgment is not signed by all members of the court panel;

7) a court judgment does not contain the reasons for the judgment;

8) the conclusions presented in the conclusion of a court judgment do not correspond to the facts established with regard to the subject of proof;

9) a criminal matter is heard without the participation of an interpreter or translator in a language in which the accused is not proficient;

10) minutes are not taken of a court session, with the exception of the matters heard by way of summary proceedings;

[RT I 2004, 46, 329 - entry into force 01.07.2004]



11) members of the court panel of a county court hearing a criminal matter pursuant to the general procedure participate, before a court judgement is made in the matter under hearing, in a court hearing of another criminal matter sent to court pursuant to the general procedure without the corresponding grounds;

[RT I 2008, 32, 198 - entry into force 15.07.2008]

12) the principle of fair and equitable court procedure is violated in the court hearing.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A court may declare any other violation of criminal procedural law to be material if such violation results or may result in an unlawful or unfounded court judgment.

### **§ 340. Making of new judgment in circuit court**

(1) A circuit court shall make a new judgment on the basis of a request submitted in an appeal or regardless of such request if the court ascertains incorrect application of substantive law or material violation of criminal procedural law which has aggravated the situation of the accused.

(2) If a circuit court makes a new judgment, the court may:

- 1) acquit the accused with regard to all the criminal offences;
- 2) acquit the accused with regard to some of the criminal offences and impose a lesser punishment or refuse to amend the punishment;
- 3) convict the accused of a lesser criminal offence and impose a lesser punishment or refuse to amend the punishment;
- 4) annul the judgment of the court of first instance as regards imposition of the punishment and impose a lesser punishment on the accused;
- 5) annul the court judgment with regard to the civil action;
- 6) annul the court judgment with regard to issues provided for in §§ 313 and 314 of this Code.

(3) If incorrect application of the provisions of substantive law is ascertained, the court shall apply the provisions of subsection (1) of this section also with regard to the other accused persons regardless of whether they have filed an appeal.

(4) On the basis of an appeal filed by a Prosecutor's Office or a victim, a circuit court may:

- 1) convict the accused of a more serious criminal offence and impose a more severe punishment or refuse to amend the punishment;
- 2) annul the judgment of acquittal and make a judgment of conviction;
- 3) convict the accused of a criminal offence with regard to which he or she has been acquitted, and impose a punishment on him or her;
- 4) annul the judgment of the court of first instance in the part of the punishment and impose a more severe punishment;
- 5) annul the court judgment with regard to issues provided for in §§ 313 and 314 of this Code.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 341. Return of criminal matters to courts of first instance for new hearing**

(1) If a circuit court establishes material violation of criminal procedural law pursuant to clauses 339 (1) 1)-5) or 9)-10) of this Code, its shall annul the court judgment and return the criminal matter to the county court for a new hearing by a different court panel.

(2) If a circuit court establishes material violation of criminal procedural law pursuant to clauses 339 (1) 6)-8) or 11) of this Code, its shall annul the court judgment and return the criminal matter to the county court for a new hearing by the same or a different court panel.

(3) If a circuit court establishes material violation of criminal procedural law specified in clause 339 (1) 12) or subsection (2) of this Code which cannot be eliminated in appeal proceedings, it shall annul the court judgment and return the criminal matter to the county court for a new hearing by the same or a different court panel.

(4) The circuit court shall determine in which part the court proceeding is to be supplemented or repeated at the county court when it sends the criminal matter for a new hearing by the same court panel. If the material violation of criminal procedural law only concerns the making of a court judgment, the circuit court shall send the criminal matter to the circuit court for making a new court judgment. Regardless of what is indicated in the ruling of the circuit court, the county court shall perform, in a new hearing of the criminal matter, additional procedural acts which are necessary, in the opinion of the court, for adjudication of the criminal matter.

(5) If a circuit court annulled a court judgment only on the basis of an appeal of the accused or counsel, the court of first instance may, in a new hearing of the criminal matter, convict the accused of a more serious criminal offence but shall not impose a more severe punishment on the accused than the punishment imposed by the annulled judgment of the court of first instance. In the case specified in the previous sentence, the court shall not apply any other legal consequences to the accused which would aggravate the situation of the accused in comparison with the annulled judgment of the court of first instance.

(6) If one of the bases for the annulment of a court judgment by a circuit court was the appeal of a Prosecutor's Office or a victim which applied for aggravation of the situation of the accused, the courts of first instance may aggravate the situation of the accused when re-hearing the criminal matter. The court of first instance may, in a new hearing of the criminal matter, aggravate the situation of the accused even in the case this was applied for in the appeal of the Prosecutor's Office or the victim and which reasons the circuit court was unable to assess upon referral of the criminal matter for new hearing.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 341<sup>1</sup>. Annulment of court judgments made in settlement proceedings and return of criminal files to Prosecutor's Offices**

A circuit court shall annul a court judgment made in settlement proceedings and return the criminal file to the Prosecutor's Office if it establishes that:

1) the act described in the settlement is not a criminal offence or the legal assessment thereof

according to the Penal Code is incorrect;

- 2) a punishment which is not prescribed by law is imposed on the accused;
- 3) the provisions of Division 2 of Chapter 9 or subsection 339 (1) of this Code have been violated and such violation cannot be eliminated in the court proceeding.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 342. Judgment of circuit court**

(1) A judgment of a circuit court shall be made pursuant to §§ 305-314 of this Code, taking into account the specifications provided for in this section.

(2) The introduction of a judgment of a circuit court shall set out:

- 1) the appealed court judgment;
- 2) the content of the appealed part of the judgment of the court of first instance and the content of the requests of the appellant.

(3) If a circuit court refuses to amend a judgment of a court of first instance pursuant to clauses 337 (1) 1) or 2) of this Code, the court:

- 1) need not repeat the facts set out in the main part of the judgment of the court of first instance in the judgment of the circuit court and may, if necessary, add the reasoning of the circuit court;
- 2) may limit the judgment thereof to the introduction, conclusion and the provisions of procedural law pursuant to which the judgment was made.

### **§ 342<sup>1</sup>. Obligation to comply with decision of circuit court**

The positions of a circuit court concerning the interpretation and application of a provision of law contained in the decision of the circuit court whereby a judgment of a county court is annulled are mandatory to the court which made the annulled judgment in the new hearing of the matter.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 343. Pronouncement of judgment of circuit court and service of copies of judgment**

(1) After the summations, the circuit court shall announce the time when the court judgement is pronounced or the day when the decision will be accessible to the parties to the proceedings at circuit court.

(2) If a circuit court pronounces a court judgment or the conclusion of the judgment immediately after deliberations, provisions of §§ 315 and 316 of this Code apply.

(3) Copies of a judgment of a circuit court shall be served in accordance with § 317 of this Code.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 343<sup>1</sup>. Return of criminal files to court of first instance of criminal matters upon referral for new hearing pursuant to general procedure**

(1) When a circuit court refers a criminal matter heard pursuant to general procedure to a court of first instance for a new hearing with a different panel of court, the circuit court shall send to the county court, together with its ruling, only the materials of the criminal matter specified in § 226 and subsection 268 (2) of this Code. The remainder of the court file shall be returned to the Prosecutor's Office which shall append it to the criminal file.

(2) The parties to the court proceedings have the right to examine the materials of the court file appended to the criminal file pursuant to the procedure provided for in § 224 of this Code.

(3) In the cases not specified in subsection (1) of this section, the whole court file shall be sent to the county court upon entry into force of the ruling of the circuit court.

(4) If it becomes evident in the county court that the criminal matter cannot be re-heard by the same court panel, the county court shall return the materials of the criminal matter not specified in the first sentence of subsection (1) of this section to the Prosecutor's Office.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Chapter 12 CASSATION PROCEEDINGS**

### **Division 1 Appeal to Supreme Court**

#### **§ 344. Right of appeal in cassation**

(1) A party to a court proceeding has the right of appeal in cassation on the grounds provided for in § 346 of this Code, if:

- 1) the right of appeal has been exercised in the interests or against the party;
- 2) a circuit court has amended or annulled the judgment of a county court.

(2) A victim and civil defendant have the right of appeal in cassation as concerns a civil action.

(2<sup>1</sup>) A third party may file an appeal against a court judgment with regard to his or her rights or freedoms which are protected by law.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(3) The following have the right to file an appeal in cassation:

- 1) a Prosecutor's Office;
- 2) an advocate who is a criminal defence counsel;
- 3) other parties to a court proceeding through an advocate.

(4) An appellant in cassation is the prosecutor or advocate who filed the appeal in cassation or supports the appeal at a session of the Supreme Court.

(5) An appellant in cassation, a Prosecutor's Office and a counsel or representative who is an advocate of the party to the court proceeding whose interests are concerned by the appeal in cassation are parties to cassation proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) The Republic of Estonia as a victim, civil defendant or third party may also file an appeal in cassation and participate in cassation proceedings without the mediation of a representative who is an advocate.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 345. Term for cassation**

(1) A circuit court shall be notified in writing of a wish to exercise the right of appeal in cassation within seven days after a court judgment or the conclusion thereof is pronounced or communicated through the court office. A circuit court may be notified of a wish to exercise the right of appeal in cassation by fax.

(2) An appeal in cassation shall be filed with the circuit court which made the judgment in writing within thirty days as of the day when the party to the court proceeding had the opportunity to examine the judgment of the circuit court. An appeal in cassation may be filed by fax.

(3) Hearing of an appeal in cassation shall be refused and the appeal shall be returned by a conclusion of the Supreme Court if the term for filing an appeal in cassation has been allowed to expire.

(3<sup>1</sup>) A term for cassation shall suspend upon submission of an application for state legal aid. In such case the term for cassation shall recommence as of the delivery of the ruling on adjudication of an application for state legal aid to the counsel or refusal to grant state legal aid.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If, upon adjudication of a criminal matter, a circuit court declares legislation of general application subject to application in the conclusion of a court judgment to be in conflict with the Constitution and refuses to apply the legislation of general application, an appeal in cassation shall be filed within thirty days as of the day following pronouncement of the judgment made concerning the legislation of general application which is not applied by way of constitutional review of the Supreme Court.

(5) At the request of an appellant in cassation, the Supreme Court may restore the term for cassation if the Court finds that the term was allowed to expire for good reason.

(6) Restoration of the term or refusal to restore the term shall be formalised by a ruling of the Supreme Court.

### **§ 346. Bases for appeal in cassation**

The bases for an appeal in cassation are:

- 1) incorrect application of substantive law;
- 2) material violation of criminal procedural law in the case specified in § 339 of this Code.

### **§ 347. Appeal in cassation**

(1) Appeals in cassation shall be in typewritten form. An electronic copy of an appeal in cassation shall be added to the appeal.

(2) An appeal in cassation shall set out:

- 1) the name, status in the proceedings, address of the seat, phone number and other telecommunications numbers of the appellant in cassation;
  - 2) the name of the court which made the contested decision, and the date of the decision;
  - 3) the name of the party to the proceeding in whose interests or against whom the appeal in cassation is filed, the address of the residence or seat, phone number and other telecommunications numbers of the party;
  - 4) bases for the appeal in cassation according to § 346 of this Code and a reference to the relevant provisions of substantive law or criminal procedural law;
  - 5) the facts which were established by the court judgment or the evidence examined by the court on the basis of which the appellant in cassation proves that substantive law has been applied incorrectly or criminal procedural law has been materially violated;
  - 6) a list of documents which the appellant in cassation considers necessary to submit additionally in cassation proceedings in order to establish a material violation of criminal procedural law;
  - 7) the content of and reason for the request of the appellant in cassation;
  - 8) [repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]
  - 9) justification of the necessity of oral proceedings if the appellant in cassation applies for oral proceedings;  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]
  - 10) a list of the documents appended to the appeal in cassation.
- 3) A document certifying the authorisation of the appellant in cassation shall be appended to an appeal in cassation if the appellant in cassation is an advocate and such authorisation document is not in the court file.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) An appeal in cassation shall be signed and dated by the appellant in cassation.

### **§ 347<sup>1</sup>. Amendments to cassation**

(1) An appellant in cassation may amend and supplement a submitted appeal in cassation until the end of the term for cassation, and also extend the appeal in cassation to the parts of the court judgment which were initially not appealed. Upon amendments to appeal in cassation, the provisions concerning appeals in cassation shall be observed.

(2) The provisions of subsection (1) of this section do not preclude or restrict the right of the appellant in cassation to submit allegations concerning the interpretation of law and objections against the submissions of the other party to cassation proceedings made in the cassation proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 348. Prohibition on disclosure of court file and access to court file**

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(1) During a term for cassation, a court file shall be kept in the circuit court and shall not be disclosed.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) Persons who have the right to file an appeal in cassation have the right to examine the court file.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) Upon expiry of a term for cassation, the court file and the appeal in cassation shall be sent to the Supreme Court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Division 2 Pre-trial Proceedings in Supreme Court**

### **§ 348<sup>1</sup>. Giving notice of appeal in cassation and response to appeal in cassation**

(1) After receipt of an appeal in cassation which conforms to the requirements, the Supreme Court shall send a copy thereof to the person specified in subsection 344 (3) of this Code whose interests are concerned by the appeal in cassation and inform such person of the following circumstances:

- 1) the time of receipt of the appeal in cassation by the Court;
- 2) the obligation of the person to respond to the appeal in cassation within the term set by the court;
- 3) the mandatory contents of the response.

(2) A response to an appeal in cassation shall, inter alia, indicate the following:

- 1) whether any circumstances exist which prevent the proceeding of the appeal in cassation;
- 2) whether or not the appeal in cassation should be accepted;
- 3) whether the party to the cassation proceedings considers the appeal in cassation to be justified or intends to contest it;
- 4) objections to the appeal in cassation;
- 5) justification of the necessity of oral proceedings if the person submitting the response to the appeal in cassation applies for oral proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 349. Decision on acceptance of appeal in cassation**

(1) Within one month after the expiry of the term for giving response to an appeal in cassation, the Supreme Court shall decide to accept an appeal in cassation or refuse to accept an appeal in cassation by a ruling.

(2) If an appeal in cassation is clearly justified or clearly unjustified, the decision on acceptance of the appeal in cassation may be made without sending the appeal in cassation to the other persons or before the expiry of the term specified in subsection (1) of this section.

(3) An appeal in cassation shall be accepted if at least one justice of the Supreme Court finds that:

- 1) the allegations made in the appeal in cassation give reason to believe that the circuit court has applied substantive law incorrectly or has materially violated criminal procedural law;
- 2) the appeal in cassation contests the correctness of application of substantive law or requests annulment of the judgment of a circuit court due to material violation of criminal procedural law, and a judgment of the Supreme Court is essential for the uniform application of law or elaboration of law.

(4) Acceptance of an appeal in cassation or refusal to accept an appeal in cassation shall be formalised by a ruling of the Supreme Court without setting out any reasons.

(5) The results of adjudication of requests for acceptance of appeals in cassation shall be immediately published on the website of the Supreme Court indicating the number of the court case, names of the participants in the proceeding and the legal assessment of the criminal offence which form the content of the charges. In the case of adjudication of requests for acceptance of appeals in cassation submitted in closed proceedings, only the result of adjudication of the request and the number of the court case together with a reference to closed proceedings shall be published on the website. Refusal of acceptance for processing on the basis that the appeal in cassation did not comply with the requirements provided by law and was therefore returned shall not be published on the website. The data of adjudication of requests for acceptance of appeals in cassation for processing shall be removed from the website when seven days have expired from the communication of adjudication of the request.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 350. Refusal to accept or hear appeal in cassation**

(1) If an appeal in cassation is not in compliance with the requirements provided for in § 347 of this Code or other significant circumstance hindering the conduct of the cassation proceedings becomes evident and such circumstance can be corrected, the Supreme Court shall, by a ruling, refuse to accept the appeal in cassation and set a term for the appellant in cassation for the elimination of deficiencies.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The Supreme Court shall prepare a ruling on refusal to hear an appeal in cassation and return the appeal to the appellant in cassation if:



- 1) the appeal in cassation was filed after the expiry of the term for cassation provided for in § 345 of this Code and the appellant in cassation has not requested restoration of the term or the Supreme Court has refused to restore the term;
- 2) the appeal in cassation is submitted by a person who pursuant to subsection 344 (3) of this Code does not have the corresponding right;
- 3) the appellant in cassation fails to eliminate deficiencies in the appeal in cassation within the specified term;
- 4) the appeal in cassation is discontinued before the beginning of the court session.

**§ 351. [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

**Division 3 Hearing of Criminal Matters in Supreme Court**

**§ 352. Procedure for hearing criminal matters by way of cassation proceedings**

(1) The Supreme Court shall take guidance in cassation proceedings from the provisions of Chapter 10 of this Code, unless otherwise provided for cassation proceedings and unless the provisions of Chapter 10 are in conflict with the nature of cassation proceedings.

(2) Generally, the Supreme Court shall hear a criminal matter by way of a written proceeding. In such case the Supreme Court shall set a term during which the parties to the cassation proceedings may submit their positions to the court and the time for making the judgment public, and notify the parties to the cassation proceedings thereof. If a copy of the appeal in cassation has not been sent to the parties to the cassation proceedings pursuant to the procedure provided for in subsection 348<sup>1</sup> (1) of this Code, it shall be appended to the notice.

(3) A criminal matter shall be heard by way of an oral proceeding in the case the Supreme Court deems it necessary. If the Supreme Court hears an appeal in cassation by way of an oral proceeding, it shall summons the parties to the cassation proceedings. The Supreme Court may also summons a party to the court proceeding who is not a party to the cassation proceedings to a court session if the Supreme Court deems it necessary. The failure of a party to the cassation proceedings or another party to the court proceeding who has received the summons to appear in a court session shall not hinder the hearing of the matter, unless the Supreme Court decides otherwise.

(4) Parties to cassation proceedings have the right to examine the court file in the Supreme Court and make copies of the file at their own expense.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 353. Court panel upon hearing criminal matter subject to cassation proceedings**

In the Supreme Court, a criminal matter shall be heard subject to cassation proceedings:

- 1) by a three-member panel of the Criminal Chamber;
- 2) by the full panel of the Criminal Chamber;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 3) by a Special Panel of the Supreme Court;
- 4) by the Supreme Court *en banc*.

### **§ 354. Hearing of criminal matter by full panel of Criminal Chamber**

If fundamentally different opinions arise as to the application of the law in a three-member panel of the Criminal Chamber of the Supreme Court or if a need arises to amend a position regarding application of the law maintained by the Criminal Chamber in an earlier court judgment, a criminal matter shall be referred, on the basis of a ruling, for hearing by the full panel of the Criminal Chamber which shall comprise at least six justices of the Supreme Court. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 355. Hearing of criminal matter by Special Panel of Supreme Court**

(1) If the full panel of the Criminal Chamber of the Supreme Court finds in the hearing of a criminal matter that it is necessary to interpret the law so as to amend a position of another chamber of the Supreme Court or a position maintained in the most recent decision of the Special Panel, the criminal matter shall be referred for hearing by a Special Panel of the Supreme Court on the basis of a court ruling.

(2) A Special Panel of the Supreme Court shall be formed by the Chief Justice of the Supreme Court.

(3) The members of a Special Panel of the Supreme Court are:

- 1) the Chief Justice of the Supreme Court as the presiding judge;
- 2) two justices of the Criminal Chamber of the Supreme Court;
- 3) two justices from such chamber of the Supreme Court whose position concerning application of the law is contested by the Criminal Chamber.

(4) At the sessions of a Special Panel, materials shall be presented by a member of the Criminal Chamber.

### **§ 356. Hearing of criminal matter by Supreme Court *en banc***

A criminal matter is referred to the Supreme Court *en banc* if:

- 1) the majority of the full panel of the Criminal Chamber reaches a different opinion than the legal principle or position hitherto held by the Supreme Court *en banc* on the application of law;
- 2) the majority of the full panel of the Criminal Chamber considers the adjudication of the criminal matter by the Supreme Court *en banc* to be essential for the uniform application of the law;
- 3) that adjudication of the criminal matter requires adjudication of an issue subject to hearing on the basis of the Constitutional Review Court Procedure Act.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 356<sup>1</sup>. Referral of criminal matter in Supreme Court**

(1) A court ruling ordering referral of a criminal matter for adjudication to the full panel of the Criminal Chamber, Special Panel of Supreme Court or the Supreme Court *en banc* shall be sent to the parties to the cassation proceedings.

(2) If a matter is heard in a court session, the participants in the cassation proceedings shall be notified of the time and place of the session of the full panel of the Criminal Chamber, Special Panel of the Supreme Court or the Supreme Court *en banc*.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 357. Opening of Supreme Court session**

(1) Upon application of a court session in the Supreme Court, the presiding judge shall:

- 1) open the court session and announce the criminal matter to be heard and the name of the person who filed the appeal in cassation;
- 2) ascertain which of the parties to the cassation proceedings and other persons summoned have appeared at the court session and verify their authority;
- 3) involve an interpreter or translator, if necessary;
- 4) announce the composition of the panel of the court and ask the appellant in cassation and the other parties to the cassation proceedings whether they wish to submit petitions of challenge or other requests;
- 5) ask the appellant in cassation whether he or she will proceed with the appeal in cassation or discontinue the appeal. Discontinuance of an appeal in cassation shall be certified by the signature of the appellant on the appeal.

(2) Any requests shall be adjudicated pursuant to the procedure prescribed in subsection 284 (3) of this Code.

(3) If circumstances hindering the hearing of a criminal matter become evident during a court session, the court shall adjourn the hearing of the matter by a ruling.

### **§ 358. Discontinuance of appeal in cassation**

(1) An appellant in cassation may discontinue an appeal in cassation in part or in full before the Supreme Court withdraws from the courtroom to make the judgment, and in the case of written proceedings until the expiry of the term granted to the parties to the cassation proceedings for submission of their positions.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A criminal defence counsel or representative may discontinue an appeal in cassation if the person being defended or the principal has agreed to this in writing.

(3) On the basis of a written request, a party to cassation proceedings has the right to discontinue an appeal in cassation filed in the interests of the party. The accused may discontinue an appeal

in cassation filed by the counsel, unless the participation of a counsel in the criminal proceeding is mandatory pursuant to subsection 45 (2) of this Code.

(4) If an appellant in cassation discontinues an appeal in cassation, the hearing of the appeal in cassation shall be refused by a court ruling and the cassation proceedings shall be terminated with regard to such appeal in cassation.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If the Supreme Court ascertains that a circuit court has incorrectly applied substantive law in the adjudication of a criminal matter and thereby aggravated the situation of the accused or that a circuit court has materially violated criminal procedural law, the hearing of the criminal matter shall be continued regardless of discontinuance of the appeal in cassation.

### **§ 359. Report on materials of criminal matter**

(1) After opening a court session, the presiding judge or a justice of the Supreme Court shall present the materials of the criminal matter.

(2) A presentation shall give an overview of:

- 1) the facts relating to the criminal matter;
- 2) the content of and reasons for the appeal in cassation;
- 3) the requests of the appellant in cassation;
- 4) the explanations and objections set out in the response to the appeal in cassation.

### **§ 360. Hearing of opinions of parties to cassation proceedings and closing of court session**

(1) After presentation of the materials of a criminal matter, the court shall hear the opinions of the parties to the cassation proceedings who have appeared at the court session in the order determined by the court, whereas the appellant in cassation shall be heard first. The criminal defence counsel of the accused shall be the last to be heard even if he or she had already spoken as the appellant in cassation.

(2) The presiding judge has the right to interrupt the statement of a party to the cassation proceedings if he or she exceeds the limits of the appeal in cassation.

(3) The court has the right to question the parties to the cassation proceedings and the parties to the court proceeding who are not parties to the cassation proceedings and who have been summoned to the court session.

(4) After hearing the parties to the cassation proceedings, the presiding judge shall close the court session and announce the date when the court judgment will be accessible in the Office of the Supreme Court. The judgment of the Supreme Court shall be published on the website of the Supreme Court.

[RT I 2010, 19, 101 - entry into force 01.06.2010]

(5) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 360<sup>1</sup>. Written questions of Supreme Court**

(1) For ensuring legal hearing, the Supreme Court shall have the right, during the entire cassation proceedings, to pose written questions to the party to the cassation proceedings and the party to the court proceedings who is not a party to the cassation proceedings. Written questions are signed by a member of the court panel hearing the matter. The written questions shall also set out the term for giving response to them which shall not be shorter than one week.

(2) A response to the written questions of the court shall be in typewritten form. The response shall be signed by the party to the court proceeding to whom the questions are addressed.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 360<sup>2</sup>. Limits of hearing criminal matters by way of cassation proceedings**

(1) A criminal matter shall be heard within the limits of the appeal in cassation. In the hearing of a criminal matter, the appellant in cassation does not have the right to exceed the limits of the appeal in cassation. The provisions in the first sentence of this subsection do not preclude or restrict the right of the appellant in cassation to submit allegations concerning the interpretation of law and objections against the positions of the opposing party.

(2) The Supreme Court is not bound by the legal grounds of an appeal in cassation.

(3) The Supreme Court shall extend the limits of hearing a criminal matter to all the accused and all the criminal offences they are accused of regardless of whether an appeal in cassation has been filed with regard to them if incorrect application of substantive law which has aggravated the situation of the accused or a material violation of criminal procedural law becomes evident.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 361. Competence of Supreme Court upon making of judgment**

(1) The Supreme Court may, by a judgment:

- 1) refuse to amend a judgment made by a circuit court and deny the appeal in cassation;
- 2) refuse to make substantive amendments to the judgment of a circuit court and make corrections thereto which do not aggravate the situation of the convicted offender;
- 3) amend the main part of a court judgment by replacing the legal reasons therein by the reasons of the Supreme Court or excluding the facts presented in the main part of the court judgment;
- 4) annul a court judgment and terminate the criminal proceeding on the grounds prescribed in clauses 199 (1) 2)-6) of this Code;
- 5) annul a judgment of a circuit court and enforce the judgment of the county court;
- 6) annul a court judgment in full or in part and refer the criminal matter for a new hearing by the court which applied substantive law incorrectly or materially violated criminal procedural law;
- 7) annul a court judgment made in a criminal matter in full or in part and, without collecting any additional evidence, make a new judgment which does not aggravate the situation of the convicted offender;
- 8) annul the court judgment made in the settlement proceedings in full and send the criminal file to the Prosecutor's Office.

(2) Upon referral of criminal matters to circuit courts or county courts for new hearing or return of criminal files to Prosecutor's Offices, the Supreme Court shall observe the provisions of §§ 341, 341<sup>1</sup> and 343<sup>1</sup> of this Code, taking into consideration the specifications of cassation proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 362. Grounds for annulment of court judgment by way of cassation procedure**

The grounds for annulment of a court judgment by way of cassation procedure are:

- 1) incorrect application of substantive law;
- 2) material violation of criminal procedural law.

### **§ 363. Judgment of Supreme Court**

(1) The introduction of a judgment of the Supreme Court shall set out:

- 1) the number of the case;
- 2) the date of the judgment of the Supreme Court;
- 2<sup>1</sup>) the court panel;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 3) the name of the case heard;
- 4) the contested decision;
- 5) the date of hearing the case;
- 6) whether the case is heard by way of written or oral proceedings;
- 7) the official title and name of the appellant in cassation;
- 8) the official titles and names of the parties to the cassation proceedings and the names of the parties to the court proceedings and the name of the interpreter or translator who participated in the session of the Supreme Court.

(2) The statement of reasons of a judgment of the Supreme Court shall set out the following:

- 1) a short summary of the court proceedings to date;
- 2) the part of the court judgment which the appellant in cassation contests, and the requests of the appellant;

- 3) the explanations and objections submitted in the response to the appeal in cassation;
- 4) the opinions of the parties to the cassation proceedings presented during the court session;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

- 5) the reasons for the conclusions of the Supreme Court;
- 6) the legal basis for the conclusions of the Supreme Court.

(3) The conclusion of a judgment of the Supreme Court shall set out the conclusions of the court.

(4) If the Supreme Court refuses to amend a judgment of a circuit court pursuant to clauses 361 1) or 2) of this Code, the Supreme Court:

- 1) is not required to repeat in its judgment the reasons for the judgment of the circuit court and may add the motives of the Supreme Court;

2) may limit the judgment thereof to the introduction, conclusion and the provisions of procedural law pursuant to which the judgment was made.

(5) The Supreme Court shall not establish facts.

(6) Judgments of the Supreme Court enter into force as of the date they are made and are not subject to appeal.

(7) A judgment of the Supreme Court shall be accessible in the Office of the Supreme Court not later than one month after the session of the Supreme Court or the term granted to the parties to cassation proceedings for submission of their positions in written proceedings. In exceptional cases, the term may be extended by one month.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 364. Obligation to comply with judgment of Supreme Court**

The positions set out in a judgment of the Supreme Court on the interpretation and application of a provision of law are mandatory for the court conducting a new hearing of the same matter.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Chapter 13 REVIEW PROCEDURE FOR DECISIONS**

### **§ 365. Definition of review procedure**

(1) Review procedure means hearing of a petition for review by the Supreme Court in order to decide on the resumption of proceedings in a criminal matter in which the decision has entered into force.

(2) A criminal matter in which the decision has entered into force and resumption of the proceedings in which resumption is requested is a criminal matter subject to review.

### **§ 366. Grounds for review**

**[RT I, 17.04.2012, 4 - entry into force 10.04.2012 The decision of the Supreme Court en banc declares § 366 of the Code of Criminal Procedure to be in conflict with the Constitution to the extent that this does not prescribe the entry into force of a court judgment made pursuant to general procedure, which establishes the absence of a criminal act, as bases for review if a punishment of imprisonment was imposed for participation in such criminal act to a person by a court judgment made pursuant to general procedure in the criminal matter subject to review.]**

The grounds for review are:

- 1) the unlawfulness or unfoundedness of a court judgment or ruling arising from the false testimony of a witness, knowingly wrong opinion of an expert, knowingly false interpretation or translation, or falsification of documents, or fabrication of evidence which is established by another court judgment which has entered into force;
- 2) a criminal offence which is committed by a judge in the hearing of the criminal matter subject

to review and which is established by a court judgment;

3) a criminal offence which is committed by an official of the body that conducted proceedings or a prosecutor in the proceedings of a criminal matter and which is established by a court judgment, if the criminal offence could have had an effect on the court judgment made in the criminal matter subject to review;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

4) annulment of a court judgment or ruling which was one of the bases for making a court judgment or ruling in the criminal matter subject to review, if this may result in the making of a judgment of acquittal in the criminal matter subject to review, or in mitigation of the situation of the convicted offender;

5) any other facts which are relevant to the just adjudication of the criminal matter but which the court was not aware of while making the court judgment or a court ruling in the criminal matter subject to review and which independently or together with the facts previously established may result in a judgment of acquittal or in mitigation of the situation of the convicted offender or in mitigation of the situation of a third party whose property has been confiscated on the basis of a court judgment or ruling;

[RT I 2007, 2, 7 - entry into force 01.02.2007]

6) the Supreme Court declares, by way of constitutional review proceedings, the legislation of general application or a provision thereof on which the court judgment or ruling in the criminal matter subject to review was based to be in conflict with the Constitution;

7) satisfaction of an individual appeal filed with the European Court of Human Rights against a court judgment or ruling in the criminal matter subject to review filed with the European Court of Human Rights, due to violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a Protocol belonging thereto if the violation may have affected the resolution of the matter and it cannot be eliminated or damage caused thereby cannot be compensated in a manner other than by review;

8) entry into force of a court judgment by which the accused is acquitted in the criminal offence in which a joint principal offender or an accomplice was convicted in simplified proceeding in the criminal matter subject to review.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 367. Right to submit petition for review**

(1) Persons specified in subsection 344 (3) of this Code have the right to submit a petition for review.

(2) On the basis provided for in clause 366 7) of this Code, the criminal defence counsel, who is an advocate, of the person who filed an individual appeal with the European Court of Human Rights, and the Public Prosecutor's Office, as well as the criminal defence counsel of such person, who is an advocate who has filed an individual appeal with the European Court of Human Rights in a similar matter and on the same legal basis or who has the right to file such appeal in a similar matter and on the same legal basis, taking into account the terms provided for in Article 35(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms have the right to submit petitions for review.

[RT I 2006, 48, 360 - entry into force 18.11.2006]



### **§ 368. Terms for submission of petitions for review**

A petition for review may be submitted within six months after the bases for provided for in § 366 of this Code become evident.

### **§ 369. Petition for review**

(1) A petition for review submitted to the Criminal Chamber of the Supreme Court shall be prepared in typewritten form. The petition for review shall be also sent to the court by electronic means.

(2) A petition for review shall set out:

- 1) the name, official title, address of the seat, phone number and other telecommunications numbers of the petitioner;
- 2) the name of the court whose decision is requested to be reviewed, and the date of the decision subject to review;
- 3) the name of the convicted offender with regard to whom review of the criminal matter is requested;
- 4) the grounds for review according to § 366 of this Code and the reasons therefor;
- 5) materials which should be examined and persons who should be questioned in the Supreme Court in order to ascertain the existence of the grounds for review;
- 6) whether the petitioner requests an oral procedure;
- 7) a list of the documents appended to the petition for review.

(3) The following shall be appended to a petition for review:

- 1) a document certifying the authority of the petitioner if the petition is submitted by a sworn advocate;
- 2) copies of the petition for review for the convicted offender who is serving a prison sentence and whose interests are concerned by the petition and for the Prosecutor's Office;
- 3) materials which should be examined in the Supreme Court in order to ascertain the existence of the grounds for review;
- 4) addresses of the residence or seat and phone numbers and other telecommunications numbers of persons who should be questioned in the Supreme Court in order to ascertain the existence of the grounds for review.

(4) If review of a criminal matter is requested on the basis of the grounds provided for in clauses 366 1)-4) and 7) of this Code, a copy of the court judgment on which the request for review is based shall be appended to the petition for review.

(5) A person submitting a petition for review shall sign the petition and indicate the date of preparation of the petition.

[RT I 2006, 48, 360 - entry into force 18.11.2006]

### **§ 370. Decision on acceptance of petition for review**

(1) The Supreme Court shall decide on acceptance of a petition for review pursuant to the provisions of subsection 349 (1)-(3) of this Code.

(2) A petition for review shall be accepted if at least one justice of the Supreme Court finds that the allegations made in the petition give reason to presume the existence of grounds for review. Upon acceptance of a petition for review, the Supreme Court may suspend, in full or in part, if necessary, the execution of a court judgment or ruling in the criminal matter subject to review. [RT I 2006, 48, 360 - entry into force 18.11.2006]

(3) If a petition for review is not accepted, the petition and the ruling of the Supreme Court shall be included in the court file which shall be returned to the court of first instance. Copies of the ruling of the Supreme Court shall be sent to the person who submitted the petition for review and the person who responded to the petition for review. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If necessary, the Supreme Court shall send copies of a petition for review and relevant materials to the Public Prosecutor's Office for verification. The Prosecutor's Office shall organise verification directly or through the body that conducted pre-trial proceedings and observe the requirements of pre-trial procedure.

### **§ 371. Refusal to accept or hear petition for review**

Acceptance or hearing of a petition for review shall be refused pursuant to the provisions of § 350 of this Code.

### **§ 372. Review procedure**

Review procedure shall be conducted in compliance with the provisions of §§ 352-360<sup>2</sup> and 363 of this Code, taking into account the specifications provided for in this Chapter. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 373. Jurisdiction of Supreme Court in review procedure**

(1) In the absence of the grounds for review, the Supreme Court shall dismiss the petition for review.

(2) If a petition for review is justified, the Supreme Court shall annul the contested decision by a judgment and send the criminal matter for a new hearing by the court which made the annulled decision or to the Public Prosecutor's Office for a new pre-trial proceeding to be conducted.

(3) If there is no need to ascertain new facts in the criminal matter subject to review, the Supreme Court may make a new judgment after the review of the criminal matter without aggravating the situation of the convicted offender. [RT I 2006, 21, 160 - entry into force 25.05.2006]

### **§ 374. Criminal proceedings after review of criminal matter**

(1) After the review of a criminal matter, criminal proceedings shall be conducted pursuant to general procedure.

(2) A person may be acquitted without a court hearing if:

- 1) the person is dead;
- 2) the facts are explicit and the Prosecutor's Office does not request a court hearing.

### **Chapter 14 SPECIAL PROCEDURE FOR PREPARATION OF STATEMENT OF CHARGES AND PERFORMANCE OF CERTAIN PROCEDURAL ACTS**

#### **§ 375. Scope of application of Chapter**

(1) The provisions of this Chapter apply to the preparation of a statement of charges and the performance of procedural acts specified in § 377 of this Code with regard to the President of the Republic, members of the Government of the Republic and the *Riigikogu*, the Auditor General, the Chancellor of Justice, the Chief Justice of the Supreme Court and judges.

(2) The provisions of this Chapter apply to the preparation of a statement of charges and the performance of procedural acts specified in § 377 of this Code with regard to persons who held an office specified in subsection (1) of this section at the time when a resolution concerning the grant of consent provided for in § 381 of this Code was adopted, regardless of whether the act was committed prior to assuming office or during the term of office.

(3) The provisions of this Chapter concerning members of the *Riigikogu* also apply to alternate members of the *Riigikogu* who perform the duties of a member of the *Riigikogu*.

(4) The provisions of this Chapter concerning the President of the Republic also apply to the President of the *Riigikogu* who is temporarily performing the duties of the President of the Republic pursuant to subsection 83 (1) of the Constitution. The provisions of this Chapter concerning members of the Government of the Republic also apply to any member of the *Riigikogu* whose authority is suspended due to his or her appointment as a member of the Government of the Republic.

#### **§ 376. Special procedure for preparation of statement of charges**

(1) A statement of charges with regard to the President of the Republic, members of the Government of the Republic and the *Riigikogu*, the Auditor General, or the Chief Justice and justices of the Supreme Court may be prepared only on the proposal of the Chancellor of Justice and with the consent of the majority of the membership of the *Riigikogu*.

(2) A statement of charges with regard to the Chancellor of Justice may be prepared only on the proposal of the President of the Republic and with the consent of the majority of the membership of the *Riigikogu*.

(3) A statement of charges with regard to a judge may be prepared only on the proposal of the Supreme Court and with the consent of the President of the Republic.

### **§ 377. Special procedure for performance of procedural acts**

(1) The President of the Republic, a member of the Government of the Republic or the *Riigikogu*, the Auditor General, the Chief Justice or a justice of the Supreme Court may be detained as a suspect and preventive measures may be applied with regard to him or her, seizure and physical examinations of property may be conducted with regard to him or her, if the Chancellor of Justice has granted consent thereto at the request of the Chief Public Prosecutor.

(2) A judge or the Chancellor of Justice may be detained as a suspect and preventive measures may be applied with regard to him or her, seizure and physical examinations of property may be conducted with regard to him or her if the President of the Republic has granted consent thereto at the request of the Chief Public Prosecutor.

(3) A person specified in subsection (1) or (2) of this section may be detained as a suspect and preventive measures may be applied with regard to him or her, seizure and physical examinations of property may be conducted with regard to him or her without the consent of respectively the Chancellor of Justice or the President of the Republic if the person was apprehended in the act of commission of a criminal offence in the first degree.

(4) The Chief Public Prosecutor and the President of the *Riigikogu* shall be notified of the performance of any procedural acts referred to in subsection (3) of this section if procedural acts are performed with regard to a member of the *Riigikogu*.

(5) If necessary, the President of the Republic or the Chancellor of Justice shall examine the materials of the criminal file upon grant of consent for the procedural act.

(6) The President of the Republic or the Chancellor of Justice shall grant his or her consent for the performance of the procedural act or return the petition within 10 days as of receipt of the request. If the request is returned, the reasons shall be provided.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 378. Chief Public Prosecutor's request for preparation of statement of charges and processing of statement of charges**

**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) On the basis of a request from the Chief Public Prosecutor, the Chancellor of Justice shall make a proposal to the *Riigikogu* for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic, a member of the *Riigikogu*, the Auditor General, the Chief Justice or a justice of the Supreme Court.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) The President of the Republic shall make a proposal for the preparation of a statement of charges with regard to the Chancellor of Justice on the basis of a request from the Chief Public

Prosecutor.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The Supreme Court shall make a proposal for the preparation of a statement of charges with regard to a judge on the basis of a request from the Chief Public Prosecutor.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) If necessary, the Chancellor of Justice, the President of the Republic or the Supreme Court shall examine the materials of the criminal file but shall not verify or assess the collected evidence.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(6) The Chancellor of Justice or the President of the Republic shall make a written proposal to the *Riigikogu* or the Supreme Court to the Presidents of the Republic to grant consent for the preparation of a statement of charges with regard to the person specified in the request of the Chief Public Prosecutor, except in the case the bringing of charges would be politically impartial or clearly unjustified for any other reason.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(7) The Chancellor of Justice, the President of the Republic or the Supreme Court shall make a proposal or return the request within one month as of the receipt of the request. If the request is returned, the reasons shall be provided.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 379. Submission of proposal for preparation of statement of charges**

(1) A proposal to grant consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic or the *Riigikogu*, the Auditor General, the Chancellor of Justice, the Chief Justice or a justice of the Supreme Court shall be submitted to the *Riigikogu* in writing by the Chancellor of Justice or the President of the Republic.

(2) A proposal to grant consent for the preparation of a statement of charges with regard to a judge shall be submitted to the President of the Republic in writing by the Supreme Court.

(3) A proposal shall be reasoned and it shall set out:

1) the name of the person with regard to whom consent for the preparation of a statement of charges is requested from the *Riigikogu* or the President of the Republic;

2) the facts relating to the criminal offence;

3) the content of the suspicion and legal assessment of the criminal offence;

4) under the circumstances set out in a request of the Chief Public Prosecutor;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

5) other facts on which the proposal is based.

(4) The Chancellor of Justice, the President of the Republic or the Supreme Court shall limit the content of the proposal submitted to the *Riigikogu* or the President of the Republic, as appropriate, to the content of the suspicion.

(5) A request of the Chief Public Prosecutor shall be appended to the proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 380. Proceeding in *Riigikogu* concerning proposal for preparation of statement of charges**

(1) In the *Riigikogu*, a proceeding concerning a proposal of the Chancellor of Justice or the President of the Republic provided for in subsection 379 (1) of this Code shall be conducted pursuant to the *Riigikogu* Rules of Procedure and Internal Rules Act.  
[RT I 2007, 44, 316 - entry into force 14.07.2007]

(2) A report presented by the Chancellor of Justice or the President of the Republic to the *Riigikogu* in order to obtain consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic or the *Riigikogu*, the Auditor General, the Chancellor of Justice, the Chief Justice of the Supreme Court or a judge shall set out the information contained in the proposal specified in subsection 379 (1) of this Code and annexes thereto.

(3) The President or Vice-President of the *Riigikogu* with regard to whom consent for the preparation of a statement of charges is requested shall not chair the session of the *Riigikogu* during the proceeding concerning the corresponding draft resolution.

(4) Questions posed by the members of the *Riigikogu* and the responses of the Chancellor of Justice or the President of the Republic must remain within the limits of the material presented to the *Riigikogu*.

(5) If the *Riigikogu* conducts a proceeding concerning a draft resolution for the grant of consent for the preparation of a statement of charges with regard to a member of the *Riigikogu*, questions shall not be posed to the member of the *Riigikogu* and he or she shall not be given the floor nor participate in voting.

### **§ 381. Consent of *Riigikogu* or President of Republic and consequences thereof**

(1) A resolution of the *Riigikogu* to grant consent for the preparation of a statement of charges with regard to the President of the Republic, a member of the Government of the Republic or the *Riigikogu*, the Auditor General, the Chancellor of Justice, the Chief Justice or a justice of the Supreme Court enters into force as of the adoption thereof. The resolution shall be immediately sent to the person who made the proposal, to the Chief Public Prosecutor and to the person whom it concerns.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A resolution of the President of the Republic to grant consent for the preparation of a statement of charges with regard to a judge enters into force upon signature thereof.

(3) A resolution of the *Riigikogu* or the President of the Republic to grant consent for the preparation of a statement of charges with regard to a person specified in subsection (1) or (2) of this section, except members of the *Riigikogu*, shall suspend the performance of the official duties of the person concerned until entry into force of a court judgment.

(4) If, by a resolution, the *Riigikogu* or the President of the Republic grants consent for the preparation of a statement of charges with regard to a person specified in subsection (1) or (2) of this section, proceedings in the criminal matter shall be conducted pursuant to the general procedure prescribed by this Code.

### **§ 382. Preparation of statement of charges in other criminal offence**

(1) If it is necessary to prepare a statement of charges with regard to a person specified in subsection 375 (1) of this Code concerning a criminal offence other than the criminal offence indicated in the proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court, new consent of the *Riigikogu* or the President of the Republic is required.

(2) The *Riigikogu* or the President of the Republic shall grant the consent specified in subsection (1) of this section by a resolution on the basis of a proposal of the Chancellor of Justice, the President of the Republic or the Supreme Court, as appropriate, and pursuant to the procedure provided for in this Chapter.

(3) New consent of the *Riigikogu* or the President of the Republic is not required for amendment of the legal assessment of the criminal offence or the statement of charges or preparation of a new statement of charges.

## **Chapter 15 PROCEEDINGS FOR ADJUDICATION OF APPEALS AGAINST COURT RULINGS**

### **§ 383. Definition of appeal against court ruling**

(1) An appeal against a court ruling may be filed in order to contest a court ruling prepared in a pre-trial proceeding, a court proceeding conducted by a court of first instance or a court of appeal or an execution proceeding unless contestation of the ruling is precluded pursuant to § 385 of this Code.

(2) A court ruling which cannot be contested by way of an appeal against the ruling may be contested by an appeal or appeal in cassation filed against the court judgment.

### **§ 384. Right to file appeals against rulings**

(1) The parties to a court proceeding and persons not subject to the proceeding have the right to file appeals against a ruling of a county court if the ruling restricts their rights or lawful interests.

(2) Persons listed in subsection 344 (3) of this Code have the right to file appeals against a ruling of a circuit court and persons not participating in the court proceeding have the right to file appeals against a ruling of a circuit court through an advocate if the ruling restricts their rights or lawful interests.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 385. Court rulings not subject to contestation by way of proceedings for adjudication of appeals against court rulings**

Appeals shall not be filed against the following court rulings:

- 1) a ruling on the restriction of public access to a court session;
- 2) a ruling on the involvement of a reserve judge or reserve lay judge;
- 3) a ruling on the referral of a criminal matter to a court with appropriate jurisdiction;
- 4) a ruling on removal, a ruling on dismissal of a petition of challenge and a ruling on removal of a person from proceedings;
- 5) a ruling on the grant of permission for a procedural act, except rulings on taking into custody or refusal to take into custody, extension of the term for holding in custody or refusal to extend the term for holding in custody, provisional custody, compulsory placement of person in a medical institution, seizure of property, seizure of a postal or telegraphic item, exclusion from office, application of temporary restraining order, and placement of a minor in a school for students who need special treatment due to behavioural problems or for extension of the term for his or her stay in such a school and on grant of permission by a court for surveillance activities;  
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]
- 6) a ruling on verification of the reasons for holding in custody, except the ruling specified in subsection 275 (2) of this section;
- 7) a ruling on verification of the reasons for the bail;
- 8) a ruling on verification of the reasons for the exclusion from office;
- 9) a ruling on verification of reasons for temporary restraining order, except in the case the conditions of the temporary restraining order are amended;
- 10) a ruling on termination and resumption of criminal proceedings on the basis of §§ 201-203<sup>1</sup> of this Code, except a victim against a ruling on termination of criminal proceedings on the bases provided for in § 203<sup>1</sup> of this Code;
- 11) a ruling on refusal to commence or continue criminal proceedings on the basis of § 208 of this Code, except a ruling by which an appeal filed on the basis of § 205<sup>2</sup> of this Code was dismissed;
- 12) a ruling on compelled attendance;
- 13) a ruling on declaring a person a fugitive;
- 14) a ruling made concerning contestation of the activities of an investigative body or Prosecutor's Office on the basis of § 231 of this Code, except rulings made upon adjudication of appeals filed against the course of surveillance activities, failure to give notice thereof and failure to submit information collected thereby;  
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]
- 15) a ruling on the return of a criminal file to a Prosecutor's Office;
- 16) a ruling on prosecution;
- 17) a ruling on acceptance of a civil action and grant of term for elimination of deficiencies therein;



- 18) a ruling on the adjournment of a court hearing;
- 19) a ruling on the joinder or severance of criminal matters;
- 20) a ruling made in the course of a court proceeding on the adjudication of a request of a party to the court proceeding, except rulings on adjudication of requests to expedite court proceedings and rulings by which requests for termination of criminal proceedings in connection with expiry of the reasonable time of proceedings are adjudicated;
- 21) [repealed - RT I, 23.02.2011, 3 - entry into force 01.01.2012]
- 22) a ruling on an expert assessment;
- 23) a ruling on alteration of the time of pronouncement of a court judgment or the conclusion thereof and of making the court judgment accessible to the parties;
- 24) a ruling on refusal to accept an appeal;
- 25) a ruling ordering the hearing of a criminal matter by a circuit court;
- 26) a ruling for the enforcement of a sentence of imprisonment imposed on a convicted offender made on the basis of subsection 427 (2) and § 428 of this Code;  
[RT I, 09.07.2012, 2 - entry into force 03.07.2012 - The judgment of the Supreme Court *en banc* declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which a sentence suspended on probation is enforced pursuant subsection 74 (4) of the Penal Code.  
[RT I, 09.07.2012, 2 - entry into force 03.07.2012 - The judgment of the Supreme Court *en banc* declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which a sentence suspended on probation is enforced pursuant subsection 74 (4) of the Penal Code.]  
[RT I, 16.11.2012, 6 - entry into force 13.11.2012 - The judgment of the Supreme Court *en banc* declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent that this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 427 (2) of the Code of Criminal Procedure by which the part of the punishment which was not served due to release on parole is enforced pursuant subsection 76 (5) of the Penal Code.]  
[RT I, 03.05.2013, 12 - entry into force 30.04.2013 - The decision of the Supreme Court *en banc* declares clause 385 26) of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 428 (2) of the Code of Criminal Procedure by which the sentence of imprisonment substituted by community service is enforced pursuant to subsection 69 (6) of the Penal Code. ]  
[RT I, 15.05.2013, 3 - entry into force 10.05.2013 - The ruling of the Constitutional Review Chamber of the Supreme Court declares that clause 385 26) of the Code of Criminal Procedure was in conflict with the Constitution at the time of making the ruling of the Tallinn Circuit Court dated 7 January 2013 to the extent this does not allow to file an appeal against a ruling made by a judge in charge of execution of court judgments at a county court on the basis of subsection 428 (2) of the Code of Criminal Procedure by which the sentence of imprisonment substituted by community service is enforced pursuant to subsection 69 (6) of the Penal Code.]
- 27) a court ruling on the verification of the legal permissibility of extradition on the basis of §

451 of this Code;

28) an arrest warrant in surrender proceedings.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 386. Appeals against rulings**

**[RT I 2006, 21, 160 - entry into force 25.05.2006]**

(1) An appeal against a court ruling shall be prepared in writing and shall set out:

- 1) the name of the court with which the appeal is filed;
- 2) the name, status in the proceedings, residence or seat and address of the appellant;
- 3) the name of the court whose ruling is contested, the date of making the ruling and the name of the party to the court proceeding with regard to whom the ruling is contested;
- 4) which part of the ruling is contested;
- 5) the content of and reasons for the requests submitted in the appeal;
- 6) a list of documents appended to the appeal.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(2) An appeal against a court ruling shall be signed and dated by the appellant.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(2) An appeal against a court ruling shall be appended to the court file.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 387. Procedure and term for submission of appeals against court rulings**

(1) An appeal against a ruling shall be filed with the court which made the contested court ruling within ten days as of the date when the person became or should have become aware of the contested court ruling unless otherwise provided for in subsection (2) of this section.

(2) An appeal against a ruling on taking into custody or refusal to take into custody, extension of the term for holding in custody or refusal to extend the term for holding in custody, provisional custody, compulsory placement of a person in a medical institution, seizure of property, seizure of a postal or telegraphic item, exclusion from office, placement of a minor in a school for students who need special treatment due to behavioural problems and grant of permission for surveillance activities shall be filed, through the court which made the contested court ruling, with a court which is superior to the court which made the contested court ruling within 10 days as of the date when the person became or should have become aware of the contested court ruling.

[RT I, 05.07.2013, 2 - entry into force 15.07.2013]

(3) If, by a ruling made in a criminal matter, a court declares legislation of general application subject to application to be in conflict with the Constitution and refuses to apply the legislation of general application, the term for filing an appeal against a ruling concerning the legislation of general application which is not applied shall be calculated as of pronouncement of the judgment made by way of constitutional review of the Supreme Court.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

**§ 388. [Repealed - RT I 2006, 21, 160 - entry into force 25.05.2006]**

**§ 389. Hearing of appeal against court ruling by court which made such ruling**

(1) An appeal against a court ruling shall be heard pursuant to the provisions of Chapters 10 or 11 of this Code, taking into account the specifications provided for in this Chapter.

(2) The panel of a court which made the ruling shall hear an appeal against the ruling within five days as of the filing of the appeal by way of a written proceeding within the limits of the appeal and only with regard to the person in respect of whom the appeal was filed.

(3) If the court which made a contested court ruling considers the appeal against the ruling justified, the panel shall annul the contested court ruling by a ruling and, if necessary, make a new ruling and shall immediately notify the appellant and any participants in the proceedings whose interests are concerned thereof.

(4) If the court which made a contested court ruling considers the appeal against the ruling unjustified, the panel shall forward the contested court ruling and the appeal against the ruling immediately to the court with appropriate jurisdiction.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

**§ 390. Hearing of appeal against court ruling by higher court**

**[RT I 2006, 21, 160 - entry into force 25.05.2006]**

(1) An appeal against a court ruling shall be heard by a higher court pursuant to the provisions of Chapters 11 or 12 of this Code, taking into account the specifications provided for in this Chapter.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(2) An appeal against a court ruling shall be heard within the limits of the appeal and only with regard to the person in respect of whom the appeal was filed.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

(3) A circuit court shall hear an appeal against a court ruling in a written proceeding within ten days as of the receipt of the appeal unless otherwise provided for in subsection (4) or (4<sup>1</sup>) of this section.

[RT I 2009, 39, 261 - entry into force 24.07.2009]

(4) The counsel of the suspect or accused, or the representative of the minor, and the prosecutor shall be summoned to a circuit court to the hearing of an appeal filed against a ruling on taking into custody or refusal to take into custody, extension of the term for holding in custody or refusal to extend the term for holding in custody, provisional custody, compulsory placement of a person in a medical institution, seizure of property, seizure of a postal or telegraphic item, exclusion from office and placement of a minor in a school for students who need special treatment due to behavioural problems or for extension of the term for his or her stay in such a

school. The failure of such persons to appear shall not hinder the hearing of the appeal.  
[RT I 2006, 21, 160 - entry into force 25.05.2006]

(4<sup>1</sup>) [Repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

(4<sup>2</sup>) In the case of satisfaction of an appeal against a court ruling to deny a request to expedite court proceedings or a ruling on implementation of a measure which is different from the measure set out in the request to expedite court proceedings, a higher court decides on the implementation of such measure which presumably allows to conclude the court proceedings within a reasonable period of time. The court shall not be bound by the limits of the appeal in choosing the measure.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) The Supreme Court shall decide on acceptance of an appeal against a ruling of a circuit court pursuant to the provisions of § 349 of this Code. Acceptance of a court ruling specified in subsection (4) of this section shall be decided within 10 days. The Supreme Court shall accept an appeal against a ruling made in the hearing of an appeal against a ruling in a circuit court if the decisions of the Supreme Court in this matter is essential for uniform application of law or elaboration of law.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 391. [Repealed - RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

### **§ 392. Suspension of execution of contested ruling**

A court which receives an appeal against a court ruling may suspend the execution of the contested ruling if the further execution of the ruling may result in grave and irreversible violation of the rights of the person.

[RT I 2006, 21, 160 - entry into force 25.05.2006]

## **Chapter 16 PROCEDURE FOR ADMINISTRATION OF COERCIVE PSYCHIATRIC TREATMENT**

### **§ 393. Grounds for administration of coercive psychiatric treatment**

If a person commits an unlawful act in a state of mental incompetence or if he or she becomes mentally ill or feeble-minded or suffers from any other severe mental disorder after the court judgment is made but before he or she has served the full sentence or if it is established during pre-trial proceedings or court proceedings that the person suffers from one of the aforementioned conditions, he or she poses danger to himself or herself and to the society and is in need of coercive psychiatric treatment, criminal proceedings with regard to the person shall be conducted pursuant to the provisions of this Chapter.

[RT I, 05.07.2013, 2 - entry into force 15.07.2013]

### **§ 394. Facts relating to subject of proof**

In the case of a person specified in § 393 of this Code, the facts relating to a subject of proof are as follows:

- 1) an unlawful act;
- 2) state of mental incompetence at the time of commission of the unlawful act, developing an illness or disorder after the court judgment is made but before the person has served the full sentence or developing an illness or disorder during pre-trial proceedings or court proceedings; [RT I, 05.07.2013, 2 - entry into force 15.07.2013]
- 3) mental state during criminal proceedings;
- 4) whether the person's subsequent behaviour may be harmful to the person himself or herself or to society;
- 5) the need for administration of coercive psychiatric treatment.

### **§ 395. Participation in procedural acts**

A person subject to proceedings for the administration of coercive psychiatric treatment shall participate in procedural acts and exercise the rights of a suspect or the accused provided for in §§ 34 and 35 of this Code if the mental state of the person allows for it.

### **§ 395<sup>1</sup>. Taking into custody of person subject to proceedings for administration of coercive psychiatric treatment**

(1) Taking into custody of a person subject to proceedings for the administration of coercive psychiatric treatment is a preventive measure which means deprivation of a person of his or her liberty on the basis of a court ruling and detention of the person on the basis thereof in a medical prison ward or a hospital providing psychiatric health services until the ruling on the administration of coercive psychiatric treatment enters into force with respect to the person or until the bases for taking into custody specified in subsection (2) of this section cease to exist.

(2) A person subject to proceedings for the administration of coercive psychiatric treatment may be taken into custody at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if the person is or may become, during the proceedings, dangerous to himself or herself or others or if he or she may abscond criminal proceedings or continue to commit criminal offences.

(3) Other circumstances relevant to the application of preventive measures shall be also taken into consideration upon taking a person subject to proceedings for the administration of coercive psychiatric treatment into custody.

(4) A person subject to proceedings for the administration of coercive psychiatric treatment is taken into custody pursuant to the procedure provided for in § 131 of this Code and taking into consideration the mental state of the person.

(5) A court may take into custody a person in the matter of the proceeding of coercive psychiatric treatment sent to court or already subject to coercive psychiatric treatment but at

large on the basis of a ruling of a county court or circuit court if he or she has failed to appear when summoned by the court and may continue absconding from the court proceedings or the execution of the ruling on administration of coercive treatment.

(6) A person subject to proceedings for the administration of coercive psychiatric treatment shall not be held in custody for more than six months. If the person subject to proceedings for the administration of coercive psychiatric treatment was held in custody in the same criminal matter in accordance with § 130 of this Code, the specified period of holding in custody shall be included in the period of holding in custody provided for in this section.

(7) In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in a criminal proceeding, a preliminary investigation judge or a court may extend the six-month term for holding in custody for up to one year at the request of the Chief Public Prosecutor.

(8) Taking into custody of a person subject to proceedings for the administration of coercive psychiatric treatment, notification thereof, contestation and verification of the reasons thereof shall be conducted in accordance with the provisions of Division 1 of Chapter 4 of this Code and taking into consideration the mental state of the person.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 395<sup>2</sup>. Conditions of detention of persons held in custody in proceedings for administration of coercive psychiatric treatment**

(1) Persons held in custody in the proceedings for the administration of coercive psychiatric treatment shall be placed in a medical prison ward where they are held in custody or a hospital ward for coercive psychiatric treatment with intensified supervision, taking into consideration the mental state of the person and the specifications provided for in this Division.

(2) The age, sex, state of health and characteristics of persons shall be taken into account upon placement of the persons in a ward for coercive psychiatric treatment.

(3) Persons taken into custody in the proceedings for the administration of coercive psychiatric treatment are placed in a medical prison ward pursuant to the procedure provided for serving of custody pending trial in the Imprisonment Act.

(4) Persons taken into custody in the proceedings for the administration of coercive psychiatric treatment are placed in a hospital pursuant to the procedure for the administration of coercive psychiatric treatment.

(5) Upon arrival in a hospital, persons are required to undergo medical examination performed by a medical officer.

(6) No health services shall be provided to persons taken into custody in the proceedings for the administration of coercive psychiatric treatment, except if the person has granted permission himself or herself for it or if it is necessary to provide emergency care to the person for the

purposes of the Health Care Services Organisation Act. Persons shall not be subjected to clinical trials, testing of new medicinal products or treatment methods.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 395<sup>3</sup>. Respect for human dignity of persons held in custody in proceedings for administration of coercive psychiatric treatment**

(1) Persons held in custody in the proceedings for the administration of coercive psychiatric treatment are treated in a manner that respects their human dignity and ensures that their holding in custody does not cause them more suffering or inconvenience than that inevitable associated with detention of persons.

(2) Liberty of persons held in custody in the proceedings for the administration of coercive psychiatric treatment shall be subject to the restrictions provided by law. The restrictions shall comply with their objective of execution and the principles of human dignity and shall not distort the nature of the other rights and liberties provided by law.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 395<sup>4</sup>. Rights of persons held in custody in proceedings for administration of coercive psychiatric treatment and restriction thereof**

(1) Persons held in custody in the proceedings for administration of coercive psychiatric treatment have the rights equivalent to those of persons held in custody pursuant to the procedure provided for in § 130 of this Code, and the rights provided for in the Imprisonment Act, taking into consideration the mental state of the person and the specifications of a hospital and prison.

(2) The same additional restrictions may be applied to persons held in custody in the proceedings for the administration of coercive psychiatric treatment which application is permitted pursuant to the procedure provided for in § 130 of this Code to persons held in custody on the basis of an order of a Prosecutor's Office or a court ruling on the bases of and pursuant to the procedure provided for in this Code.

(3) Disciplinary issues concerning persons held in custody in the proceedings for the administration of coercive psychiatric treatment are adjudicated pursuant to the procedure in which the same issues are adjudicated in respect of persons suffering from a mental disorder held in custody or persons receiving coercive treatment, taking in particular into consideration the mental state of the person.

(4) The measures provided for in the Imprisonment Act may be applied with respect to persons held in custody in the proceedings for the administration of coercive psychiatric treatment for ensuring security in prisons.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 396. Summary of pre-trial proceedings for administration of coercive psychiatric treatment**

(1) If an official of an investigative body is convinced that the evidentiary information necessary for a criminal matter has been collected, he or she shall immediately prepare a summary of the pre-trial proceedings pursuant to § 153 of this Code setting out the facts relating to the subject of proof in accordance with § 394 of this Code.

(2) The summary of the pre-trial proceedings shall be included in the criminal file which shall be sent to the Prosecutor's Office.

### **§ 397. Acts performed by Prosecutor's Office upon receipt of criminal file**

(1) If a Prosecutor's Office receives a criminal file for the administration of coercive psychiatric treatment, the Prosecutor's Office shall act in accordance with the provisions of subsections 223 (1)-(3) of this Code.

(1<sup>1</sup>) A counsel may submit a request to a Prosecutor's Office to send the criminal matter to a court within the term specified in § 225 of this Code for hearing pursuant to general procedure. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If a Prosecutor's Office declares pre-trial proceedings completed, the Prosecutor's Office shall make a ruling on the sending of the criminal matter to a court for the administration of coercive psychiatric treatment provided for in the Penal Code.

### **§ 398. Ruling on sending criminal matter to court**

(1) The introduction of a ruling on sending a criminal matter to a court shall set out:

- 1) the date and place of preparation of the ruling;
- 2) the official title and name of the prosecutor;
- 3) the title of the criminal matter;
- 4) the name of the person who committed the unlawful act and his or her personal identification code or, in the absence thereof, date of birth, nationality, education, residence, place of work or educational institution, native tongue.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(2) The main part of a ruling shall set out:

- 1) facts relating to the unlawful act;
- 2) evidence that proves commission of the unlawful act;
- 3) reasons for the administration of coercive psychiatric treatment;
- 4) statements made by the counsel or other participants in the proceedings who have contested the need for administration of coercive psychiatric treatment.

(3) The final part of a ruling shall set out the proposal of the prosecutor concerning the administration of coercive psychiatric treatment and indicate whether or not the counsel or prosecutor requests the court hearing of the criminal matter pursuant to general procedure. The



ruling shall be included in the criminal file.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) The criminal file shall be sent to the court.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 399. Preparation for court hearing**

Preparations for a court hearing shall be carried out in accordance with subsection 257 (1) of this Code.

### **§ 400. Court hearing**

(1) The provisions of this Code regulating alternative proceedings shall be applicable to court hearings, taking into account the specifications provided for in this Chapter. If a counsel or Prosecutor's Office has requested it, the provisions of the general procedure shall be observed in court hearing, taking into account the specifications provided for in this Chapter.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A judge sitting alone shall decide on the administration of coercive psychiatric treatment.

(3) Examination by a court begins with the publication of the ruling on sending a criminal matter to the court.

(4) The person with regard to whom administration of coercive psychiatric treatment is requested is summoned to a court session. A person need not be summoned to the court session, if the mental state of the person does not allow him or her to participate in court sessions. The court shall reason the failure to summon a person and the reasons therefor shall be recorded in the minutes of the court session.  
[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 401. Issues to be adjudicated in chambers**

(1) A court shall adjudicate a criminal matter by a ruling made in chambers.

(2) Upon making of a ruling, a court shall adjudicate on the following issues:  
1) whether an unlawful act has been committed;  
2) whether the act was committed by the person with regard to whom administration of coercive psychiatric treatment is requested;  
3) whether the person committed the unlawful act in a state of mental incompetence or whether he or she developed an illness or disorder after the court judgment was made but before he or she had served the sentence or whether he or she developed an illness or disorder during pre-trial proceedings or court proceedings;  
[RT I, 05.07.2013, 2 - entry into force 15.07.2013]  
4) whether to administer coercive psychiatric treatment.

## **§ 402. Ruling on administration of coercive psychiatric treatment**

(1) If a court deems it to be proved that an unlawful act was committed by a person specified in § 393 of this Code, the court shall prepare a ruling on termination of the criminal proceedings on the basis of clause 199 (1) 1) of this Code and, if necessary, order coercive psychiatric treatment prescribed in the Penal Code to be administered to the person concerned.

(2) If a court finds that the mental incompetence of a person has not been established or that the nature of the illness or disorder of the person who committed an unlawful act is such that he or she is able to understand the unlawfulness of his or her act and to act according to such understanding, the court shall, by a ruling, return the criminal matter to the Prosecutor's Office for continuation of the proceedings pursuant to the general procedure.

## **§ 402<sup>1</sup>. Alteration of administration of coercive psychiatric treatment**

(1) Taking into consideration the opinion of a psychiatrist or medical committee having examined the person subject to coercive treatment, coercive in-patient treatment may be replaced by out-patient treatment or coercive out-patient treatment by in-patient treatment, if such request is submitted by a person close to the person being treated for the purposes of subsection 71 (1) of this Code, a legal representative, health care provider or counsel of such person, taking into account the specifications specified in subsection (4) of this section.

(2) A health care provider which administers coercive out-patient treatment is required to immediately submit a request to a court for replacement of coercive out-patient treatment by in-patient treatment if the harmfulness of the person subjected to treatment to the person himself or herself or to society has increased, he or she does not comply with the requirements relating to the treatment or if the subjection of the person to in-patient treatment is necessary for the achievement of the objectives of the treatment.

(3) Alteration of the administration of coercive psychiatric treatment shall be decided by a ruling of the court of the location of the health care provider in the presence of a prosecutor and a criminal defence counsel. When coercive in-patient treatment is replaced by coercive out-patient treatment, the person subject to treatment and his or her guardian shall be also summoned to the session, but their failure to appear shall not hinder the hearing of the matter. If necessary, the court may involve other persons or order an expert assessment upon deciding on alteration of administration of coercive psychiatric treatment.

(4) If a person subject to coercive out-patient treatment is admitted to the psychiatric department of a hospital for emergency psychiatric care and a court has made the decision specified in subsection 11 (2) of the Mental Health Act, the coercive treatment of the person shall continue in the form of in-patient treatment.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**§ 403. Termination of administration of coercive psychiatric treatment**  
**[RT I, 23.02.2011, 1 - entry into force 01.09.2011]**

(1) If a person recovers as a result of coercive psychiatric treatment administered to him or her or, according to the opinion of a psychiatrist or medical committee having examined the person subjected to coercive treatment, there is no need for further administration of coercive treatment, a court shall terminate the administration of coercive psychiatric treatment on the proposal of the health care provider.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) If the administration of coercive psychiatric treatment is terminated with regard to a person who developed an illness or disorder after the court judgment was made but before the person had served the full sentence, a court shall decide on the subsequent serving of the sentence at the request of a Prosecutor's Office.

[RT I, 05.07.2013, 2 - entry into force 15.07.2013]

(3) If the administration of coercive psychiatric treatment is terminated with regard to a person who developed an illness or disorder during pre-trial proceedings or court proceedings, a Prosecutor's Office shall decide on the continuation of criminal proceedings pursuant to general procedure.

(4) Taking into consideration the opinion of the psychiatrist or medical committee having examined the person subjected to treatment, a court may terminate the administration of coercive treatment if such request is submitted by a person close to the person being treated for the purposes of subsection 71 (1) of this Code, his or her legal representative or counsel.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(5) Termination of the administration of coercive psychiatric treatment shall be decided by a ruling of the court of the location of the health care provider in the presence of a prosecutor and a criminal defence counsel. The person subject to treatment and his or her guardian shall be also summoned to a court session, but their failure to appear shall not hinder the hearing of the matter. If necessary, the court may involve other persons or order an expert assessment upon deciding on termination of the administration of coercive psychiatric treatment.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

**Chapter 16<sup>1</sup> PROCEEDINGS OF CONFISCATION OF PROPERTY WHICH WAS  
OBTAINED BY CRIMINAL OFFENCE**

**[RT I 2007, 2, 7 - entry into force 01.02.2007]**

**§ 403<sup>1</sup>. Commencement of proceedings of confiscation of property which was obtained by  
criminal offence**

(1) In the case of particular complexity or extent of circumstances relating to confiscation, a Prosecutor's Office may conduct preparation of a confiscation request on the basis of §§ 83<sup>1</sup> and 83<sup>2</sup> of the Penal Code in separate proceedings pursuant to the provisions of this Chapter.

(2) Severance of confiscation proceedings into a new file shall be formalised by an order of the Prosecutor's Office. A copy of an order or ruling on the severance shall be included in the new file.

(3) A request for decision on confiscation shall be submitted to the court not later than within two years after the entry into force of a court judgment in criminal proceedings conducted with regard to the criminal offence which is the basis for confiscation.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 403<sup>2</sup>. Facts relating to subject of proof in confiscation proceedings**

(1) If a request for confiscation is submitted on the basis of § 83<sup>1</sup> of the Penal Code, the facts relating to a subject of proof are:

- 1) ownership of the property by the accused, the convicted offender or third party;
- 2) association of the property with the criminal offence which is the basis for confiscation;
- 3) the circumstances of acquisition of the property by the third party pursuant to subsection 83<sup>1</sup>(2) of the Penal Code.

(2) If a request for confiscation is submitted on the basis of § 83<sup>2</sup> of the Penal Code, the facts relating to a subject of proof are:

- 1) ownership of the property by the accused, the convicted offender or third party;
- 2) the circumstances specified in subsection 83<sup>2</sup>(1) of the Penal Code which give reason to presume that the property has been acquired through commission of criminal offences;
- 3) the circumstances of acquisition of the property by the third party pursuant to subsection 83<sup>2</sup>(2) of the Penal Code and the time of acquisition of the property.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 403<sup>3</sup>. Pre-trial proceedings in confiscation proceedings**

(1) Pre-trial proceedings in confiscation proceedings shall be conducted pursuant to the provisions of this Code unless otherwise provided for in this Chapter.

(2) [Repealed - RT I, 29.06.2012, 2 - entry into force 01.01.2013]

(3) It is prohibited to apply a preventive measure in order to secure confiscation proceedings.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 403<sup>4</sup>. Summary of confiscation proceedings**

(1) If an official of an investigative body is convinced that the evidentiary information necessary for the confiscation proceedings has been collected, he or she shall prepare a summary of confiscation proceedings which shall set out:

- 1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth of the accused or the convicted offender;
- 2) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth of the third party;

- 3) a reference to the title of the criminal matter and the court judgment of the criminal offence which is the basis for confiscation if a court judgment has been made in the criminal matter which is the basis for confiscation;
- 4) information concerning seizure of the property to be confiscated;
- 5) a description and location of the property to be confiscated;
- 6) a list of evidence.

(2) The summary of confiscation proceedings together with evidence shall be delivered to the Prosecutor's Office.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

#### **§ 403<sup>5</sup>. Activities of Prosecutor's Office upon receipt of summary of confiscation proceedings**

A Prosecutor's Office which receives a summary of confiscation proceedings shall prepare a confiscation request, require the investigative body to perform additional acts or terminate the confiscation proceedings by a ruling pursuant to the procedure provided for in subsection 206 (1) of this Code due to the absence of the grounds for confiscation or confiscation being impossible.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

#### **§ 403<sup>6</sup>. Sending of confiscation request to court**

(1) A confiscation request shall set out:

- 1) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth of the accused or the convicted offender;
- 2) the name, residence or seat and address, personal identification code or, in the absence thereof, date of birth of the third party;
- 3) a reference to the title of the criminal matter and the court judgment of the criminal offence which is the basis for confiscation;
- 4) information concerning seizure of the property to be confiscated;
- 5) a description and location of the property to be confiscated;
- 6) whether substitution of confiscation is applied for pursuant to § 84 of the Penal Code;
- 7) a list of evidence.

(2) A copy of the application shall be sent to the accused or the convicted offender, his or her counsel and the third party and the application shall be forwarded to the court. The confiscation request shall be also delivered to the court by electronic means.

(3) If necessary, a Prosecutor's Office shall perform the acts provided for in § 240 of this Code for the application of settlement procedure, taking into account the specifications of the confiscation proceedings. The third party shall grant his or her consent to the application of settlement proceedings pursuant to the procedure provided for in § 243 of this Code. If a Prosecutor's Office and the accused or the convicted offender reach a settlement concerning the amount of property, the agreement shall be sent to the court.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 403<sup>7</sup>. Confiscation proceedings in court**

(1) A court shall decide on confiscation by a ruling at the request of the Prosecutor's Office after the entry into force of a judgment of conviction of the criminal offence which is the basis for confiscation.

(2) The prosecutor, the accused or the convicted offender, his or her counsel and third party shall be summoned to a court session. The failure of a third party to appear in a court session shall hinder neither the court hearing nor the hearing of the confiscation request. If the accused or convicted offender fails to appear, the provisions of § 269 of this Code apply.

(3) Confiscation shall be decided by a judge sitting alone.

(4) A court hearing shall be conducted pursuant to the provisions of Division 2 of Chapter 9 or Chapter 10 of this Code, taking into account the specifications of the confiscation proceedings.

(5) If an accused, convicted offender or third party submits a written request to the Prosecutor's Office or court to the effect that he or she has no objections to the confiscation of his or her property, his or her failure to appear shall not hinder the hearing of the confiscation request. In such case, the court has the right to adjudicate the confiscation request by way of written proceedings.

(6) If a confiscation request is submitted to the court before the entry into force of the court judgment and a judgment of acquittal enters into force, the court shall terminate confiscation proceedings by a ruling.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 403<sup>8</sup>. Issues to be adjudicated in chambers in confiscation proceedings**

(1) A court shall adjudicate a confiscation request by a ruling made in chambers.

(2) Upon making of a ruling, a court shall adjudicate on the following issues:

1) whether the property of the convicted offender is connected, under the conditions provided for in § 83<sup>1</sup> or 83<sup>2</sup> of the Penal Code, with the criminal offence which is the basis for confiscation;

2) whether the property has been acquired by the third party in the manner provided for in subsection 83<sup>1</sup> (2) or subsection 83<sup>2</sup> (2) of the Penal Code;

3) whether and to which part of the property confiscation should be applied;

4) how to proceed with regard to seized property or property which has been taken over which is not confiscated;

5) the expenses relating to the confiscation proceeding and the person who is to bear the expenses.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 403<sup>9</sup>. Decision in confiscation proceedings**

(1) A court shall make one of the following in chambers:

- 1) a confiscation ruling, or
- 2) a ruling by which the confiscation request is denied.

(2) A copy of a ruling shall be submitted to the convicted offender and the third party.

(3) Upon adjudication of a confiscation request in the case provided for in subsection 403<sup>7</sup> (5) of this Code, a copy of the ruling is sent to the participant in the proceedings who did not participate in the in the court hearing.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

### **§ 403<sup>10</sup>. Contestation of confiscation ruling**

(1) A prosecutor, convicted offender or third party may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against a confiscation ruling and a ruling by which the confiscation request is denied.

(2) A court ruling made in the hearing of an appeal against a court ruling may be filed with a higher court.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

## **Chapter 17 GRANT OF PERMISSION FOR IMPOSITION OF SANCTIONS PROVIDED FOR IN JUVENILE SANCTIONS ACT**

### **§ 404. Grant of permission for placement of minor in school for students who need special treatment due to behavioural problems or for extension of term for his or her stay in school for students who need special treatment due to behavioural problems**

Permission for placement of a minor in a school for students who need special treatment due to behavioural problems or for extension of the term for his or her stay in such a school pursuant to the procedure provided for in subsection 6 (4) of the Juvenile Sanctions Act s granted by a judge on the basis of a written reasoned request of a juvenile committee.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 405. Grant of permission for premature release of minor from school for students who need special treatment due to behavioural problems**

Permission for the premature release of a minor from a school for students who need special treatment due to behavioural problems is granted by a judge on the basis of a written request of the head of the school for students who need special treatment due to behavioural problems or the legal representative of the minor. The opinion of the juvenile committee shall be appended to a request.

## **§ 406. Procedure for hearing of requests**

- (1) A judge shall immediately hear a request specified in §§ 404 or 405 of this Code.
- (2) For the adjudication of a request, a judge may summon a minor, his or her legal representative, a representative of the juvenile committee and a child protection official, social worker or psychologist to the court and question them in order to ascertain whether the request is justified.
- (3) For the adjudication of a request, a court shall make:
  - 1) a ruling on placement in a school for students who need special treatment due to behavioural problems;
  - 2) a ruling on extension of the term for stay in a school for students who need special treatment due to behavioural problems;
  - 3) a ruling on premature release from a school for students who need special treatment due to behavioural problems, or
  - 4) a ruling by which the request is denied.
- (4) A ruling specified in subsection (3) of this section shall be reasoned.
- (5) Copies of a ruling shall be sent to the person who submitted a request, the minor and his or her legal representative, and the school for students who need special treatment due to behavioural problems.

## **§ 407. Contestation of grant of permission or refusal to grant permission**

The juvenile committee or the legal representative of a minor may file an appeal against a ruling specified in subsection 406 (3) of this Code pursuant to the procedure provided for in Chapter 15 of this Code.

[RT I, 28.05.2013, 6 - entry into force 11.12.2012 - The decision of the Constitutional Review Chamber of the Supreme Court declares § 407 of the Code of Criminal Procedure to be in conflict with the Constitution and repeals it to the extent this precludes the right of a minor to file an appeal against a ruling whereby the court authorises placement of the minor in a school for students who need special treatment.]

## **Chapter 18 ENTRY INTO FORCE AND ENFORCEMENT OF DECISIONS**

### **Division 1 General Provisions**

## **§ 408. Entry into force of court judgments and rulings**

- (1) A court judgment or ruling enters into force when it no longer can be contested in any other manner except by review procedure.
- (2) A court judgment enters into force upon expiry of the term for appeal or appeal in cassation. If an appeal in cassation is filed, the court judgment enters into force as of the date on which



acceptance of the appeal in cassation is refused or the conclusion of the judgment of the Supreme Court is pronounced.

(3) A court judgment made subject to summary proceedings enters into force upon expiry of the term for submission of requests for court hearing of the judgment subject to the general procedure.

(4) A court ruling enters into force upon expiry of the term for appeal against the ruling. If an appeal is filed against a ruling, the ruling enters into force after it has been heard by the court which made the ruling or by a higher court.

(5) Rulings on taking into custody, extension of the term for holding in custody, provisional custody, compulsory placement of a person in a medical institution, seizure of property, seizure of a postal or telegraphic items, exclusion from office and application of temporary restraining order, or a court ruling which cannot be contested, enter into force as of the making of the ruling. [RT I 2006, 31, 233 - entry into force 16.07.2006]

(6) In the case a part of a court judgment is contested, the court judgment shall enter into force to the extent not contested. [RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 408<sup>1</sup>. Publication of court judgments and court rulings which have entered into force**

(1) A court judgment and a court ruling which have entered into force and which terminate proceedings shall be published in the computer network in the place prescribed therefor, except in the case pre-trial proceedings continue in the criminal matter in which the court ruling was made.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(2) A published decision shall disclose the name and personal identification code or, in the absence of the personal identification code, date of birth of the accused. The personal identification code and name or date of birth of an accused who is a minor are replaced by initials or characters, except in the case the disclosed decision is at least the third one in which the minor is convicted in a criminal offence. A court shall replace the names and other personal data of other persons with initials or characters. A decision shall not disclose the residence of a person.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) If the main part or statement of reasons of a decision contains sensitive personal data or personal data regarding which another restriction on access prescribed by law applies and the decision allows identification of a person although the names and other personal data have been replaced with initials or characters, the court shall publish, on its own initiative or at the request of the data subject, only the conclusion or final part of a decision.

[RT I 2007, 12, 66 - entry into force 25.02.2007]

(4) If the main part or statement of reasons of a decision contains information regarding which another restriction on access prescribed by law applies, the court shall disclose, on its own initiative or at the request of the interested person, only the conclusion or final part of a decision. [RT I 2007, 12, 66 - entry into force 25.02.2007]

(5) The requests specified in subsections (3) and (4) of this section shall be submitted to a court before a decision is made. The court shall adjudicate the request by a ruling. A person who submitted the request may file an appeal against a court ruling by which the request was dismissed.

[RT I 2007, 12, 66 - entry into force 25.02.2007]

#### **§ 409. Mandatory nature of court judgments and rulings**

Compliance with court judgments and court rulings which have entered into force is mandatory for all persons within the territory of the Republic of Estonia.

#### **§ 410. Admissibility of execution of court judgment or ruling**

(1) A court judgment or ruling shall be enforced when it has entered into force unless otherwise provided by law.

(2) If an appeal or appeal in cassation is filed against a court judgment with regard to only one of the accused persons, the court judgment shall neither be enforced with regard to the other accused persons before the entry into force of the judgment.

#### **§ 411. Enforcement of court judgment or ruling**

(1) A judgment or ruling of a court of first instance which has entered into force shall be enforced by the county court which made the decision.

(2) A court judgment or ruling of a court of appeal or court of cassation which has entered into force shall be enforced by the county court which made the first decision in the same criminal matter.

(3) In the case provided by § 417 of this Code, the court judgment shall be enforced by the institution designated by the Minister of Finance.

[RT I, 28.12.2011, 1 - entry into force 01.01.2012]

(4) If a decision is enforced, the county court or the institution designated by a directive of the Minister of Finance shall send a copy of the decision to the body executing the decision. The court shall make a notation concerning the entry into force of the court judgment or ruling on the copy.

[RT I, 28.12.2011, 1 - entry into force 01.01.2012]

### **§ 412. Term for enforcement of court judgment or ruling**

(1) A judgment of acquittal or a judgment releasing the accused from punishment shall be enforced immediately after the conclusion of the judgment has been pronounced. If the accused is held in custody, the court shall release him or her from custody in the courtroom.

(2) A judgment of conviction shall be enforced within three days after the entry into force of the judgment or rejection of the criminal matter by the court of appeal or court of cassation.

(3) In the case provided for in subsection 417 (2) of this Code, the court judgment shall be enforced within one month after the entry into force of the judgment.

(4) A court ruling shall be enforced immediately after the entry into force thereof.

### **§ 413. Enforcement of several court judgments**

If, in the making of a court judgment, a punishment which was imposed on the person by a previous court judgment and which has not been served in full is not added to or deemed to be covered by the punishment imposed on the person by the new court judgment, the court making the most recent judgment or the judge of the court of the place of execution of the court judgment who is in charge of execution of court judgments shall make a ruling pursuant to § 65 of the Penal Code.

## **Division 2 Enforcement of Punishments**

### **§ 414. Enforcement of sentence of imprisonment**

(1) If a convicted offender was not held in custody during the court proceedings, the county court enforcing the decision shall send a notice prepared according to the treatment plan to the convicted offender, setting out by which time and to which prison the convicted offender must appear for the service of the sentence. Such notice shall set out that in the case of failure to appear in the prison at the time specified compelled attendance shall be applied to the person pursuant to subsection (3) of this section.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2) In the case provided for in subsection (1) of this section, the time when the convicted offender arrives in the prison is deemed to be the time of commencement of the service of the sentence of imprisonment.

(3) If a convicted offender fails to appear in the prison for the service of the sentence at the time specified, the prison shall forward a request for the imposition of compelled attendance to the Police and Border Guard Board.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(4) Submission of a request for deferral of execution of imprisonment shall not suspend the enforcement of the execution imprisonment.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

#### **§ 415. Deferral of enforcement of sentence of imprisonment**

(1) A judge in charge of execution of court judgments may defer the enforcement of a sentence of imprisonment by a ruling:

1) by up to six months if the convicted offender suffers from a serious illness and it is impossible to provide medical treatment for him or her in the prison;

2) by up to one year if the convicted offender is pregnant at the time of execution of the court judgment;

[Clause 3) enters into force 01.01.2015]

3) by up to one year if the convicted offender cannot serve the sentence due to overcrowding in the prison.

[RT I 2006, 63, 466 - entry into force 01.01.2015]

(2) If a female convicted offender has a small child, the judge in charge of execution of the court judgment may defer the enforcement of the sentence of imprisonment by a ruling until the child has attained three years of age.

(3) A judge in charge of execution of court judgments may defer the enforcement of a punishment by a ruling for up to two months if immediate commencement of the service of the sentence of imprisonment would result in serious consequences for the convicted offender or his or her family members due to extraordinary circumstances.

(4) The judge in charge of execution of court judgments shall decide the deferral of enforcement of the sentence of imprisonment on the basis specified in clause (1) 1) of this section after considering the opinion of the prosecutor and the representative of the prison.

(5) A ruling on deferral of the enforcement of a sentence of imprisonment shall set out also the information specified in subsection 414 (1) of this Code.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(6) A copy of a ruling which has entered into force shall be sent to the prison.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

#### **§ 416. Waiver of enforcement of sentence of imprisonment**

(1) A judge in charge of execution of court judgments may, by a ruling, waive the enforcement of a sentence of imprisonment for a specified term or a sentence of imprisonment imposed in substitution for another punishment pursuant to §§ 70 and 71 of the Penal Code if the convicted offender is extradited to a foreign state or expelled.

(2) A judge in charge of execution of court judgments may enforce a sentence of imprisonment for a specified term or a sentence of imprisonment imposed in substitution for another

punishment pursuant to §§ 70 and 71 of the Penal Code if the convicted offender who has been extradited or expelled returns to the state earlier than ten years after his or her extradition or expulsion.

#### **§ 417. Enforcement and execution of pecuniary punishments**

(1) A court judgment ordering pecuniary punishment which has entered into force shall be sent to the institution designated by a directive of the Minister of Finance.

[RT I, 28.12.2011, 1 - entry into force 01.01.2012]

(2) If a convicted offender has failed to pay the amount of the pecuniary punishment imposed on him or her to the bank account of the court in full within one month after the entry into force of the court judgment, a copy of the court judgment shall be sent to the bailiff within ten days.

[RT I 2009, 68, 463 - entry into force 01.01.2010]

(3) If a bailiff has sent to the county court an application which indicates that the convicted offender has failed to pay an amount of pecuniary punishment or a fine to the extent of assets by the designated due date or if the terms for the payment of instalments of an amount of pecuniary punishment or a fine to the extent of assets has not been extended or deferred pursuant to the procedure provided for in § 424 of this Code, the judge in charge of execution of court judgments shall decide on the substitution of the pecuniary punishment or fine to the extent of assets pursuant to the procedure provided for in §§ 70 and 71 of the Penal Code or file a claim against the assets of the debtor.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

(4) If an amount of pecuniary punishment has been paid in part, the paid part shall be taken into account upon determination of the duration of the substitutive punishment in proportion to the paid amount. A judge in charge of execution of court judgments shall settle the ordering of substitutive punishment pursuant to the procedure provided for in subsections 432 (1) and (3) of this Code. A copy of the ruling shall be sent to the participants in the proceedings concerned and to the bailiff.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

#### **§ 418. Waiver of enforcement of pecuniary punishment**

(1) The judge in charge of execution of court judgments at the county court of the residence of a convicted offender may waive the enforcement of a pecuniary punishment by a ruling if:

- 1) a sentence of imprisonment is imposed on the convicted offender in another criminal matter and the sentence is enforced;
- 2) execution of the pecuniary punishment may endanger the resocialization of the convicted offender;
- 3) circumstances provided for in § 416 of this Code exist.

(2) On the bases provided for in subsection (1) of this section, a judge in charge of execution of court judgments may also waive collection of the procedure expenses from the convicted

offender.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

#### **§ 419. Enforcement and execution of sentence of community service**

(1) A sentence of community service is enforced by sending the court judgment or ruling to the probation supervision department of the residence of the convicted offender.

(2) The head of a probation supervision department which receives a court judgment or ruling shall appoint a probation supervisor for the convicted offender and the duty of the probation supervisor is to monitor the community service and exercise supervision over compliance with the supervisory requirements and obligations set out in the decision.

(3) If possible, the head of a probation supervision department shall appoint the probation officer who prepared the pre-trial report as the probation officer for the convicted offender.

(4) Community service specified in clause 202 (2) 3) of this Code is applied on the basis of the provisions of this section. If a person evades community service, the probation supervisor shall immediately submit to a Prosecutor's Office a report on failure to perform his or her obligations.

(5) The procedure for the preparation, execution of sentence and supervision of community service shall be established by a regulation of the Minister of Justice.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 419<sup>1</sup>. Enforcement and execution of electronic surveillance**

(1) A sentence of electronic surveillance is enforced by sending the decision to the probation supervision department of the residence of the convicted offender.

[RT I 2010, 44, 258 - entry into force 01.01.2011]

(2) The head of a probation supervision department which receives a decision shall appoint a probation supervisor for the convicted offender and the duty of the probation supervisor is to exercise supervision over compliance with the obligations set out in the decision.

[RT I 2010, 44, 258 - entry into force 01.01.2011]

(3) If possible, the head of a probation supervision department shall appoint the probation officer who prepared the opinion concerning release before the prescribed time.

(4) If a person violates the conditions of electronic surveillance, the probation supervisor shall immediately submit a report on failure to perform the obligations to a court.

(5) The procedure for the execution of electronic surveillance and supervision over it shall be established by a regulation of the Minister of Justice.

[RT I 2006, 46, 333 - entry into force 01.01.2007]

## **§ 419<sup>2</sup>. Enforcement of treatment**

(1) For the enforcement of the addiction treatment of drug addicts and complex treatment of sex offenders, the court judgment or ruling shall be sent to the probation supervision department of the residence of a convicted offender which makes preparations for the administrator of the treatment and refers the convicted offender to a health care provider.

(2) If a convicted offender agrees to undertake, upon release on probation or parole in accordance with § 74 or 76 of the Penal Code, to submit to the addiction treatment of drug addicts or complex treatment of sex offenders during the period of probation in accordance with clause 75 (2) 5) of the Penal Code, the procedure provided for in subsection (1) of this section shall apply.

(3) The procedure for supervision over the preparation of the treatment applicable upon administration of the addiction treatment of drug addicts or complex treatment of sex offenders and release on probation or parole and the supervision over the execution thereof shall be established by a regulation of the Minister of Justice.

(4) The health care provider specified in subsection 6 (2) of the Mental Health Act provides the addiction treatment of drug addicts and complex treatment of sex offenders.  
[RT I, 15.06.2012, 2 - entry into force 01.06.2013]

## **§ 420. Enforcement, deferral or waiver of enforcement of prohibition on activities or prohibition on business**

(1) A prohibition on activities or prohibition on business is enforced when the judgement has entered into force and the convicted offender has been notified thereof and if the prohibition on activities or prohibition on business has not been deferred and enforcement of the prohibition has not been waived on the basis specified in subsection (2) of this section.

(2) The judge in charge of execution of court judgments at the county court of the residence of a convicted offender may, at the request of the offender, defer enforcement of a prohibition on activities or prohibition on business imposed as a supplementary punishment for up to six months by a ruling or waive enforcement of the prohibition if execution of the punishment may result in serious consequences for the convicted offender or his or her family members.

(3) Upon the application of a prohibition on business, the court shall send a copy of the judgement which has entered into force to the registrar for entering the information concerning the prohibition on business in the relevant database. If enforcement of a prohibition on business imposed as a supplementary punishment is deferred or enforcement of the prohibition is waived, the court shall send also a copy of the relevant ruling to the registrar for making the corresponding entry in the database.

[RT I 2008, 52, 288 - entry into force 22.12.2008]

**§ 421. Enforcement of other supplementary punishments**  
**[RT I 2007, 23, 119 - entry into force 02.01.2008]**

(1) A supplementary punishment not specified in § 420 of this Code is enforced by sending the court judgment or ruling to the appropriate agency who shall deprive the convicted offender of the rights specified in the decision or restrict such rights and revoke or deposit the documents issued to the convicted offender for exercising such rights.

(2) A fine to the extent of assets shall be enforced pursuant to the provisions of this Code concerning enforcement of pecuniary punishments.

(3) Expulsion shall be enforced pursuant to the procedure provided for in the Obligation to Leave and Prohibition on Entry Act.

**§ 421<sup>1</sup>. Procedure for transfer of confiscated property and physical evidence transferred into state ownership**

(1) Unless otherwise provided by law, a copy of the court judgment or ruling and of the procedural document concerning the confiscated property and physical evidence transferred into state ownership shall be sent to the country government of the location of the confiscated property and physical evidence transferred into state ownership.

(2) The cost of transfer and destruction of confiscated property shall be paid by the convicted offender or the third party.

[RT I 2007, 2, 7 - entry into force 01.02.2007]

(3) The procedure for the transfer of confiscated property and physical evidence transferred into state ownership shall be established by the Government of the Republic.

**Division 3 Return of Objects and Collection of Expenses Relating to Criminal Proceedings**

**§ 422. Return of things and release of property from seizure**

(1) If documents or things were taken over or property was seized from a person who is acquitted or with regard to whom criminal proceedings are terminated, the judge in charge of execution of court judgments at the county court enforcing the court judgment shall send the court judgment or ruling which has entered into force to the appropriate agency and order return of such documents or things or release of the property from seizure.

(2) The agency executing a court judgment or ruling shall immediately notify the court of the execution of the decision.

[RT I 2005, 39, 308 - entry into force 01.01.2006]



### **§ 423. Collection of expenses relating to criminal proceedings**

The expenses relating to a criminal proceeding and other claims for payment shall be collected pursuant to the provisions of this Code concerning enforcement of pecuniary punishments.  
[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **Division 4 Settlement of Issues Arising in Execution of Decisions**

### **§ 424. Extension of term for payment of pecuniary punishment and deferral thereof**

With good reason, the judge in charge of execution of court judgments at the county court of the residence of a convicted offender may, by a ruling made at the request of the convicted offender, extend the term for the payment of a pecuniary punishment in full or in part or defer such term for up to one year, or order payment of the pecuniary punishment in instalments on specified dates.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 425. Premature release of convicted offender from service of punishment due to illness**

(1) If a convicted offender becomes terminally ill during the service of his or her punishment, the judge in charge of execution of court judgments at the county court of the place of execution of the punishment shall, on the basis of a proposal of the head of the agency executing the punishment and the decision of the medical committee, make a ruling on the release of the convicted offender from the service of the rest of the punishment pursuant to § 79 of the Penal Code.

(2) If a convicted offender becomes mentally ill or feeble-minded or develops any other severe mental disorder after the making of the court judgment but before the punishment has been served in full, the judge in charge of execution of court judgments at the county court of the place of execution of the punishment shall make a ruling on the waiver of enforcement of the punishment or the release of the offender from the service of the punishment. In such case, the judge in charge of execution of court judgments shall apply coercive psychiatric treatment with regard to the convicted offender pursuant to § 86 of the Penal Code.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 426. Release on parole**

(1) The judge in charge of execution of court judgments at the county court of the place of execution of a punishment may release a convicted offender on parole after the convicted offender has served the term of punishment provided for in § 76 or 77 of the Penal Code.

(2) If a court refuses to release a convicted offender on parole it may set a term for a new hearing the issue of release which is longer or shorter than the term of one year provided for in subsection 76 (3) of the Imprisonment Act.

[RT I 2009, 39, 261 - entry into force 24.07.2009]

(3) A judge in charge of execution of court judgments may, by a ruling, waive the application of supervision of conduct with regard to a convicted offender on the basis of § 76 or 77 of the Penal Code if the convicted offender is extradited to a foreign state or expelled.

(4) A judge in charge of execution of court judgments may enforce the unserved part of the sentence if the convicted offender who has been extradited or expelled returns to the state earlier than ten years after his or her extradition or expulsion.

[RT I 2006, 46, 333 - entry into force 01.01.2007]

### **§ 426<sup>1</sup>. Application of supervision of conduct after service of sentence**

The judge in charge of execution of court judgments at the county court of the place of execution of the punishment shall decide on the application of supervision of conduct after service of the sentence within one month as of the receipt of the file by the court. In order to apply supervision of conduct after service of the sentence, the court shall consider the bases for the application of supervision of conduct after service of the sentence provided for in § 87<sup>1</sup> of the Penal Code and the conduct of the person during the service of the sentence.

[RT I 2009, 39, 261 - entry into force 24.07.2009]

### **§ 426<sup>2</sup>. Verification of reasons for and termination of application of detention after service of sentence**

[Repealed - RT I, 05.07.2013, 2 - entry into force 15.07.2013]

### **§ 427. Settlement of issues arising in execution of probation supervision**

(1) The judge in charge of execution of court judgments at the county court of the residence of a convicted offender shall, by a ruling, decide whether to assign additional duties to or mitigate or annul the existing duties of the convicted offender pursuant to subsection 74 (4), 75 (3), 87<sup>1</sup> (4) or (5) of the Penal Code.

[RT I 2009, 39, 261 - entry into force 24.07.2009]

(2) The judge in charge of execution of court judgments at the county court of the residence of a convicted offender shall, by a ruling, decide whether to annul the probation applied with regard to the offender and send him or her to serve the punishment imposed by the court judgment pursuant to subsection 74 (5) or (6), 76 (5) or (6) or 77 (4) of the Penal Code.

(3) A judge in charge of execution of court judgments shall review a special report of a probation officer within ten days as of the receipt of the report by the court.

(4) [Repealed - RT I 2007, 11, 51 - entry into force 18.02.2007]

(5) A judge in charge of execution of court judgments may, by a ruling, waive the enforcement or execution of the supervision of conduct imposed pursuant to § 74 of the Penal Code if the convicted offender is extradited to a foreign state or expelled.

(6) A judge in charge of execution of court judgments may enforce the sentence of imprisonment which was suspended pursuant to § 74 of the Penal Code if the convicted offender who has been extradited or expelled returns to the state earlier than ten years after his or her extradition or expulsion.

[RT I 2006, 46, 333 - entry into force 01.01.2007]

#### **§ 427<sup>1</sup>. Settlement of issues arising in performance of obligations**

If circumstances become evident, after the termination of the criminal proceedings and the assignment of an obligation to a person on the basis of subsection 202 (2) or subsection 203<sup>1</sup> (3) of this Code, which aggravate the performance of the obligation, a Prosecutor's Office or court may, with the consent of the person, change the obligation imposed on a person or to free him or her from the obligation by an order. The consent of the victim is necessary in the case of amendment of or release from an obligation imposed on the bases provided for in subsection 203<sup>1</sup> (3) of this Code, except for the obligation to compensate for procedural expenses.

[RT I 2007, 11, 51 - entry into force 18.02.2007]

#### **§ 428. Settlement of issues arising in execution of sentence of community service**

(1) If a convicted offender evades community service or fails to comply with the supervisory requirements or to perform the duties imposed on him or her, the probation officer shall submit a special report for the enforcement of the sentence of imprisonment imposed on the convicted offender to the court.

(2) The judge in charge of execution of court judgments at the county court of the residence of a convicted offender shall, by a ruling made within ten days as of the receipt of a report of the probation officer by the court, decide whether to annul the community service of the offender and enforce the sentence of imprisonment imposed on him or her by the court judgment pursuant to subsection 69 (6) or (7) of the Penal Code.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

#### **§ 428<sup>1</sup>. Settlement of issues arising in execution of decisions**

(1) If a convicted offender absconds or waives the treatment of drug addicts or complex treatment of sex offenders imposed on him or her, the person administering the treatment shall immediately submit an application to the probation supervisor in which the probation supervisor is informed of non-subjection of the convicted offender to the treatment.

(2) A probation supervisor has the right to access the information concerning the treatment and diagnosis.

(3) A probation supervisor who establishes the violation provided for in subsection (1) of this section shall make a special report to the court for the enforcement of the sentence of imprisonment imposed on the convicted offender which contains information about the circumstances of the violation, duration of the treatment administered, a summary of the explanations of the convicted offender and a proposal for discontinuance of the treatment and

enforcement of the punishment. A special report shall be also submitted in the case the convicted offender fails to comply with the supervisory requirements or perform the obligations imposed on him or her.

(4) If a convicted offender fails to submit to the addiction treatment of drug addicts imposed on him or her due to an illness or family situation, a probation supervisor shall submit a request to the court for suspension of the running of the term of the addiction treatment of drug addicts. The request shall contain information on the bases of suspension and a proposal for the term of suspension. Upon suspension of the running of the term and upon determination of a new term, the court shall take into account the general restrictions on the term of addiction treatment of drug addicts imposed for the respective offence.

[RT I, 15.06.2012, 2 - entry into force 01.06.2013]

#### **§ 429. Bases for taking convicted offender into custody and procedure for holding him or her in custody**

(1) At the request of a probation officer or bailiff, a judge in charge of execution of court judgments may take into custody a convicted offender who has not been taken into custody if the offender evades or may evade execution of the judgment of conviction and the court has sufficient reason to believe that:

[RT I 2008, 19, 132 - entry into force 23.05.2008]

- 1) the conditional sentence will be enforced;
- 2) the part of the punishment which was not served due to release on parole will be enforced;
- 3) the sentence of imprisonment substituted by community service will be enforced;
- 4) the pecuniary punishment will be substituted by detention, imprisonment or community service; or
- 5) the fine to extent of assets will be substituted by imprisonment.

(2) In the cases provided for in subsection (1) of this section, a convicted offender may be held in custody until the entry into force of a ruling on the enforcement or substitution of the punishment.

(3) Convicted offenders are taken into custody pursuant to the provisions of §§ 131-136 of this Code.

#### **§ 430. Alteration of type or extension of term of sanction imposed on person less than 18 years of age**

Extension of the term for application of supervision of conduct with regard to a convicted offender under 18 years of age or the term for his or her stay at a youth home or a school for students who need special treatment due to behavioural problems pursuant to subsection 87 (2) or (3) of the Penal Code or alteration of the type of a sanction pursuant to subsection 87 (4) of the Penal Code shall, on the basis of a special report submitted by the probation officer or a proposal of the head of the agency applying the sanction, be decided by a ruling of the judge in charge of execution of court judgments at the county court of the residence of the convicted

offender.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 431. Settlement of Issues Arising in Execution of Decisions**

Issues not regulated by §§ 424-428<sup>1</sup> and 430 of this Code and other doubts and ambiguities arising in the execution of a decision shall be settled by a ruling of the court which made the decision or the judge in charge of execution of court judgments at the county court enforcing the decision.

[RT I, 23.02.2011, 2 - entry into force 05.04.2011]

### **§ 432. Procedure for hearing of issues arising in execution of decisions**

(1) A judge in charge of execution of court judgments shall adjudicate issues relating to the execution of a decision by a ruling made subject to a written proceeding without summoning the parties to the court proceeding unless otherwise provided for in subsection (3) of this section.

(2) If an issue pertains to the execution of a judgment in the part which concerns the civil action, the judge in charge of execution of court judgments shall inform the victim and civil defendant of the issue beforehand and they have the right to submit their opinions in writing within the term specified by the court. If an application for amendment of or release from an obligation imposed on the bases provided for in subsection 203<sup>1</sup> (3) of this Code is submitted, the judge in charge of execution of court judgments shall inform the victim of the issue and the victim shall submit his or her opinion in writing by the term determined by the court.

[RT I 2007, 11, 51 - entry into force 18.02.2007]

(3) A judge in charge of execution of court judgments shall settle the issues provided for in §§ 425-426<sup>1</sup> of this Code and the issues relating to the deprivation of the liberty of a convicted offender in his or her presence. Prosecutor shall be summoned before the judge in charge of execution of court judgments, except in the case provided for in subsections 417 (3), 427 (2) and § 428 of this Code, and counsels at the request of convicted offenders, and their opinions shall be heard. The health care professional who has rendered an opinion concerning the premature release of a convicted offender from punishment due to his or her illness is required to participate in the adjudication of the corresponding issue. If necessary, the court may involve other persons or order an expert assessment upon deciding an issue concerning application of supervision of conduct.

[RT I, 05.07.2013, 2 - entry into force 15.07.2013]

(3<sup>1</sup>) If a convicted offender who stays outside the territory of the Republic of Estonia has been declared a fugitive, the enforcement of a sentence of imprisonment on the bases provided for in § 427 or § 428 of this Code and taking into custody on the bases provided for in subsection 131 (4) of this Code may be decided upon by way of a written proceeding without summoning the parties to the court proceeding. Not later than on the second day following the date of bringing the person into Estonia, the convicted offender shall be taken to the judge in charge of execution of court judgments for interrogation.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3<sup>2</sup>) The judge in charge of execution of court judgments may organise the participation of the persons specified in subsections (2) and (3) of this section in the hearing of the issues arising in the execution of decisions by means of a technical solution, which complies with the requirements specified in clause 69 (2) 1) of this Code.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3<sup>3</sup>) The issues specified in §§ 425 and 426 of this Code may be heard before a judge in charge of execution of court judgments without the participation of a prosecutor if the Prosecutor's Office had delivered the positions thereof to the judge in charge of execution of court judgments in writing or by electronic means and declared that they do not wish to participate in the hearing of the issue.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) A court shall send a copy of a ruling made pursuant to subsection (1) of this section to the participants in the proceeding who are concerned by the ruling.

## **Chapter 19 INTERNATIONAL CO-OPERATION IN CRIMINAL PROCEDURE**

### **Division 1 General Provisions**

#### **§ 433. General principles**

(1) International co-operation in criminal procedure comprises extradition of persons to foreign states, mutual assistance between states in criminal matters, execution of the judgments of foreign courts, taking over and transfer of criminal proceedings commenced, co-operation with the International Criminal Court and Eurojust and extradition to member states of the European Union.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2) International co-operation in criminal procedure shall be effected pursuant to the provisions of this Chapter unless otherwise prescribed by the international agreements of the Republic of Estonia, the European Union legislation or the generally recognised principles of international law.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3) International co-operation in criminal procedure shall be effected pursuant to the provisions of the other chapters of this Code in so far as this is not in conflict with the provisions of this Chapter.

(4) If adherence to the requirement of confidentiality is requested in the course of international co-operation in criminal procedure, such requirement shall be complied with to the extent necessary for the purposes of co-operation. If compliance with the confidentiality requirement is refused, the requesting state shall be immediately notified of such refusal.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

#### **§ 434. Requesting state and requested state**

(1) A state which submits a request for international co-operation in criminal procedure to another state is the requesting state.

(2) A state to which a requesting state has submitted a request for international co-operation in criminal procedure is the requested state.

#### **§ 435. Judicial authorities competent to engage in international co-operation in criminal procedure**

(1) The central authority for international co-operation in criminal procedure is the Ministry of Justice.

(2) Courts, Prosecutors' Offices, Police and Border Guard Board, the Security Police Board, the Tax and Customs Board, the Competition Board and the Military Police are the judicial authorities competent to engage in international co-operation in criminal procedure to the extent provided by law.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(3) If the Estonian Penal Code is applied to criminal offences which are committed outside the territory of the Republic of Estonia, the Public Prosecutor's Office, which initiates criminal proceedings or verifies the legality and justification of commencement of the criminal proceedings, shall be immediately informed thereof.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 436. Prohibition on international co-operation in criminal procedure**

(1) The Republic of Estonia refuses to engage in international co-operation if:

- 1) it may endanger the security, public order or other essential interests of the Republic of Estonia;
- 2) it is in conflict with the general principles of Estonian law;
- 3) there is reason to believe that the assistance is requested for the purpose of bringing charges against or punishing a person on account of his or her race, nationality or religious or political beliefs, or if the situation of the person may deteriorate for any of such reasons.

(1<sup>1</sup>) The Republic of Estonia shall not refuse to engage in international co-operation with a Member State of the European Union on the ground that the offence is regarded as a political offence, as an offence connected with a political offence or an offence inspired by political motives unless otherwise provided by law or an international agreement.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(1<sup>2</sup>) The Republic of Estonia shall not refuse to engage in international co-operation with a Member State of the European Union on the ground that the same kind of tax or duty is not imposed or the same type of taxes, customs or exchange arrangements have not been established

in Estonia as in the requesting state.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2) If a witness or expert is requested to be summoned to a foreign court, the request shall not be complied with if the requesting state fails to ensure compliance with the requirement of immunity on the bases provided for in § 465 of this Code.

### **§ 437. Division of expenses relating to international co-operation in criminal procedure**

(1) The Republic of Estonia as the requesting and requested state shall bear all expenses incurred in its territory unless otherwise provided by an international agreement or a decision of the requested state.

(2) The Republic of Estonia as the requested state shall claim the following expenses from the requesting state:

- 1) expenses relating to the involvement of experts in Estonia;
- 2) expenses relating to the organisation of a telehearing in Estonia and to the attendance of the persons to be heard and the translators and interpreters unless otherwise agreed upon with the requesting state;
- 3) other essential or unavoidable expenses incurred by Estonia, to the extent agreed upon with the requesting state.

(3) On the basis of the request of a requesting state, the Estonian state may grant an advance to the experts and witnesses involved in international co-operation in criminal procedure.

(4) The Republic of Estonia as the requesting state shall bear all expenses incurred in the requested state if the expenses:

- 1) have arisen on the bases and pursuant to the procedure provided for in subsection (2) of this section;
- 2) are related to the transfer of a person in custody.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

## **Division 2 Extradition**

### **Subdivision 1 Extradition of Persons to Foreign States**

#### **§ 438. Admissibility of extradition**

Estonia as the requested state is entitled to extradite a person on the basis of a request for extradition if criminal proceedings have been initiated and an arrest warrant has been issued with regard to the person in the requesting state or if the person has been sentenced to imprisonment by a judgment of conviction which has entered into force.



### **§ 439. General conditions for extradition of persons to foreign states**

(1) Extradition of a person for the purposes of continuation of the criminal proceedings concerning him or her in a foreign state is permitted if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment according to both the penal law of the requesting state and the Penal Code of Estonia.

(2) Extradition of a person for the purposes of execution of a judgment of conviction made with regard to him or her is permitted under the conditions provided for in subsection (1) of this section if at least four months of the sentence of imprisonment have not yet been served.

(3) If a person whose extradition is requested has committed several criminal offences and extradition is permitted for some of the criminal offences, extradition may be granted also for the other offences which do not meet the requirements specified in subsections (1) and (2) of this section.

### **§ 440. Circumstances precluding or restricting extradition of persons to foreign states**

(1) In addition to the cases provided for in § 436 of this Code, extradition of a person to a foreign state is prohibited if:

1) the request for extradition is based on a political offence within the meaning of the Additional Protocols to the European Convention on Extradition, except in the case provided for in subsection 436 (1<sup>1</sup>) of this Code;

[RT I 2008, 19, 132 - entry into force 23.05.2008]

2) the person has been finally convicted or acquitted on the same charges in Estonia;

3) according to the laws of the requesting state or Estonia, the limitation period for the criminal offence has expired or an amnesty precludes application of a punishment.

(2) Extradition of an Estonian citizen is not permitted if the request for extradition is based on a military offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols thereto.

(3) If death penalty may be imposed in a requesting state as punishment for a criminal offence which is the basis for the request for extradition, the person may be extradited only on the condition that the competent authority of the requesting state has assured that death penalty will not be imposed on the person to be extradited or, if death penalty was imposed before the submission of the request for extradition, the penalty will not be carried out.

(4) A request for the extradition of a person to a foreign state may be denied if initiation of criminal proceedings on the same charges has been refused with regard to the person or if the proceedings have been terminated.

### **§ 441. Conflicting requests for extradition**

If extradition of a person is requested by several states, the state to which the person is to be extradited shall be determined having regard, primarily, to the seriousness and place of

commission of the criminal offences committed by the person, the order in which the requests were submitted, the nationality of the person claimed and the possibility of his or her subsequent extradition to a third state.

#### **§ 442. Requirements for request for extradition of person from Republic of Estonia**

(1) A request for extradition shall be prepared by the competent judicial authority of the requesting state and it shall be addressed to the Ministry of Justice of the Republic of Estonia.

(2) The following shall be appended to a request for extradition:

- 1) information concerning the time and place of commission of and other facts relating to the criminal offence on which the request for extradition is based, and the legal assessment of the criminal offence pursuant to the penal law of the requesting state;
- 2) an extract from the penal law or any other relevant legal act of the requesting state;
- 3) the original or an authenticated copy of the arrest warrant or judgment of conviction made pursuant to the procedure prescribed in the procedural law of the requesting state;
- 4) if possible, a description of the person claimed, together with any other information which may enable to establish the identity of the person.

#### **Subdivision 2 Procedure for Extradition of Persons to Foreign States**

##### **§ 443. Stages in procedure for extradition of persons to foreign states**

The procedure for the extradition of a person to a foreign state is divided into the preliminary proceeding in the Ministry of Justice and the Public Prosecutor's Office, verification of the legal admissibility of the extradition in court, and deciding on extradition falling within the competence of the executive power.

##### **§ 444. Acts of Ministry of Justice in preliminary proceedings**

(1) The Ministry of Justice shall verify the compliance of a request for extradition with the requirements, and the existence of the necessary supporting documents.

(2) If necessary, the Ministry of Justice may grant a term to a requesting state for submission of additional information.

(3) A request for extradition which meets the requirements, and the supporting documents shall be immediately sent to the Public Prosecutor's Office.

##### **§ 445. Acts of Public Prosecutor's Office in preliminary proceedings**

(1) If a request for extradition submitted by a foreign state is received directly by the Public Prosecutor's Office, the Ministry of Justice shall be immediately notified of such request.

(2) If a request for extradition is received directly by the Public Prosecutor's Office, additional information may be requested without the mediation of the Ministry of Justice.

(3) The Public Prosecutor's Office shall append an excerpt from the punishment register and other necessary information to a request for extradition and ascertain whether criminal proceedings have been initiated with regard to the person in Estonia.

(4) The Public Prosecutor's Office shall send a request for extradition which meets the requirements, and the additional materials specified in subsection (3) of this section to the court immediately.

#### **§ 446. Jurisdiction over verification of legal admissibility of extradition**

Verification of the legal admissibility of the extradition of a person to a foreign state falls within the jurisdiction of the Harju County Court.  
[RT I 2005, 39, 308 - entry into force 01.01.2006]

#### **§ 447. Provisional custody**

(1) If the legal admissibility of the extradition of a person to a foreign state is recognised, provisional custody may be applied with regard to the person at the request of the Public Prosecutor's Office.

(2) In cases of urgency, a preliminary investigation judge may apply provisional custody at the request of the Public Prosecutor's Office before the arrival of the request for extradition if the requesting state has:

- 1) assured that an arrest warrant has been issued or a judgment of conviction has entered into force with regard to the person in the requesting state;
- 2) assumed the obligation to immediately dispatch the request for extradition.

(3) A person may be detained pursuant to the procedure provided for in subsection 217 (1) of this Code before the arrival of the request for extradition on the basis of an application for an arrest warrant submitted through the International Criminal Police Organisation (Interpol) or a notice on a wanted person in the Schengen Information System.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(4) Provisional custody shall not be applied with regard to a person if legal impediments to the extradition have become evident.

(5) A person with regard to whom provisional custody has been applied may be released if the requesting state fails to send the request for extradition within eighteen days as of the application of provisional custody with regard to the person. A person with regard to whom provisional custody has been applied shall be released if the request for extradition does not arrive within forty days as of the application of provisional custody.

(6) Release of a person from provisional custody in the cases provided for in subsection (5) of this section does not preclude application of provisional custody with regard to him or her and his or her extradition upon subsequent arrival of the request for extradition.

(7) A person shall not be kept under provisional custody for more than one year. A preliminary investigation judge may extend the one-year term of keeping in custody at the request of the Chief Public Prosecutor only in exceptional cases.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(8) A ruling on provisional custody may be contested pursuant to the procedure provided for in Chapter 15 of this Code.

#### **§ 448. Participation of counsel in extradition proceedings**

(1) The counsel in an extradition proceeding must be an advocate.

(2) Participation of a counsel in an extradition proceeding is mandatory as of the detention of the person on the basis of subsection 447 (3) of this Code.

#### **§ 449. Simplified extradition procedure**

(1) An alien may be extradited to the requesting state pursuant to the simplified procedure without verification of the legal admissibility of the extradition, on the basis of a written consent granted by the alien in the presence of his or her counsel.

(2) A proposal to consent to extradition pursuant to the simplified procedure shall be made to the person claimed upon his or her detention. The consent shall be immediately communicated to the Minister of Justice who shall decide on the extradition of the person pursuant to the procedure provided for in § 452 of this Code.

(3) A decision of the Minister of Justice on the extradition of an alien pursuant to the simplified procedure shall be promptly forwarded to the Police and Border Guard Board for execution and to the Public Prosecutor's Office for their information. A decision by which extradition pursuant to the simplified procedure is refused shall be sent to the Public Prosecutor's Office who shall decide on the submission of a request to take over the criminal proceeding from the foreign state.  
[RT I 2009, 27, 165 - entry into force 01.01.2010]

#### **§ 450. Verification of legal admissibility of extradition in court**

(1) In order to verify the legal admissibility of an extradition in court, a court hearing shall be held within ten days as of the receipt of the request for extradition by the court.

(2) A proceeding for the verification of the legal admissibility of an extradition shall be conducted by a judge sitting alone.

(3) The following persons are required to participate in a court session:

- 1) the public prosecutor;
- 2) the Estonian citizen or the alien whose extradition is requested, if he or she has not consented to the simplified extradition procedure or if a proposal to consent to extradition pursuant to the

simplified procedure has not been made to him or her upon his or her detention;  
3) the counsel of the person claimed.

(4) In a court session, the court shall:

1) explain the request for extradition and the extradition proceeding regulation, inter alia that the circumstances concerning the legal admissibility of the extradition shall be submitted to the Harju County Court or a circuit court and upon failure to submit thereof on time they shall not be heard in the extradition proceeding;

[RT I, 23.02.2011, 3 - entry into force 01.01.2012]

2) hear the opinions of the person claimed, his or her counsel and the public prosecutor concerning the legal admissibility of the extradition.

(5) A court may grant a term to a requesting state through the Ministry of Justice for submission of additional information.

#### **§ 451. Decisions made upon verification of legal admissibility of extradition in court**

(1) In the adjudication of a request for the extradition of a person to a foreign state, a court shall make one of the following rulings:

- 1) to declare the extradition legally admissible;
- 2) to declare the extradition legally inadmissible.

(2) A ruling shall set out:

- 1) the name, personal identification code or, in the absence thereof, date of birth and place of birth of the person subject to extradition proceedings;
- 2) the content of the request reviewed;
- 3) the opinions of the persons who participated in the court session;
- 4) the decision of the court concerning the legal admissibility of the extradition, and the reasons therefor;
- 5) the decision of the court concerning provisional custody, and the reasons therefor.

(3) A copy of a ruling shall be immediately sent to the person subject to extradition proceedings, his or her counsel, the Public Prosecutor's Office and the Minister of Justice.

(4) If a court declares the extradition of a person legally admissible, the request for extradition together with the other materials of the extradition proceeding shall be sent to the Minister of Justice in addition to a copy of the ruling.

(5) If a court declares the extradition of a person legally inadmissible, a copy of the ruling together with the request for extradition and the supporting materials shall be sent to the Ministry of Justice who shall inform the requesting state thereof.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 451<sup>1</sup>. Contestation of ruling made in upon verification of legal admissibility of extradition**

(1) An appeal may be filed against a ruling on declaring extradition legally admissible or inadmissible pursuant to the procedure provided for in § 386 of this Code within ten days as of after the receipt of the ruling.

(2) An appeal against a ruling shall be submitted to the Tallinn Circuit Court through the Harju County Court.

(3) An appeal against a ruling shall be heard in a written proceeding in a circuit court within ten days as of arrival of the matter to the circuit court.

(4) A ruling of the Supreme Court is final and not subject to appeal.  
[RT I, 23.02.2011, 3 - entry into force 01.01.2012]

### **§ 452. Extradition decision**

(1) The extradition of an Estonian citizen shall be decided by the Government of the Republic. Draft extradition decisions shall be prepared and submitted to the Government of the Republic by the Ministry of Justice.

(2) The extradition of an alien shall be decided by the Minister of Justice.

(3) A reasoned decision to grant or refuse to grant extradition shall be made immediately.

(4) A copy of a decision shall be sent to the custodial institution where the person claimed is kept under provisional custody and the decision is made known to him or her against signature.

(5) A decision on the extradition of a person enters into force unless this is appealed in accordance with § 452<sup>1</sup> of this Code or amended as a result of a court proceeding and the decision has entered into force. A decision to refuse to extradite a person enters into force as of the making of the decision.

[RT I, 23.02.2011, 3 - entry into force 01.01.2012]

(6) A decision on the extradition of a person which has entered into force shall be immediately sent to the Police and Border Guard Board who shall organise the execution of the decision.

[RT I 2009, 27, 165 - entry into force 01.01.2010]

(7) If extradition is refused, the person shall be released from provisional custody.

(8) The Ministry of Justice shall immediately notify a requesting state of a decision to grant or refuse to grant extradition.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

### **§ 452<sup>1</sup>. Contestation of extradition decision**

- (1) An action against a decision on extradition of a person to a foreign state shall be filed with an administrative court within ten days after the decision on extradition was made.
- (2) A court shall hear an appeal submitted according to the requirements concerning extradition within thirty days after the receipt thereof.
- (3) Upon adjudication of an appeal, an administrative court shall refuse to hear circumstances concerning the legal admissibility of extradition, except in the case such circumstances could not be filed with the Harju County Court or a circuit court.
- (4) An appeal against a judgment of an administrative court shall be filed with the Tallinn Circuit Court through the Harju County Court within ten days after the court judgment is made public.
- (5) A circuit court shall hear an appeal submitted according to the requirements within thirty days after the receipt thereof.
- (6) An appeal in cassation against a judgment of a circuit court shall be filed to the Supreme Court within ten days after the court judgment is made public.
- (7) The Supreme Court shall review an appeal in cassation submitted according to the requirements within thirty days after the receipt thereof.  
[RT I, 23.02.2011, 3 - entry into force 01.01.2012]

### **§ 453. Postponement of extradition and temporary extradition**

- (1) The Ministry of Justice may, on the proposal of the Public Prosecutor's Office, postpone the execution of an extradition decision which has entered into force if postponement is necessary for the purposes of the criminal proceeding conducted in Estonia with regard to the person claimed or for the purposes of execution of a court judgment made with regard to him or her.
- (2) By agreement with a requesting state, a person whose extradition has been postponed may be temporarily extradited to the requesting state.

### **§ 454. Surrender of person claimed**

- (1) An extradition decision which has entered into force shall be sent to the Police and Border Guard Board who shall notify the requesting state of the time and place of surrender of the person claimed and organise the surrender of the person.  
[RT I 2009, 27, 165 - entry into force 01.01.2010]
- (2) A person claimed may be released from provisional custody if the requesting state fails to take the person over within fifteen days after the due date for the surrender. A person claimed

shall be released from provisional custody if the requesting state fails to take the person over within thirty days after the due date for the surrender.

#### **§ 455. Extension of extradition**

(1) If a state to whom a person has been extradited requests performance of procedural acts or execution of a court judgment regarding the person for an offence other than that for which he or she was extradited, such request shall be adjudicated pursuant to the provisions of §§ 438-442 of this Code.

(2) A court shall decide on the extension of extradition subject to a written proceeding on the basis of the request and the supporting documents.

(3) The provisions of subsections (1) and (2) of this section also apply if a request to extradite a person to a third state is submitted.

#### **§ 456. Permission for transit of extradited person**

(1) Permission for the transit of persons extradited by third states through the territory of the Republic of Estonia shall be granted by the Minister of Justice.

(2) A request for transit shall meet the requirements of § 442 of this Code.

(3) Permission for transit shall not be granted if:

1) the act for which the person is extradited is not punishable pursuant to the Estonian Penal Code;

2) Estonia considers the act which is the basis for extradition to be a political offence or a military offence;

3) death penalty may be imposed on the extradited person in the requesting state and the state has not given assurance that death penalty will not be imposed or carried out.

#### **Subdivision 3 Request for Extradition by Foreign State**

#### **§ 457. Initiation of proceedings for request for extradition of person by foreign state**

(1) Extradition of a person is requested from a foreign state if the person is a suspect or accused who stays in the foreign state and absconds the criminal proceeding, and continuation of the criminal proceeding without the participation of the suspect or accused is especially complicated or precluded or if extradition of a convicted person is necessary for the execution of a court judgment made with regard to him or her.

(2) The principles provided for in §§ 438-442 of this Code shall be taken into account in requesting the extradition of a person by a foreign state.

(3) A request for the extradition of a person to be submitted to a foreign state shall be prepared in compliance with the requirements provided for in § 458 of this Code by:



1) the Prosecutor's Office in a pre-trial proceeding;  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

2) the court in a court proceeding;

3) the Public Prosecutor's Office in the stage of execution of a court judgment.

(4) In a pre-trial proceeding, the preliminary investigation judge may apply provisional custody by a ruling at the request of the Prosecutor's Office before the request for extradition is submitted.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(5) If the extradition of a person by a foreign state is requested in a court proceeding, the arrest warrant for the person shall be prepared by the court which hears the criminal matter.

(6) [Repealed - RT I 2008, 19, 132 - entry into force 23.05.2008]

(7) A request for extradition shall be communicated to the Ministry of Justice.

#### **§ 458. Requirements for request for extradition of person by foreign state**

(1) A request for the extradition of a person by a foreign state shall be addressed to the competent judicial authority of such state.

(2) A request shall set out:

1) the name, personal identification code and citizenship of the person claimed;

2) the facts relating to and the legal assessment of the criminal offence of which the person is suspected, accused or convicted and for which his or her extradition is requested;

3) the date of application of preventive custody with regard to the person;

4) the date of detention of the person in the foreign state;

5) a reference to the European Convention on Extradition or an agreement on legal assistance.

(3) A request for the extradition of a person by a foreign state shall be submitted together with the documents specified in subsection 442 (2) of this Code and a translation of the request and the annexes thereto into the language specified by the requested state.

#### **§ 459. Submission of request for extradition**

(1) A request for extradition shall be submitted to the requested state by the Minister of Justice.

(2) In cases of urgency, a request to apply provisional custody with regard to a person claimed may be submitted to a foreign state through the International Criminal Police Organisation (Interpol) or the central authority responsible for the national section of the Schengen Information System with the consent of the Public Prosecutor's Office before the request for extradition is submitted.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

## **Division 3 Mutual Assistance in Criminal Matters**

### **§ 460. Requirements for requests for assistance**

(1) A request for assistance shall set out:

- 1) the name of the authority making the request;
- 2) the content of the request;
- 3) the name, address and, if possible, other contact details of the person with regard to whom the request is submitted;
- 4) the facts relating to and the legal assessment of the criminal offence concerning which the request is submitted.

(2) The following shall be appended to a request for assistance:

- 1) extracts from the relevant legal acts;
- 2) a translation of the request and the supporting materials into the language of the requested state.

### **§ 461. Prohibition on compliance with request for assistance**

Compliance with a request for assistance is not permitted and shall be refused on the grounds provided for in § 436 of this Code.

### **§ 462. Proceedings conducted by Ministry of Justice and Public Prosecutor's Office concerning requests for assistance received from foreign states**

(1) The Ministry of Justice shall verify whether a request for assistance received from a foreign state meets the requirements. A request in compliance with the requirements shall be immediately sent to the Public Prosecutor's Office.

(2) The Public Prosecutor's Office shall verify whether compliance with the request is admissible and possible and forward the request to the competent judicial authority for execution.

(2<sup>1</sup>) In cases of urgency, a request submitted through the International Criminal Police Organisation (Interpol) or a notice in the Schengen Information System may be complied with the consent of the Public Prosecutor's Office before the request for assistance is received by the Ministry of Justice.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(3) The Ministry of Justice shall forward a request for the service of a summons to the court of first instance of the residence or seat of the person for execution.

(4) If a request for assistance is submitted through Eurojust, Eurojust's National Member for Estonia shall verify whether the request for assistance meets the requirements and whether compliance with the request for assistance is admissible and possible and forward the request to

the Estonian competent judicial authority for execution.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 463. Compliance with requests for assistance received from foreign states**

(1) Requests for assistance are complied with pursuant to this Code. At the request of a foreign state, a request may be complied with pursuant to procedural provisions different from the provisions of this Code unless this is contrary to the principles of Estonian law.

(1<sup>1</sup>) If summoning of a person to court is required for compliance with a request for assistance, service of the summons shall be organised by the court.

[RT I 2008, 32, 198 - entry into force 15.07.2008]

(2) The materials received as a result of compliance with a request shall be sent to the Ministry of Justice through the Public Prosecutor's Office and the Ministry of Justice shall forward the materials to the requesting state.

(3) The materials received as a result of compliance with a request for assistance from a foreign state submitted through Eurojust shall be sent to the requesting state through Eurojust unless otherwise agreed with Eurojust.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 464. Submission of requests for assistance to foreign states**

(1) Unless otherwise prescribed by an international agreement entered into by the Republic of Estonia, a request for assistance shall be submitted to the Public Prosecutor's Office which shall verify whether the request meets the requirements. The Public Prosecutor's Office shall forward requests in compliance with the requirements to the Ministry of Justice.

(2) The Ministry of Justice shall immediately make a decision on the submission of or refusal to submit a request to a foreign state and notify the judicial authority which submitted the request of such decision. Refusal to submit a request shall be reasoned.

(3) In cases of urgency, a request may be submitted also through the International Criminal Police Organisation (Interpol) and communicated concurrently through the judicial authorities specified in subsection (1) of this section. The central authority responsible for the national section of the Schengen Information System has the right to add a notice in the Schengen Information System before preparing a request for assistance in order to ensure application of a measure necessary for compliance with the request for assistance.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

(4) If the protection of a witness is requested, the measures of protection shall be agreed upon separately.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(5) In cases of urgency, a request for assistance in criminal offences listed in subsection 491 (2) of this Code may be submitted to a Member State of the European Union through Eurojust.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(6) In cases of urgency, Eurojust's National Member for Estonia may prepare a request for assistance in a criminal offence the proceeding of which is to be conducted in Estonia and submit it to a foreign state.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(7) The following are competent to submit a request for assistance to foreign states:  
1) in pre-trial proceedings, the prosecutor conducting the proceedings;  
2) in matters which are subject to court proceedings, the court.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

#### **§ 465. Immunity of person arriving in Estonia on basis of request for assistance submitted to foreign state**

(1) A witness or expert appearing before a judicial authority on a summons set out in a request for assistance shall not be prosecuted, accused, taken into custody or detained as a suspect in connection with any criminal offence which was committed before his or her departure from the territory of the requesting party and which was not expressly specified in the summons.

(2) The accused appearing before a judicial authority on a summons set out in a request shall not be prosecuted, accused, taken into custody or detained as a suspect in connection with any criminal offences or charges which were committed or brought before his or her departure from the territory of the requesting party and were not expressly specified in the summons.

(3) The immunity provided for in subsections (1) and (2) of this section ceases when the witness, expert or accused has been in Estonia for fifteen consecutive days after the date when his or her presence was no longer required by the judicial authority although he or she has had the opportunity of leaving or, having left, has returned.

#### **§ 466. Temporary transfer to foreign states of persons whose personal liberty has been restricted**

(1) If a person has been held in custody or imprisoned or his or her personal liberty has been restricted in any other lawful manner in Estonia, the person may, by a decision of the Minister of Justice on the basis of a request from a foreign state, be temporarily transferred to such state for the purposes of hearing the person as a witness or performing any other procedural act with his or her participation.

(2) A person may be temporarily transferred if the requesting state has assured that:  
1) the person transferred will not be prosecuted and his or her fundamental rights will not be restricted in connection with any criminal offence which was committed before his or her departure from the territory of the requesting state and was not expressly specified in the summons;

2) the person transferred shall be sent back to Estonia immediately after the performance of the procedural acts.

(3) A person will not be temporarily transferred to a foreign state if:

- 1) he or she does not consent to the transfer;
- 2) his or her presence is necessary at criminal proceedings being carried out in Estonia;
- 3) the transfer may prolong the lawful term for the restriction of his or her personal liberty;
- 4) there is another good reason to refuse to transfer the person.

(4) The conditions for arrest applicable in the requesting state apply to a person transferred, and the period of his or her stay in the foreign state shall be included in the term of the punishment imposed on him or her in Estonia.

#### **§ 467. Request for temporary transfer of person staying in foreign state whose personal liberty has been restricted**

(1) If a person has been taken into custody or imprisoned or his or her personal liberty has been restricted in any other lawful manner in a foreign state and it is necessary to hear the person as a witness or perform any other procedural acts with his or her participation at a criminal proceeding being carried out in Estonia, the competent judicial authorities may request temporary transfer of the person, taking into account the requirements provided for in § 465 of this Code.

(2) A request shall set out:

- 1) the time and place of preparation of the request;
  - 2) the name, personal identification code or, in the absence thereof, date of birth and place of birth of the person to be temporarily transferred;
  - 3) the name of the procedural act in connection with which the presence of the person in Estonia is required;
  - 4) the basis for the request under procedural law.
- [RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 468. Telehearing of persons staying in foreign states**

(1) Telehearing of a person staying in a foreign state may be requested on the bases provided for in subsection 69 (1) of this Code. The request shall set out the reasons for telehearing the person, the name of the person to be heard and his or her status in the proceeding, and the official title and name of the person conducting the hearing.

(2) If audiovisual telehearing is requested, the request shall contain the assurance that the suspect or accused to be heard consents to the telehearing of him or her.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3) If telehearing by telephone is requested, the request shall contain the assurance that the witness or expert to be heard consents to the hearing by telephone.

(4) Telehearing of a suspect or accused by telephone is not permitted.

(5) Telehearings shall be conducted directly by, and under the direction of, a representative of the competent judicial authority of the requesting state pursuant to the procedural law of such state. Summonses to telehearings shall be served pursuant to the procedural law of the requested state. The person to be heard may refuse to give statements also on the basis of the procedural law of the requested state.

(6) The competent judicial authority of a requested state which holds a telehearing shall:

- 1) determine and give notification of the time of the telehearing;
- 2) ensure that the person to be heard be summoned to and appear at the hearing;
- 3) be responsible for the identification of the person to be heard;
- 4) be responsible for compliance with laws of the state of the authority;
- 5) ensure participation of an interpreter if necessary.

(7) A telehearing shall be recorded by the competent judicial authority of the requesting state but may additionally be recorded by the competent judicial authority of the requested state.

(8) The minutes of a telehearing shall be taken by the competent judicial authority of the requested state. The minutes of a telehearing held by telephone shall be taken by the competent judicial authority of the requesting state.

(9) The minutes of a telehearing shall set out:

- 1) the time and place of the telehearing;
- 2) the form in which the telehearing was held and the names of the technical devices used;
- 3) a reference to the request for assistance which is the basis for the telehearing;
- 4) the names of the representatives of the competent judicial authorities of the requesting state and requested state participating in the telehearing;
- 5) the status in the proceeding of the person heard and his or her name, personal identification code or, in the absence thereof, date of birth, residence or seat, address and telecommunications numbers or e-mail address;
- 6) a notation concerning explanation of the rights of the person heard to him or her;
- 7) assurance from the person heard that he or she has been warned about the liability for refusal to give statements and for giving knowingly false statements, or that he or she has taken an oath concerning the statements if the procedural law prescribes such obligation.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 469. Reclamation of property from foreign states**

(1) A foreign state may be requested to hand over property located in such state if:

- 1) the property claimed has been acquired by a criminal offence subject to proceedings in the requesting state or if the property is required as physical evidence in a criminal proceeding conducted in the requesting state;
- 2) the act on which the request is based is punishable as a criminal offence pursuant to both the Estonian Penal Code and the penal law of the requested state.

(2) In Estonia, third party rights to property to be handed over shall be preserved and the property shall be delivered to the entitled person not subject to the proceedings at the request of the person after the entry into force of the court judgment.

(3) The procedural decision which is the basis for reclamation of property or an authenticated copy thereof or assurance from the competent judicial authority of the requesting state that such procedural decision would have been made if the property had been located in Estonia shall be appended to a request to hand over property submitted to a foreign state.

(4) In cases of urgency, seizure of property or the conduct of a search may be requested before submission of a request to hand over property.

#### **§ 470. Handing over of property to foreign states**

(1) Handing over of property to a foreign state by Estonia on the bases provided for in § 469 of this Code shall be decided by a ruling made by a judge of the county court of the location of the property sitting alone.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

(2) A ruling shall set out:

1) the name and location of the property to be handed over, and, if possible, the name of the owner or possessor of the property;

[RT I 2008, 19, 132 - entry into force 23.05.2008]

2) the content of the request reviewed;

3) the content of and reasons for the ruling;

4) the basis under procedural law;

5) the decision of the court and the procedure for appeal.

(3) A court shall send a copy of a ruling which has entered into force to the Ministry of Justice who shall notify the requesting state of compliance with the request or refusal thereof.

(4) Handing of property over to the requesting foreign state shall be organised by the competent judicial authority.

(5) In cases of urgency, property may be seized or a search may be conducted at the request of a foreign state before receipt of the request to hand over property. The above-mentioned acts are recorded in the minutes pursuant to the procedure provided for in this Code.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(6) Upon detaining a wanted vehicle on the basis of a request submitted through the International Criminal Police Organisation (Interpol) or a notice in the Schengen Information System, a report on detaining the vehicle shall be prepared. A vehicle shall be seized on the basis of subsection 142 (9) for two months. If a foreign state does not submit a request to hand over property during the term specified, the vehicle shall be released from seizure.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

## **§ 471. International investigation teams**

(1) An international investigation team may be requested to be set up for a specific purpose and a limited period in the interests of efficiency of pre-trial investigation of criminal offences. The request shall set out a proposal concerning the composition of the investigation team.

(1<sup>1</sup>) In Estonia, the Public Prosecutor's Office and Eurojust's National Member for Estonia are competent to submit a request for setting up a joint investigation team. The Public Prosecutor's Office or Eurojust's National Member for Estonia with the permission of the Public Prosecutor's Office shall make a decision concerning setting up a joint investigation team on the basis of a proposal made to Estonia and enter into a corresponding agreement with the competent judicial authority of a foreign state.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2) A joint investigation team operates pursuant to the legislation of the state in which it operates. The competent judicial authority of such state shall appoint the leader of the investigation team and ensure the organisational and technical conditions for the operation of the team.

(3) With the knowledge of the leader of a joint investigation team and the consent of the competent judicial authorities of the states participating in the team, members of the team from foreign states may also perform procedural acts.

(4) Where an investigation team needs procedural acts to be performed outside the state where the team operates, a member of the investigation team may request the competent investigative body of a state participating in the team to perform the procedural act in the territory of and pursuant to the procedural law of such state.

(5) Information which is obtained by a member of a joint investigation team and which is not otherwise accessible to the competent authorities of the participating states may be used:

- 1) unconditionally for the purposes for which the joint investigation team was set up;
- 2) with the consent of the state which made the information available, for ascertaining facts relating to other criminal proceedings for the purposes of which the investigation team was set up. Such consent may be withheld if the information would be prejudicial to the joint investigation or if circumstances precluding provision of mutual legal assistance appear;
- 3) in order to prevent an immediate and serious threat to public security, and where criminal proceedings have already been initiated and use of the information is not contrary to the conditions specified in clause 2) of this subsection;
- 4) for other purposes by agreement between the states setting up the joint investigation team.

## **§ 472. Cross-border surveillance**

(1) In connection with pre-trial proceedings concerning criminal offences for which extradition is possible and where a person is kept under surveillance due to the suspicion of criminal offence or in order to help to identify the person suspected or ascertain his or her whereabouts, surveillance may be continued in the territory of another Member State party to the Schengen



Agreement of 14 June 1985 on the gradual abolition of checks at their common borders signed at Schengen on 19 June 1990 (hereinafter *Schengen Member State*) where the latter has authorised cross-border surveillance in response to a request for assistance made in advance with supporting reasons. Conditions may be appended to the authorisation.

(2) The Public Prosecutor's Office is competent to submit a request for cross-border surveillance to another Schengen Member State; in cases of urgency a request may be submitted by a district prosecutor's office. The Public Prosecutor's Office grants authorisation for compliance with a request for cross-border surveillance submitted to Estonia. Compliance with a request may be conditional.

(3) Submission of a request for cross-border surveillance to another Schengen Member State is permitted in pre-trial proceedings concerning the criminal offences specified in subsection 126<sup>2</sup> (2) of this Code. Estonia as a state of location shall not refuse to comply with a request if the request is submitted in connection with a criminal offence which is punishable by at least one year of imprisonment according to both, the law of the requesting state and the Penal Code of Estonia.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

(4) In cases of urgency, cross-border surveillance may be commenced without prior authorisation of the state of location in pre-trial proceedings concerning the following criminal offences:

- 1) murder;
- 2) manslaughter;
- 3) serious offence of a sexual nature;
- 4) arson;
- 5) counterfeiting and forgery of means of payment;
- 6) aggravated burglary and robbery and receiving stolen goods,
- 7) extortion;
- 8) kidnapping and hostage taking;
- 9) trafficking in human beings;
- 10) illicit trafficking in narcotic drugs and psychotropic substances;
- 11) breach of the laws on arms and explosives;
- 12) wilful damage through the use of explosives;
- 13) illicit transportation of toxic and hazardous waste;
- 14) serious fraud;
- 15) facilitation of unauthorised entry and residence;
- 16) money laundering;
- 17) illicit trafficking in nuclear or radioactive materials;
- 18) participation in a criminal organisation;
- 19) terrorism.

(5) If cross-border surveillance has been conducted in cases of urgency in pre-trial investigation of a criminal offence specified in subsection (4) of this section without prior authorisation of the state of location:

- 1) the state of location shall be immediately notified that an employee of the competent judicial

authority of the requesting state has crossed the border and has commenced surveillance;  
2) a request provided for in subsection (1) of this section which shall set out the reasons for unauthorised crossing of the border shall be immediately submitted to the state of location.

(6) In cross-border surveillance:

- 1) the law of the state of location and the instructions of the representatives of state authority shall be complied with;
- 2) a document authorising cross-border surveillance shall be carried, except in the case provided for in subsection (4) of this section;
- 3) acting for the performance of duties shall be proved at the request of the competent authority of the state of location;
- 4) service weapons may be carried with the consent of the state of location and used only for self-defence;
- 5) private property or any other places not intended for public use shall not be entered, and the person under surveillance shall not be stopped, questioned or detained;
- 6) the competent judicial authority of the state of location shall be notified of each surveillance operation and an officer carrying out surveillance shall appear to give explanations upon the request of the competent judicial authority of the state of location,
- 7) at the request of the competent judicial authority of the state of location assistance shall be provided upon conducting criminal proceedings in the state of location;

(7) Cross-border surveillance shall be terminated:

- 1) when the purpose of the surveillance has been achieved;
- 2) at the request of the state of location;
- 3) if within five hours as of crossing the border in order to commence cross-border surveillance pursuant to the procedure prescribed in subsection (5) of this section, the state of location has not granted authorisation for cross-border surveillance.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 473. Spontaneous information**

Within the framework of mutual assistance in criminal procedure, a competent judicial authority may forward to a foreign state and, in the case of criminal offences listed in subsection 491 (2) of this Code, to Eurojust information obtained by a procedural act performed without prior request when such information may be the reason for initiating a criminal proceeding in such foreign state or may assist in ascertaining the facts relating to a criminal offence subject to a criminal proceeding already initiated.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

## **Division 4 Transfer and Taking Over of Criminal Proceedings**

### **§ 474. Transfer of criminal proceedings**

(1) Transfer of a criminal proceeding initiated with regard to a person suspected or accused of a criminal offence to a foreign state may be requested if:

- 1) the person is a citizen of or permanently lives in the foreign state;

- 2) the person is serving a sentence of imprisonment in the foreign state;
- 3) criminal proceedings concerning the same or any other criminal offence have been initiated with regard to the person in the requested state;
- 4) the evidence or the most relevant pieces of evidence are located in the foreign state;
- 5) it is considered that the presence of the accused at the time of the hearing of the criminal matter cannot be ensured and his or her presence for the purposes of the hearing of the criminal matter is ensured in the requested state.

(2) A request for transfer shall be sent to the Public Prosecutor's Office together with the criminal file or an authenticated copy thereof, and other relevant materials.

(3) The Public Prosecutor's Office shall verify whether the transfer of a criminal proceeding is justified and send the materials to the Ministry of Justice who shall forward them to the foreign state.

(4) After submission of a request for the transfer of a criminal proceeding, charges shall not be brought against the person for the criminal offence regarding which transfer of the proceedings was requested, and a court judgment previously made with regard to the person for the same criminal offence shall not be executed.

(5) The right to bring charges and execute a court judgment is regained if:

- 1) the request for transfer is not satisfied;
- 2) the request for transfer is not accepted;
- 3) the requested state decides not to commence or to terminate the proceedings;
- 4) the request is withdrawn before the requested state has given notice of its decision to satisfy the request.

#### **§ 475. Taking over of criminal proceedings**

(1) The Ministry of Justice shall forward a request to take over a criminal proceeding from a foreign state to the Public Prosecutor's Office who shall decide whether to take over the criminal proceeding.

(2) In addition to the cases provided for in § 436 of this Code, acceptance of a request to take over a criminal proceeding may be refused in full or in part if:

- 1) the suspect or accused is not an Estonian citizen or does not live permanently in Estonia;
- 2) the criminal offence concerning which the request to take over the criminal proceeding is submitted is a political offence or a military offence within the meaning of the provisions of the European Convention on Extradition and the Additional Protocols thereto;
- 3) the criminal offence was committed outside the territory of the requesting state;
- 4) the request is in conflict with the principles of Estonian criminal procedure.

(3) A criminal matter which has been taken over shall be subject to proceeding by the county court of the residence of the accused or, in the absence of a residence, by the court in whose jurisdiction the pre-trial proceeding was completed.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

## **Division 5 Recognition and Execution of Judgments of Foreign Courts and Decisions of Other Authorities**

**[RT I 2008, 33, 201 - entry into force 28.07.2008]**

### **§ 476. Assistance in recognition and execution of judgments of foreign courts and decisions of other authorities**

**[RT I 2008, 33, 201 - entry into force 28.07.2008]**

Assistance may be provided to a requesting state in the execution of a punishment or any other sanction imposed for an offence if a corresponding request together with the court judgment or a decision of another authority which has entered into force or an authenticated copy thereof has been submitted to the Ministry of Justice.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

### **§ 477. Scope of assistance**

**[RT I 2008, 33, 201 - entry into force 28.07.2008]**

(1) In addition to the conditions provided for in § 436 of this Code, assistance shall not be provided to a requesting state in the execution of a punishment or any other sanction imposed in the requesting state if:

- 1) the court judgment which is the basis for the request has not entered into force;
- 2) the judgment was not made by an independent and impartial court;
- 3) the judgment was made on default;
- 4) the right of defence was not ensured to the accused or the criminal proceedings were not conducted in a language understandable to him or her;
- 5) the act for the commission of which a punishment or any other sanction was imposed is not punishable as a criminal offence pursuant to the Estonian Penal Code or the Penal Code does not prescribe such punishment or sanction, except for the offences provided for in subsection (5) of this section;
- 6) an Estonian court has convicted the person on the same charges, or commencement of criminal proceedings with regard to him or her has been refused or the criminal proceedings have been terminated;
- 7) pursuant to Estonian law, the limitation period for the execution of the court judgment or the decision of another authority has expired;
- 8) the judgement or decision has been made with regard to a natural person who, pursuant to Estonian law, cannot be punished due to his or her age for the acts in connection of which the judgement or decision was made;
- 9) the judgement or decision has been made with regard to a person who enjoys diplomatic immunity on the basis of clause 4 2) of this Code;
- 10) the pecuniary punishment or fine is equal to or less than 70 euros;
- 11) a certificate is not produced, is incomplete or manifestly does not correspond to the court judgement or the decision of another authority.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(2) If a person has been sentenced to imprisonment in a foreign state, a request for assistance in the execution of the punishment may be satisfied if the person is a citizen of Estonia and the written consent of the person to his or her surrender in order to continue service of the punishment in Estonia has been appended to the request. The consent shall not be withdrawn.  
[RT I 2008, 33, 201 - entry into force 28.07.2008]

(3) If a court judgment made with regard to a citizen of the Republic of Estonia, or an administrative act relating to such judgment contains an order to expel the person from the state immediately after his or her release from imprisonment, the person may be surrendered without his or her consent.  
[RT I 2008, 33, 201 - entry into force 28.07.2008]

(4) If a judgment on confiscation made in a requesting state concerns a person not subject to the proceedings, the judgment shall not be executed if:

- 1) such third party has not been given the opportunity to protect his or her interests, or
- 2) the judgment is in conflict with a decision made in the same matter subject to civil procedure pursuant to Estonian law.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(5) Mutual recognition of pecuniary punishments and fines is permitted regardless of the punishment of the act pursuant to Estonian law if punishment is prescribed in a Member State of the European Union for the following offences:

- 1) participation in a criminal organisation;
- 2) terrorism;
- 3) trafficking in human beings;
- 4) sexual exploitation of children and child pornography;
- 5) illicit trafficking in narcotic drugs and psychotropic substances;
- 6) illicit trafficking in weapons, ammunition and explosives;
- 7) corruption;
- 8) fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- 9) money laundering;
- 10) counterfeiting currency, including of the euro;
- 11) computer-related crime,
- 12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- 13) facilitation of unauthorised entry and residence;
- 14) manslaughter, causing serious damage to health;
- 15) illicit trade in human organs and tissue;
- 16) kidnapping, unlawful deprivation of liberty and hostage taking;
- 17) racism and xenophobia;
- 18) organised or armed robbery;
- 19) illicit trafficking in cultural goods, including antiques and works of art;
- 20) swindling;
- 21) extortion;

- 22) counterfeiting and piracy of products and trafficking therein;
- 23) forgery of administrative documents and trafficking therein;
- 24) counterfeiting and forgery of means of payment;
- 25) illicit trafficking in hormonal substances and other growth promoters;
- 26) illicit trafficking in nuclear or radioactive materials;
- 27) trafficking in stolen vehicles;
- 28) rape;
- 29) arson;
- 30) criminal offences which fall within the jurisdiction of the International Criminal Court;
- 31) unlawful seizure of aircraft or ships;
- 32) sabotage;
- 33) offences against traffic regulations, including offences relating to the requirements for working, rest and driving time and safety requirements for road transport;
- 34) smuggling of goods;
- 35) offences against intellectual property;
- 36) offences against health;
- 37) offences of damage to property specified in Subdivision 2 of Division 1 of Chapter 13 of the Penal Code;
- 38) theft;
- 39) offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

#### **§ 478. Proceedings conducted by Ministry of Justice concerning requests for execution of court judgments submitted by foreign states**

(1) The Ministry of Justice shall verify whether a request is in compliance with the requirements and has the required supporting documents and, in the case of compliance, shall immediately forward the request to the Public Prosecutor's Office.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(1<sup>1</sup>) The central authority upon execution of a decision on pecuniary punishment or fine imposed in a foreign state is the Ministry of Justice who shall verify whether the certificate meets the requirements and shall forward the judgement together with the certificate immediately to Harju County Court and the Public Prosecutor's Office.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(2) The surrender of or refusal to surrender a person sentenced to imprisonment shall be decided by the Minister of Justice.

[RT I 2004, 46, 329 - entry into force 01.07.2004]

(3) Execution of a court judgment by which a person has been sentenced to imprisonment in a requesting state shall be continued without amending the judgment if the term of the imprisonment imposed on the person in the requesting state corresponds to the punishment

prescribed for the same criminal offence by the Estonian Penal Code.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

(4) If necessary, additional information is requested from the foreign state through the Ministry of Justice and a term for reply is determined.  
[RT I 2004, 46, 329 - entry into force 01.07.2004]

#### **§ 479. Taking into custody and holding in custody for purposes of execution of foreign court judgment**

(1) If a request for the execution of a court judgment is received from a foreign state, the person staying in Estonia with regard to whom execution of the court judgment by which the person has been sentenced to imprisonment is requested may be taken into custody at the request of the public prosecutor and on the basis of a ruling of a preliminary investigation judge if there is reason to believe that the person evades execution of the court judgment.

(2) A person shall not be taken into custody if it is evident that execution of the court judgment is impossible.

(3) A person shall be released from custody if within three months as of his or her taking into custody the court has not made a judgment on the recognition and enforcement of the court judgment of the requesting state.

(4) An arrest warrant may be appealed by the person taken into custody, his or her counsel, or the Prosecutor's Office.

#### **§ 480. Participation of counsel in recognition and execution of judgments of foreign courts**

Participation of a counsel in recognition and execution of a judgment of a foreign court is mandatory. The counsel in recognition and execution of a judgment of a foreign court must be an advocate.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

#### **§ 481. Jurisdiction over recognition of foreign court judgments and decisions of other authorities** [RT I 2008, 33, 201 - entry into force 28.07.2008]

The Harju County Court shall decide on the recognition of foreign court judgments and decisions of other authorities.  
[RT I 2008, 33, 201 - entry into force 28.07.2008]

#### **§ 482. Court procedure for recognition of foreign court judgments**

(1) Recognition of a foreign court judgment shall be decided by a judge sitting alone. A court session where recognition of a foreign court judgment is heard shall be held within thirty days as of the receipt of the request by the court.

(2) If necessary, additional information is requested from a foreign state through the Ministry of Justice and a term for reply is determined.

(3) Persons not subject to the proceedings whose interests are concerned by a court judgment may be summoned to a court session if they are in Estonia. In deciding on confiscation, the participation of a third party is mandatory.

(4) The participation of the punished person and a prosecutor in a court session is mandatory. [RT I 2008, 33, 201 - entry into force 28.07.2008]

(5) Minutes shall be taken of court sessions.

### **§ 483. Court rulings made in recognition and enforcement of foreign court judgments**

(1) In deciding on the recognition of a foreign court judgment, a court shall make one of the following rulings:

- 1) to declare execution of the foreign court judgment admissible, or
- 2) to declare execution of the foreign court judgment inadmissible.

(2) If execution of a court judgment is not permitted, the court shall send a copy of the court ruling to the Ministry of Justice. The Ministry of Justice shall notify the foreign state of the refusal to execute a foreign court judgment.

### **§ 484. Specification of punishment imposed in foreign state**

(1) If a court declares execution of a foreign court judgment admissible, the court shall determine the punishment to be executed in Estonia. The punishment imposed in the foreign state shall be compared to the punishment prescribed for the same act by the Estonian Penal Code.

(2) A specified punishment shall by nature as much as possible correspond to the punishment imposed in the foreign state. The court shall take into account the degree of the punishment imposed in the foreign state but the punishment shall not exceed the maximum rate prescribed by the sanction specified in the corresponding section of the Estonian Penal Code.

(3) If the term of a punishment has not been determined in a foreign state, the court shall determine the punishment in accordance with the principles of the Penal Code.

(4) It is not permitted to aggravate a punishment imposed in a foreign state.

(5) If probation is applied with regard to a person or he or she is released on parole in a foreign state, the court shall apply the provisions of the Estonian Penal Code.

(5<sup>1</sup>) If a convicted offender provides proof of payment of a sum of money in part or in full, the Ministry of Justice shall consult the competent authority of the foreign state who made the decision. The part of a pecuniary punishment or fine paid in another state shall be deducted from



the collectable sum of the pecuniary punishment or fine.  
[RT I 2008, 33, 201 - entry into force 28.07.2008]

(6) Pecuniary punishments, fines to the extent of assets and amounts subject to confiscation shall be converted, if necessary, into euros on the basis of the exchange rate applicable on the date of specification of the punishment.  
[RT I 2010, 22, 108 - entry into force 01.01.2011]

(7) In the specification of a punishment, the time spent in imprisonment or held in custody on the basis of § 479 of this Code in a foreign state shall be included in the term of the punishment.

#### **§ 484<sup>1</sup>. Substitution of pecuniary punishment imposed in foreign state**

If a pecuniary punishment imposed in a foreign state cannot be executed, the court may substitute the punishment with the permission of the requesting state pursuant to the procedure provided for in § 70 of the Penal Code taking into account that the term of imprisonment or community service shall not exceed the maximum term prescribed in the requesting state.  
[RT I 2008, 33, 201 - entry into force 28.07.2008]

#### **§ 485. Ruling on specification of judgment of foreign court**

- (1) A court shall decide the specification of a foreign court judgment by a ruling.
- (2) A ruling shall set out the extent to which a foreign court judgment is recognised and specify the punishment to be executed in Estonia.
- (3) A court shall send a copy of a ruling which has entered into force to the punishment register and the Minister of Justice. The Ministry of Justice shall notify the foreign state of compliance with the request and of the specified punishment.
- (4) Appeals may be filed against a ruling provided for in subsection (1) of this section by the accused, counsel, third parties and the Prosecutor's Office.

#### **§ 486. Execution of specified punishments**

- (1) Punishments shall be executed pursuant to the procedure provided by Estonian legislation.
- (2) A punishment shall not be enforced if the competent authority of the foreign state gives notification that the circumstances which were the basis for imposition of the punishment have ceased to exist.

#### **§ 487. Specifications concerning execution of pecuniary punishments, fines to the extent of assets and confiscation imposed by foreign court judgments**

- (1) Pecuniary punishments and fines to the extent of assets shall be enforced as payments into the revenues of the Estonian state unless the parties have agreed otherwise.

(2) The provisions of this Division apply to confiscated property unless the parties have agreed otherwise.

#### **§ 487<sup>1</sup>. Termination of enforcement of court judgement of foreign state**

Enforcement of a court judgement of a foreign state shall be terminated immediately when the requesting state notifies of granting pardon or amnesty or a request for the conversion of the sentence or any other decision on the basis of which the court judgement cannot be enforced.  
[RT I 2008, 33, 201 - entry into force 28.07.2008]

#### **§ 487<sup>2</sup>. Recognition and execution of pecuniary punishments and fines imposed by other authorities of foreign states**

The provisions of this Division concerning the recognition and execution of judgments of foreign courts apply to recognition and execution of pecuniary punishments or fines imposed by authorities of foreign states other than courts.  
[RT I 2008, 33, 201 - entry into force 28.07.2008]

### **Division 6 Requests for Recognition and Execution of Estonian Court Judgments and Decisions of Other Estonian Authorities** [RT I 2008, 33, 201 - entry into force 28.07.2008]

#### **§ 488. Requests for recognition and execution of Estonian court judgments and decisions of other Estonian authorities by foreign states** [RT I 2008, 33, 201 - entry into force 28.07.2008]

(1) Estonia may request a foreign state to execute a punishment or any other sanction imposed on a person on the basis of the Estonian Penal Code or another Act if:

1) the convicted offender is a citizen or permanent resident of the requested state or if he or she is staying in the requested state and is not extradited;

1<sup>1</sup>) the convicted offender is a legal person whose registered office is in the requested state;

2) execution of the punishment in the foreign state is in the interests of the convicted offender or the public.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(2) If a convicted offender is staying in Estonia, execution of his or her imprisonment may also be requested from the foreign state if the convicted offender consents to his or her surrender.

Consent shall be given in writing and shall not be withdrawn.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(3) If a court judgment or an administrative act relating thereto made with regard to a convicted offender contains an order to expel the person from the state immediately after his or her release from imprisonment, surrender of the person to a foreign state may be requested without his or her consent.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(4) A person sentenced to imprisonment may be surrendered for the purposes of continuation of the service of the sentence if at the time of receipt of the request at least six months of the sentence of imprisonment have not yet been served by the person.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(5) The surrender of or refusal to surrender a person sentenced to imprisonment shall be decided by the Minister of Justice.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(6) In order to recognise and execute a court judgement or a decision of another authority which has entered into force, the judgement or decision or an authenticated copy thereof shall be sent to the Ministry of Justice who shall communicate it together with a certificate to the requested state by post, by electronic mail or in another format which can be reproduced in writing. The Ministry of Justice shall translate the certificate into the language indicated by the requested state.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

(7) The format of the certificate shall be established by a regulation of the Minister of Justice.

[RT I 2008, 33, 201 - entry into force 28.07.2008]

## **Division 7 International Criminal Court**

### **§ 489. Co-operation with International Criminal Court**

(1) Co-operation with the International Criminal Court shall be carried out pursuant to this Code unless otherwise provided by an international agreement.

(2) If the Public Prosecutor's Office receives an application for arrest from the International Criminal Court, the Public Prosecutor's Office shall arrange the detention of the person pursuant to the procedure provided for in § 217 of this Code and the arrest of the person pursuant to the procedure provided for in § 131 of this Code.

(3) The prosecutors of the International Criminal Court performing procedural acts in Estonia have all the rights and obligations of prosecutors prescribed in this Code.

(4) If a request for assistance submitted by the International Criminal Court is in conflict with a request for assistance submitted by a foreign state, the request shall be adjudicated pursuant to the procedure provided for in an international agreement.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

## **Division 7<sup>1</sup> Eurojust**

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 489<sup>1</sup>. Co-operation with Eurojust**

(1) Co-operation with the EU Judicial Co-operation Unit Eurojust shall be carried out pursuant to this Code unless otherwise provided by legislation of the European Union.

(2) A prosecutor appointed Eurojust's National Member for Estonia has all the rights and obligations of a public prosecutor pursuant to this Code in the scope of application of this Code.

(3) In cases of urgency, Eurojust's National Member for Estonia may commence criminal proceedings with regard to a criminal matter the proceedings in which are to be conducted in Estonia and after performance of procedural acts send the materials of the criminal matter to the Public Prosecutor's Office who shall forward the materials pursuant to investigative jurisdiction.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

## **Division 8 Surrender**

### **Subdivision 1 General Provisions**

[RT I 2004, 54, 387 - entry into force 01.07.2004]

### **§ 490. European arrest warrant**

A European arrest warrant is a request submitted by a competent judicial authority of a Member State of the European Union to another Member State of the European Union for the detention, arrest and surrender of a person in order to continue criminal proceedings or execute imprisonment imposed by a court judgment which has entered into force.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

### **§ 491. General conditions for surrender**

(1) A person may be surrendered in a requesting state for the continuation of criminal proceedings with regard to him or her if the person is suspected or accused of a criminal offence which is punishable by at least one year of imprisonment in the requesting state.

(2) A person shall be surrendered regardless of the punishment for the act pursuant to the Estonian Penal Code if imprisonment of at least three years is prescribed as maximum punishment in the requesting state for commission of the following criminal offences:

[RT I 2008, 19, 132 - entry into force 23.05.2008]

- 1) participation in a criminal organisation;
- 2) terrorism;
- 3) trafficking in human beings;
- 4) sexual exploitation of children and child pornography;
- 5) illicit trafficking in narcotic drugs and psychotropic substances:

[RT I 2008, 19, 132 - entry into force 23.05.2008]

- 6) illicit trafficking in weapons, ammunition and explosives;  
[RT I 2008, 19, 132 - entry into force 23.05.2008]
- 7) corruption;
- 8) fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- 9) money laundering;
- 10) counterfeiting currency;
- 11) computer-related crime,
- 12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;  
[RT I 2008, 19, 132 - entry into force 23.05.2008]
- 13) facilitation of unauthorised entry and residence;
- 14) manslaughter, causing serious damage to health;
- 15) illicit trade in human organs and tissue;
- 16) kidnapping, unlawful deprivation of liberty and hostage taking;
- 17) racism and xenophobia;
- 18) organised or armed robbery;
- 19) illicit trafficking in cultural goods, including antiques and works of art;  
[RT I 2008, 19, 132 - entry into force 23.05.2008]
- 20) swindling;
- 21) extortion;
- 22) counterfeiting and piracy of products and trafficking therein;
- 23) forgery of administrative documents and trafficking therein;
- 24) counterfeiting and forgery of means of payment;
- 25) illicit trafficking in hormonal substances and other growth promoters;  
[RT I 2008, 19, 132 - entry into force 23.05.2008]
- 26) illicit trafficking in nuclear or radioactive materials;  
[RT I 2008, 19, 132 - entry into force 23.05.2008]
- 27) trafficking in stolen vehicles;
- 28) rape;
- 29) arson;
- 30) criminal offences which fall within the jurisdiction of the International Criminal Court;
- 31) unlawful seizure of aircraft or ships;
- 32) sabotage.

(3) Surrender of a person for the purposes of execution of a judgment of conviction made with regard to him or her is permitted under the conditions provided for in subsections (1) and (2) of this section if at least four months of the sentence of imprisonment have not yet been served.  
[RT I 2004, 54, 387 - entry into force 01.07.2004]

**§ 492. Circumstances precluding or restricting surrender of persons**  
**[RT I 2004, 54, 387 - entry into force 01.07.2004]**

(1) In addition to the provisions of clause 436 (1) 3) of this Code, surrender of a person is not permitted if:

1) the Estonian Penal Code may be applied to the criminal offence and an amnesty precludes imposition of a punishment in Estonia for the criminal offence which is the basis for an arrest warrant;

2) the person has been finally convicted or acquitted on the same charges in another Member State or, in the case of a judgment of conviction, the imposed punishment has been served or is served or the execution of the punishment cannot be ordered pursuant to the legislation of the state which made the judgment;

3) the person with regard to whom an arrest warrant has been issued is less than fourteen years of age;

4) an arrest warrant has been issued with regard to an Estonian citizen for the execution of imprisonment and the person applies for enforcement of the punishment in Estonia.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(2) Surrender of a person may be refused if:

1) an act which is the basis for the arrest warrant and which is not specified in subsection 491 (2) of this Code is not a criminal offence pursuant to the Estonian Penal Code, except in the case provided for in subsections 436 (1)-(2) of this Code;

2) criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have been initiated with regard to the person in Estonia;

3) criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have not been initiated or have been terminated with regard to the person in Estonia;

4) the Estonian Penal Code may be applied to the criminal offence and the criminal offence which is the basis for the arrest warrant has expired pursuant to the Estonian Penal Code;

5) the person has been finally convicted or acquitted on the same charges in a non-EU state or, in the case of a judgment of conviction, the imposed punishment has been served or execution of the punishment cannot be ordered pursuant to the legislation of the state which made the judgment;

6) the criminal offence which is the basis for the arrest warrant was committed outside the territory of the requesting state and the Estonian Penal Code cannot be applied to criminal offences committed outside the territory of the Republic of Estonia under the same circumstances;

7) in the case provided for in subsection 502 (5) of this Code, additional information has not been submitted by the due date determined by the court.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3) Estonia surrenders its citizens who reside permanently in Estonia on the basis of an European arrest warrant for the period of criminal proceedings provided that the punishment imposed on a person in a Member State is enforced in the Republic of Estonia.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(4) If an European arrest warrant is issued for the execution of imprisonment with regard to a person who has been convicted without his or her participation in court proceedings and who was not informed of the time and place of the court session, the person may be surrendered on the condition that the requesting state has assured that the possibility of a new hearing of the criminal matter of the person is ensured.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(5) If life imprisonment may be imposed in a requesting state as punishment for a criminal offence which is the basis for an arrest warrant, the person may be surrendered on the condition that the competent authority of the requesting state has assured that release of the person before the prescribed time is possible.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(6) If a person whose surrender is requested enjoys immunity or privileges in the Republic of Estonia, execution of the European arrest warrant shall be suspended until receipt of a notice from a competent authority concerning deprivation of the person of the immunity or privileges.

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

### **§ 493. Extension of surrender**

(1) Criminal proceedings shall not be initiated, measures which restrict freedom shall not be applied and a court judgment for a criminal offence committed before surrender, except the criminal offence in connection with which the person was surrendered, shall not be enforced with regard to a person surrendered to Estonia.

(2) The provisions of subsection (1) of this section do not apply if:

1) the surrendered person had the opportunity to leave Estonia within forty-five days as of his or her final release, or if he or she has returned to Estonia after leaving;

2) the criminal offence is not punishable by imprisonment;

3) the criminal proceedings do not bring about measures which restrict freedom;

4) punishment does not bring about deprivation of liberty, except substitutive punishment which restricts freedom;

5) a person voluntarily consents to surrender and non-application of subsection (1) of this section in respect of him or her or, after entry into force of a surrender decision, has consented to the non-application of subsection (1) of this section in respect of him or her;

6) a Member State which surrenders a person has granted its consent for the bringing of additional charges.

(3) A request for the extension of surrender shall be submitted to the competent judicial authority of the requesting state.

(4) A request for the extension of surrender submitted to Estonia may be satisfied if the request is based on a criminal offence to which a European arrest warrant may be applied.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

### **§ 494. Surrender and extradition to third country**

(1) A person surrendered to Estonia cannot be re-surrendered to another Member State of the European Union or extradited to a non-EU state, unless:

1) the surrendered person had the opportunity to leave Estonia within forty-five days as of his or her final release, or if he or she has returned to Estonia after leaving;

2) the person consents to the surrender or extradition;

3) the Member State which surrenders the person grants its consent for the re-surrender or extradition.

(2) A citizen of the Republic of Estonia who is surrendered to a Member State of the European Union cannot be re-surrendered to another Member State of the European Union or extradited to a non-EU state without the consent of the Minister of Justice.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

#### **§ 495. Plurality of requests**

**[RT I 2004, 54, 387 - entry into force 01.07.2004]**

(1) If several countries request the surrender of a person, a court shall decide which European arrest warrant is executed. The decision shall be based, primarily, on the seriousness and time and place of commission of the criminal offences committed by the person, the order in which the European arrest warrants were submitted and whether the warrants have been issued for pre-trial proceedings or for the enforcement of a court judgment which has entered into force.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(2) If necessary, a court may ask the advice of Eurojust.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3) If a European arrest warrant and a request for extradition have been submitted in respect of the same person, the Minister of Justice shall decide which request is executed, taking account of the circumstances specified in subsection (1) of this section.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

#### **§ 496. Permission for transit of surrendered person**

(1) Permission for the transit of persons surrendered by other Member States through the territory of the Republic of Estonia shall be granted by the Minister of Justice.

(2) A request for transit shall set out:

- 1) the personal data and the citizenship of the person concerned;
- 2) a notation that a European arrest warrant has been issued with regard to the person;
- 3) information on the facts relating to and the legal assessment of the criminal offence.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

#### **§ 497. Relinquishment of property**

**[RT I 2004, 54, 387 - entry into force 01.07.2004]**

(1) Relinquishment of property located in a requested state may be requested by an European arrest warrant if the property claimed has been acquired by a criminal offence which is the basis for the European arrest warrant or the property is required as physical evidence in the criminal proceeding.

[RT I 2004, 54, 387 - entry into force 01.07.2004]



(1<sup>1</sup>) Property may be relinquished or relinquishment of property may be requested also if a European arrest warrant cannot be submitted because the person has died or fled from the requesting state.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2) In Estonia, third party rights to property to be relinquished shall be preserved and the property to be relinquished shall be returned to the entitled person not subject to the proceedings after the entry into force of the court judgment.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

## **Subdivision 2 Surrender Procedure**

**[RT I 2004, 54, 387 - entry into force 01.07.2004]**

### **§ 498. Authorities competent to execute European arrest warrant**

(1) The following authorities are competent to conduct proceedings regarding a European arrest warrant and adopt a surrender decision:

1) the Harju County Court if a person is detained in Tallinn or in Harju, Rapla, Lääne-Viru, Ida-Viru, Järva, Lääne, Hiiu, Saare or Pärnu county;

2) the Tartu City Court if a person is detained in Jõgeva, Viljandi, Tartu, Põlva, Võru or Valga county.

(2) The central authority for co-operation in surrender procedure is the Ministry of Justice.

[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 499. Arrest for surrender**

(1) In order to ensure execution of a European arrest warrant, a person may be arrested pursuant to the procedure provided for in subsection 217 (8) of this Code. A preliminary investigation judge shall decide on an arrest for surrender at the request of a Prosecutor's Office.

(2) A person may be detained pursuant to the procedure provided for in subsection 217 (1) of this Code before the arrival of the European arrest warrant on the basis of a request for an arrest warrant submitted through the International Criminal Police Organisation (Interpol) or a notice on a wanted person in the Schengen Information System if the request contains a confirmation on submission of the warrant.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3) Upon arrest of a person, the grounds for arrest shall be explained to him or her and the person shall be informed of the opportunity to consent to surrender. The consent shall not be withdrawn.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(4) A person has, as of his or her arrest, the right to receive state legal aid and the assistance of an interpreter or translator.

(5) If a European arrest warrant has not been sent within a term provided for in subsection 500 (1) of this Code, the person shall be immediately released.  
[RT I 2004, 54, 387 - entry into force 01.07.2004]

#### **§ 500. Channels for communication of European arrest warrant**

(1) A European arrest warrant shall be addressed to the Ministry of Justice within three working days after the person is taken into custody in Estonia. The Ministry of Justice shall immediately communicate the European arrest warrant to a competent court and the Public Prosecutor's Office.

(2) A European arrest warrant received through the International Criminal Police Organisation (Interpol) or Schengen Information System shall be sent to the Ministry of Justice immediately after the arrest of a person and the Ministry of Justice shall forward it to the competent court and the Public Prosecutor's Office.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

#### **§ 501. Participation of counsel in surrender proceedings**

(1) The counsel in a surrender proceeding must be an advocate.

(2) Participation of a counsel in a surrender proceeding is mandatory after review of a request for the arrest of a person.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

#### **§ 502. Surrender proceedings in court**

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(1) In order to hear a European arrest warrant and decide on the surrender of a person, a court session shall be held within ten days after the receipt of the European arrest warrant by the court. If a person has given notification of his or her consent to the surrender, a court session shall be held within five days after the receipt of the European arrest warrant by a court.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(2) Surrender proceedings shall be conducted by a judge sitting alone.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(3) The following persons are required to participate in a court session:

- 1) prosecutors;
- 2) the person claimed;
- 3) the counsel of the person claimed.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(4) In a court session, the court shall:

- 1) verify whether the person consents to surrender;
- 2) inform the person of the provisions of §§ 493 and 494 of this Code;

3) hear the opinions of the person claimed, his or her counsel and the prosecutor.  
[RT I 2004, 54, 387 - entry into force 01.07.2004]

(5) A court may grant a term to a competent judicial authority of a requesting state for the submission of additional information.  
[RT I 2004, 54, 387 - entry into force 01.07.2004]

(6) A court shall make a ruling provided for in § 503 of this Code immediately after a court session held for the surrender of a person and shall forward the ruling immediately to the Ministry of Justice.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

(7) If a surrender decision cannot be made within a prescribed term, the term for the making of the surrender decision shall be extended by thirty days. The person who submitted the request and Eurojust shall be immediately informed of such extension of surrender proceedings.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 503. Decisions in surrender proceedings**

(1) Upon deciding on surrender of a person to a foreign state, a court shall make one of the following rulings:

- 1) to satisfy an European arrest warrant and consent to the surrender of the person;
- 2) to refuse to satisfy a European arrest warrant and refuse to consent to the surrender of the person.

(2) A ruling shall set out:

- 1) the name, personal identification code or date of birth, and place of birth of the person subject to surrender proceedings;
- 2) the content of the European arrest warrant reviewed;
- 3) the opinions of the persons who participated in the court session and, if the person consents to his or her surrender, the consent of the person;
- 4) the court judgment and reasons for the consent or refusal to consent to surrender;
- 15) the conditions of surrender provided for in subsections 492 (3)-(5) of this Code;
- 6) the period during which a person subject to surrender proceedings was held in custody;
- 7) the procedure for appeal.

(3) If a European arrest warrant contains a request for the confiscation of assets, the court shall decide on confiscation of the assets in surrender proceedings.

(4) If a court decides to satisfy a European arrest warrant and surrender a person, a court applies arrest for surrender to the person until the person is surrendered.

(5) If a court decides to refuse surrender, arrest for surrender is applied to the person until a ruling on surrender or ruling on refusal to surrender enters into force.

(6) A copy of a ruling shall be sent to the custodial institution where the person to be surrendered is held in custody for surrender and the ruling is made known to the person to be surrendered against signature.

(7) A copy of a ruling which has entered into force and is issued in surrender proceedings shall be immediately sent to the Ministry of Justice who shall communicate it to the requesting state.  
[RT I 2004, 54, 387 - entry into force 01.07.2004]

#### **§ 504. Contestation of ruling made in surrender proceedings**

(1) An appeal against a ruling on surrender made in surrender proceedings or an appeal against a ruling on refusal to surrender may be filed pursuant to the procedure provided for in subsection 386 (2) of this Code within three days as of receipt of the ruling.

(2) An appeal against a ruling of the Harju County Court shall be filed with the Tallinn Circuit Court and an appeal against a ruling of the Tartu County Court shall be filed with the Tartu Circuit Court.

(3) An appeal against a ruling shall be heard in a written proceeding in a circuit court within ten days as of arrival of the matter to the circuit court.

(4) A judgment of a circuit court is final.  
[RT I 2005, 39, 308 - entry into force 01.01.2006]

#### **§ 505. Surrender of person**

(1) A copy of a ruling on surrender which has entered into force shall be sent to the Police and Border Guard Board who shall notify the requesting state of the time and place of surrender of the person to be surrendered and organise the surrender of the person.  
[RT I 2009, 27, 165 - entry into force 01.01.2010]

(2) A surrendered person shall be surrendered within ten days as of entry into force of the ruling on surrender.

(3) If surrender is prevented by circumstances beyond the control of the requested and requesting state, the person shall be surrendered within ten days as of the new agreed date.

(4) The surrender may exceptionally be temporarily postponed if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist and the person shall be surrendered within ten days as of the new agreed date.

(5) If a person is not surrendered with a term specified in subsections (2)-(4) of this section, he or she shall be released.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

## **§ 506. Postponement of surrender and temporary surrender**

(1) The Ministry of Justice may postpone the execution of a ruling on surrender which has entered into force if postponement is necessary for the purposes of the criminal proceeding conducted in Estonia with regard to the person to be surrendered or for the purposes of execution of a court judgment made with regard to him or her.

(2) By a written agreement with a requesting state, a person whose surrender has been postponed may be temporarily surrendered to the requesting state.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

### **Subdivision 3 Submission of Arrest Warrant to Member State of European Union** [RT I 2004, 54, 387 - entry into force 01.07.2004]

## **§ 507. Submission of European arrest warrant**

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(1) In pre-trial proceedings, the Prosecutor's Office and, in court proceedings, the court which conducts proceedings regarding a criminal offence which is the basis for a European arrest warrant is competent to submit the European arrest warrant.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2) For execution of a decision which has entered into force, the county court enforcing the decision is competent to submit an European arrest warrant.

[RT I, 21.12.2012, 1 - entry into force 01.01.2013]

(2<sup>1</sup>) In pre-trial proceedings, a preliminary investigation judge may, at the request of the Prosecutor's Office, apply arrest for surrender before preparation of a European arrest warrant.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(2<sup>2</sup>) If surrender of a person is requested in court proceedings, the arrest for surrender of the person shall be applied by the court which conducts proceedings regarding the criminal offence.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

(3) A European arrest warrant shall be prepared in Estonian and it shall be translated into the language determined by the requesting state by the Ministry of Justice.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(4) A European arrest warrant shall be communicated to a requesting state through the Ministry of Justice.

[RT I 2004, 54, 387 - entry into force 01.07.2004]

(5) In cases of urgency, a request for application of arrest for surrender with regard to a person to be surrendered may be submitted to a Member State of the European Union through the International Criminal Police Organisation (Interpol) or the central authority responsible for the national section of the Schengen Information System with the consent of the Prosecutor's Office

before a European arrest warrant is submitted.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 508. Content, format and manner of transmission of European arrest warrant**

(1) A European arrest warrant shall set out:

- 1) the identity and nationality of the person concerned;
- 2) the name and contact details of the issuing judicial authority;
- 3) a notation concerning a court judgement which has entered into force on an arrest warrant;
- 4) facts relating to and classification of the criminal offence;
- 5) the penalty imposed in the case of a court judgement which has entered into force or the prescribed scale of penalties for the criminal offence which forms the content of the warrant under the law of the issuing state.

(2) The format of a European arrest warrant shall be established by the Minister of Justice.

(3) An arrest warrant shall be communicated to a requesting state by post, by electronic mail or in a form which can be reproduced in writing.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

## **Division 9 Freezing Property and Depositing Evidence in Member States of European Union**

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **Subdivision 1 General Provisions**

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 508<sup>1</sup>. European order on freezing property or depositing of evidence**

(1) A European order concerning freezing of property or depositing of evidence (hereinafter *European freezing order*) is a request submitted by a competent judicial authority of a Member State of the European Union to another Member State of the European Union in order to ensure confiscation of property or to prevent destruction, transformation, moving, transfer or disposal of property.

(2) The following may be frozen or deposited on the basis of a European freezing order:

- 1) property which was obtained by a criminal offence or property the value of which corresponds to property which was obtained by a criminal offence;
- 2) an instrument by which a criminal offence was committed;
- 3) a direct object of a criminal offence;
- 4) other physical evidence, documents or data recordings which can be produced as evidence in criminal proceedings.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

(3) A European freezing order shall be submitted to the requested state in adherence with the form set out in the appendix to Council Framework Decision on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.08.2003, pp. 45-55).

(4) A copy of an order on freezing property or depositing evidence issued by the competent judicial authority of the requesting state shall be appended to a European freezing order.  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 508<sup>2</sup>. Request for assistance accompanying European freezing order**

(1) Together with a European freezing order a request for assistance shall be forwarded to the requested state for:

- 1) the evidence to be transferred to the requesting state;
- 2) confiscation of property or
- 3) preservation of property until the submission of a request provided for in clause 1) or 2) of this subsection together with the estimated time of submission of a request.

(2) The requests specified in clauses (1) 1) and 2) of this section shall be processed pursuant to the provisions of Division 3 or 5 of Chapter 19 of this Code.

(3) A request for assistance provided for in clause (1) 1) of this section shall not be refused on grounds that the criminal offence which is the basis for the request is not punishable pursuant to the Estonian Penal Code where the request concerns a criminal offence referred to in subsection 491 (2) of this Code and the offence is punishable in the requesting state by a prison sentence of at least up to three years.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 508<sup>3</sup>. Circumstances precluding or restricting execution of European freezing orders**

(1) Execution of a European freezing order is not permitted if:

- 1) an act which is the basis for the European freezing order is not punishable pursuant to the Estonian Penal Code, except in the case provided for in subsection (2) of this section;
- 2) a person the freezing or deposit of whose property is requested enjoys immunity or privileges in the Republic of Estonia;

[RT I, 23.02.2011, 1 - entry into force 01.09.2011]

3) it is evident on the basis of a European freezing order that compliance with the request for assistance provided for in § 508<sup>2</sup> of this Code is not permitted because the person has been finally convicted or acquitted on the same charges or, in the case of a judgment of conviction, the imposed punishment has been served or execution of the punishment cannot be ordered pursuant to the legislation of the state which issued the order;

4) the European freezing order was not submitted by using the form provided for in subsection 508<sup>1</sup> (3), it is incomplete, does not correspond to the order of the competent judicial authority of the requesting state on which it is based or the order of the competent judicial authority of the requesting state on which it is based or a copy thereof is not appended to the European freezing order.

(2) Execution of a European freezing order shall not be refused on the grounds that the criminal offence which is the basis for the request is not punishable pursuant to the Estonian Penal Code where the request concerns a criminal offence referred to in subsection 491 (2) of this Code and the offence is punishable in the requesting state by a prison sentence of at least up to three years.

(3) The competent judicial authority of the requesting state shall be notified of the refusal to execute a European freezing order.

(4) In the case specified in clause (1) 4) of this section, the Public Prosecutor's Office may grant a term to the competent judicial authority of the requesting state for the elimination of deficiencies or for the submission of additional information.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

#### **§ 508<sup>4</sup>. Compensation for damage**

(1) Estonia as a requesting state shall bear all the expenses incurred by the requested state, pursuant to the law of that state, in connection with damage caused to a third party by execution of a European freezing order provided that the damage was not caused by wrongful acts of the requested state. The Ministry of Justice shall decide on the compensation for damage.

(2) Estonia as the requested state has the right to require from the requesting state compensation for expenses which Estonia has compensated to a third party in connection with damage caused by the execution of a European freezing order provided that the damage was not caused by wrongful acts of Estonia. The Ministry of Justice shall decide on submission of a request for compensation of expenses to the requesting state.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

#### **§ 508<sup>5</sup>. Notification**

The obligation to notify the competent judicial authority of the requesting state of the circumstances relating to execution or refusal to execute a European freezing order or any other circumstances shall be performed immediately and a notice shall be submitted by post, by electronic mail or in another format which can be reproduced in writing.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

#### **Subdivision 2 Execution of European Freezing Orders**

[RT I 2008, 19, 132 - entry into force 23.05.2008]

#### **§ 508<sup>6</sup>. Authority competent to process European freezing orders**

(1) The Public Prosecutor's Office is competent to process European freezing orders issued to Estonia and to decide on execution of European freezing orders. If necessary, the Public Prosecutor's Office shall involve a district prosecutor's office in the execution of an order.

(2) If a European freezing order includes a request specified in clause 508<sup>2</sup> (1) 1) or 2) of this Code, the Public Prosecutor's Office shall forward a copy of the European freezing order to the



Ministry of Justice.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 508<sup>7</sup>. Deciding of execution of European freezing orders**

A European freezing order shall be reviewed immediately and execution of the order, refusal to execute the order, postponement of the order or requesting of additional information from the requesting state, if possible, shall be decided upon within twenty-four hours as of the receipt of the European freezing order.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 508<sup>8</sup>. Execution of European Freezing Orders**

(1) European freezing orders shall be executed pursuant to this Code. At the request of a foreign state, a request for depositing evidence may be complied with pursuant to procedural provisions different from the provisions of this Code unless this is contrary to the principles of Estonian law.

(2) In order to execute a European freezing order pursuant to the procedure provided for in § 142 of this Code, freezing of property shall be decided upon at the request of the Prosecutor's Office by an order of a preliminary investigation judge.

(3) The following are competent to decide on the freezing of property on the basis of a European freezing order:

1) the Harju County Court if the property which is the object of the request is located in Tallinn or in Harju, Rapla, Lääne-Viru, Ida-Viru, Järva, Lääne, Hiiu, Saare or Pärnu county;

2) the Tartu City Court if the property which is the object of the request is located in Jõgeva, Viljandi, Tartu, Põlva, Võru or Valga county;

3) the county court to whom the request was submitted if it is impossible to clearly determine the location of the property.

(4) The Public Prosecutor's Office shall notify the competent judicial authority of the requesting state of the execution of a European freezing order.

(5) Property shall be frozen and evidence shall be deposited until a decision is made concerning compliance with a request for assistance provided for in subsection 508<sup>2</sup> (1) of this Code.

(6) If the competent judicial authority of the requesting state notifies that the European freezing order has been lifted, the frozen property shall be released and the confiscated evidence shall be immediately returned.

(7) In case it is impossible to execute a European freezing order for the reason that the property or evidence have disappeared, have been destroyed their location cannot be identified, even after consultation with the requesting state, the competent judicial authority of the requesting state shall be notified thereof.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 508<sup>9</sup>. Postponement of execution of European freezing orders**

- (1) The Prosecutor's Office may postpone the execution of a European freezing order:
- 1) where its execution might damage ongoing criminal proceedings in Estonia;
  - 2) where the property or evidence indicated in the European freezing order have already been frozen or deposited in connection with ongoing criminal proceedings in Estonia.
- (2) The Prosecutor's Office shall notify the competent judicial authority of the requesting state of the postponement of the execution of a European freezing order. In addition to the reasons for postponement, the estimated duration of the postponement shall be notified of, if possible.
- (3) If the reasons for postponement cease to exist, the Prosecutor's Office shall take immediate measures for the execution of the European freezing order and shall notify the competent judicial authority of the requesting state thereof.
- [RT I 2008, 19, 132 - entry into force 23.05.2008]

### **§ 508<sup>10</sup>. Contestation of decisions made and acts performed upon execution of European freezing orders**

- (1) In Estonia, third party rights to property which is the object of a freezing order shall be preserved. An appeal against an order of a Prosecutor's Office or activities of an investigative body in connection with the execution of a European freezing order shall be filed with the county court in whose territorial jurisdiction the contested order was prepared or the contested procedural act was performed. An appeal against a ruling on the freezing of property may be filed pursuant to the procedure provided for in subsection 387 (2) of this Code within three days as of receipt of the ruling.
- (2) A European freezing order issued to Estonia and the ruling of the competent judicial authority of the requesting state which is the basis for the freezing order cannot be contested in Estonia. If a person so requests, the Public Prosecutor's Office shall provide contact details which allow the person to examine the procedure for contesting a European freezing order in the requesting state.
- (3) Filing of an appeal shall not suspend the execution of the contested order unless otherwise decided by the person resolving the dispute.
- (4) The Prosecutor's Office shall notify the competent judicial authority of the requesting state of filing an appeal in connection with the execution of a European freezing order and of a decision made upon resolution of the appeal.
- [RT I 2008, 19, 132 - entry into force 23.05.2008]

**Subdivision 3 Issuing European Freezing Orders to Member States of European Union**  
[RT I 2008, 19, 132 - entry into force 23.05.2008]

**§ 508<sup>11</sup>. Preparation of European freezing orders**

(1) The authority competent to prepare a European freezing order is a Prosecutor's Office in pre-trial proceedings and a court in court proceedings.

(2) A Prosecutor's Office or a court which conducts proceedings regarding a criminal offence which is the basis for a European freezing order shall prepare a European freezing order and forward it together with a copy of the order specified in subsection 508<sup>1</sup> (4) of this Code to the competent judicial authority of the state of location of the property or evidence. A European freezing order prepared by a Prosecutor's Office shall be forwarded to the requested state through the Public Prosecutor's Office.

(3) If a European freezing order issued for execution is annulled, the competent judicial authority of the requested state shall be immediately notified thereof.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

**§ 508<sup>12</sup>. Format and manner of communication of European freezing order**

(1) A European freezing order shall be prepared pursuant to the provisions of subsections 508<sup>1</sup> (3) and (4) and 508<sup>2</sup> (1) of this Code.

(2) The format of a European arrest warrant shall be established by the Minister of Justice.

(3) A European freezing order shall be communicated to a requested state by post, by electronic mail or in a form which can be reproduced in writing.

(4) A European arrest warrant shall be prepared in Estonian and it shall be translated into the language determined by the requested state by the Ministry of Justice. An order to be appended to a European freezing order pursuant to subsection 508<sup>1</sup> (4) of this Code need not be translated.

[RT I 2008, 19, 132 - entry into force 23.05.2008]

**Chapter 20 IMPLEMENTING PROVISIONS**

**§ 509. Entry into force of Code**

(1) This Code enters into force on 1 July 2004.

(2) The procedure for the implementation of this Code shall be provided for in the implementation act thereof.

[RT I 2004, 54, 387 - entry into force 01.07.2004]