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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ROMANIA

LAW (*)

ON THE CRIMINAL PROCEDURE CODE

**Text in force
as of 7 February 2014**

(*) Unofficial translation

LAW #135 of 1 July 2010
of the Criminal Procedure Code

Text shall be in force as of 7 February 2014

*PAGE LAYOUT AND TYPESETTING: “COMPANIA DE INFORMATICA
NEAMT”*

*This text was updated using the legal software “LEX EXPERT” on the basis of
the amending acts that were published in the Official Journal of Romania, Part
I, until 7 February 2014.*

Main Text

#B: *Law #135/2010*

Amending acts

#M1: *Law #63/2012*

#M2: *Law #255/2013*

#M3: *Government Emergency Order #116/2013*

#M4: *Government Emergency Order #3/2014*

*The amendments and supplements brought by the regulator acts mentioned
above are written in italics. Each amendment or supplement carries an
indication before it that defines the regulatory act that brought that amendment
or supplement, in the format **#M1**, **#M2**, etc.*

#B

The Parliament of Romania adopts this Law:

GENERAL PART

TITLE I

Principles and limits of criminal procedure law

ART. 1

Criminal procedure rules and their goal

(1) Criminal procedure rules regulate how the proceedings and other judicial
procedures take place in relation to a criminal case.

#M2

(2) *The criminal procedure rules are intended to provide effective exercise of the
judicial bodies’ responsibilities and guarantee the rights of the parties and the
other participants in the criminal proceedings so as to comply with the
Constitution, the European Union constitutive Treaties, the other European*

Union regulations in criminal procedure matters and of the pacts and agreements on fundamental human rights that Romania is a party to.

#B

ART. 2

Lawfulness of the criminal proceedings

Criminal proceedings shall take place according to the stipulations of the law.

ART. 3

Separation of judicial functions

(1) The following judicial functions shall be exercised during the criminal proceedings:

- a) the criminal investigative function;
- b) the function of issuing orders concerning the fundamental rights and liberties of a person at the stage of the criminal investigation;

#M2

c) the function of examining the lawfulness of the decision to prosecute or drop charges;

#B

d) the trial function.

(2) The judicial functions shall be exercised *ex officio*, unless the law requires otherwise.

#M2

(3) The exercise of one judicial function is incompatible with the exercise of a second judicial function as part of the same criminal proceedings, except for the one stipulated at par. (1) lett. c), which is compatible with the trial function.

#B

(4) In the exercise of the criminal investigative function the prosecutor and the criminal investigation bodies shall gather the evidence needed to establish whether grounds for prosecution exist.

(5) The acts and measures that are part of the criminal investigation and restrict individual fundamental rights and liberties shall be subject to approval by the designated judge who has authority in this sense, except for cases specifically stipulated by law.

#M2

(6) The lawfulness of the indictment and evidence it relies upon, as well as the lawfulness of decisions to drop charges, shall be subject to approval by the Preliminary Chamber Judge, as under the law.

#B

(7) The trial shall be performed by the court, with legally-assembled judicial panels.

ART. 4

Benefit of the doubt

(1) Any person shall be considered innocent until their guilt is established by a final criminal judgment.

(2) After all the evidence is presented in the case, any doubt persisting in the mind of the judicial bodies shall be interpreted in favor of the suspect or defendant.

ART. 5

Finding the truth

(1) The judicial bodies are under an obligation to ensure the finding of the truth about the facts and circumstances of the case, based on evidence, and about the person of the suspect or defendant.

(2) The criminal investigation bodies are under an obligation to collect and submit evidence both in favor and against the suspect or defendant. Denying or failing to record evidence in favor of the suspect or defendant, in ill-faith, shall be punishable according to the stipulations in this Code.

ART. 6

Ne bis in idem

No person can be investigated or prosecuted for an offense when a final criminal judgment has already been returned concerning that same person for the same offense, even if the charges were different.

ART. 7

Obligatory character of starting and exercising the criminal investigation

(1) The prosecutor is under an obligation to start and exercise the criminal investigation *ex officio* when evidence exists that shows the commission of an offense and there are no legal grounds to prevent them other than those stipulated at par. (2) and (3).

(2) In the cases and conditions specifically stipulated by law, the prosecutor can waive the exercise of the criminal action if, considering the concrete elements of the case, there is no public interest in performing its object.

(3) In cases specifically stipulated by law, the prosecutor shall start and exercise criminal action after a prior complaint is filed by the victim or after securing authorization or referral from the jurisdictional body or after satisfying another condition required by law.

ART. 8

Fair trial and reasonable duration of the trial

The judicial bodies are under an obligation to exercise the criminal investigation and trial in compliance with the due process guarantees and the rights of the parties and subjects of the trial, so as to provide timely and full finding of the actions that constitute offenses, no innocent person is held criminally liable, and

any person who has committed an offense gets punished as under the law, within a reasonable duration.

ART. 9

Right to freedom and safety

- (1) Any person's right to freedom and safety shall be guaranteed as part of the criminal proceedings.
- (2) Any custodial or freedom-restrictive measure shall only be ordered exceptionally and only in the cases and conditions stipulated by law.
- (3) Any person placed under arrest has the right to be informed within the shortest delays, and in a language they understand, of the reasons they were arrested, and have the right to challenge the arrest warrant.
- (4) When it is found that a custodial or freedom-restrictive measure was ordered unlawfully, the jurisdictional judicial bodies are under an obligation to order the measure invalidated and, as the case may be, the detained or arrested individual released.
- (5) Any person against whom a custodial or freedom-restrictive measure has been ordered unlawfully during the criminal proceedings is entitled to compensation for their losses, in the conditions stipulated by law.

ART. 10

Right to defense

- (1) The parties and main subjects in the proceedings have the right to defend themselves or be assisted by a counsel.
- (2) The parties, main subjects on the proceedings and the counsel have the right to be given the time and facilitations needed for preparing a defense.

#M2

(3) The suspect has the right to be informed immediately, and before being interviewed, of the offense the criminal investigation is looking into and the charge for that offense. The defendant has the right to be informed immediately of the offense the prosecution against them has started for, and the charges for that offense.

#B

- (4) Before being interviewed the suspect and defendant must be informed that they have the right to make no statements whatsoever.
- (5) The judicial bodies are under an obligation to ensure full and effective exercise by the parties and main subjects in the proceedings of their right to defense throughout the criminal proceedings.
- (6) The right to defense shall be exercised in good faith, according to the goal for which the law recognizes it.

ART. 11

Observance of human dignity and private life

- (1) Any person under criminal investigation or on trial shall be treated in compliance with their human dignity.
- (2) Observance of private life, inviolability of the domicile and secrecy of the mail are guaranteed. Restricting the exercise of those rights can only be allowed in the conditions set by law and if necessary in a democratic society.

ART. 12

Official language and the right to have an interpreter

- (1) The official language of the criminal proceedings is Romanian.
- (2) Romanian citizens who are members of national minorities have the right to speak in their maternal language before courts of law, while procedural acts shall be written in the Romanian language.

#M2

(3) Parties and subjects in the proceedings who do not speak or understand the Romanian language shall be provided, free of charge, with the possibility to learn of the evidence in the case, to speak and to argue in court, using an interpreter. In the situations where legal assistance is mandatory, the suspect or defendant shall be provided, free of charge, with the possibility to communicate via an interpreter with their counsel so as to prepare the hearing, the filing of an avenue of appeals, or any other motion that has to do with the resolution of the case.

#B

- (4) Judicial proceedings shall use certified interpreters, as under the law. Included in the category of interpreters are also certified translators, as under the law.

ART. 13

Applicability of procedural law in time and space

- (1) Criminal procedure law shall apply to acts undertaken and measures ordered in the criminal proceedings, from its enactment and until it is repealed, except for the situations described in the transient stipulations.
- (2) Romanian criminal procedure law shall apply to acts undertaken and measures ordered on the territory of Romania, with the exceptions specified by law.

TITLE II

Criminal action and civil action in criminal proceedings

CHAPTER I

Criminal action

ART. 14

Purpose and use of criminal action

- (1) Criminal action seeks to hold persons having committed offenses criminally liable.
- (2) Criminal action is initiated through the indictment set by the law.
- (3) Criminal action can be exercised throughout the criminal proceedings, under the law.

ART. 15

Requirements for initiating or making use of criminal action

Criminal action is initiated and exercised when there is evidence leading to a reasonable presumption that a person committed an offense, and when there are no circumstances preventing its initiation or use.

ART. 16

Circumstances preventing initiation and exercise of criminal action

(1) Criminal action may not be initiated, and when it has already been initiated, may not be used if:

- a) the action in question does not exist;
- b) the action is not covered by the criminal law or was not committed with the guilt required by law;
- c) there is no evidence that a person committed the offense;
- d) there is a justifying or non-imputability cause;
- e) a prior complaint, an authorization or seizure of the body of competent jurisdiction or other requirement set by the law, required for the initiation of criminal action, is missing;
- f) amnesty or statute of limitations, or death of a natural-person suspect or defendant occurred or de-registration of a legal-entity suspect or defendant was ordered;
- g) a prior complaint was withdrawn, for offenses in relation to which its withdrawal removes criminal liability, reconciliation took place or a mediation agreement was concluded under the law;
- h) there is a non-penalty clause set by the law;
- i) double jeopardy (*res judicata*);
- j) a transfer of proceedings with a different country took place under the law.

(2) In the situations set under par. (1) items e) and j), criminal action may be initiated subsequently, under the terms set by the law.

ART. 17

Extinguishment of criminal action

(1) During the course of the criminal investigation, criminal action is extinguished through closure or through dropping charges, under the terms set by the law.

#M2

(2) During the course of criminal proceedings, such action is extinguished under the circumstances where a court sentence ordering a conviction, waiver of penalty, delay of penalty, acquittal or termination of criminal proceedings remains final.

#B

ART. 18

Continuation of criminal proceedings upon request by the suspect or defendant

In case of amnesty, statute of limitations, prior complaint withdrawal, existence of a non-penalty or non-imputability cause, or in case of dropping charges, a suspect or defendant may request continuation of criminal proceedings.

CHAPTER II

Civil action

ART. 19

Purpose and use of a civil action

#M2

(1) A civil action initiated in criminal proceedings seeks to establish the civil liability in tort of the persons liable under the civil law for damages caused by having committed an act that is the subject matter of criminal action.

#B

(2) A civil action is used by a victim or by their successors, who become a civil party against the defendant and, as applicable, against the party with civil liability.

#M2

(3) When a victim lacks mental competence or has a limited mental competence, a civil action shall be initiated on their behalf by their legal representative or, as applicable, by the prosecutor, under the terms of Art. 20 par. (1) and (2), and pursues, depending on the interests of the person whose behalf this is initiated, to hold the responsible persons person with civil liability in tort.

#B

(4) A civil action is settled within the criminal proceedings, if this does not lead to exceeding the reasonable duration of the trial.

(5) Material and moral damages shall be remedied according to the stipulations of civil law.

ART. 20

Bringing civil action in criminal proceedings

(1) Civil action can be introduced in criminal proceedings by the moment of commencement of judicial examination. Judicial bodies are under an obligation to inform victims on the existence of such right.

(2) Civil action may be introduced in criminal proceedings in writing or verbally, by indicating the nature and scope of claims, and the reasons and evidence on which this is based.

(3) In the event that civil action is introduced in criminal proceedings verbally, judicial bodies are under an obligation to record this in a report or, as applicable, in the hearing report.

(4) In the event that any of the requirements set by par. (1) and (2) are not met, a victim or its successors may no longer become a civil party in criminal proceedings; however, they may file such action with a civil court.

(5) Until completion of judicial examination, a civil party may:

a) correct clerical errors contained in the application to become a civil party in criminal proceedings;

b) increase or decrease the scope of claims;

c) request remedy of material damages through the payment of a monetary compensation, if an in-kind remedy is no longer possible.

#M2

(6) In the event that a large number of persons, who do not have contrary interests, become civil parties in criminal proceedings, these may appoint a person to represent their interests within the criminal proceedings. If civil parties did not appoint a joint representative, for the proper conducting of criminal proceedings, the prosecutor or the court may appoint, through an order or through a reasoned court resolution, a court-appointed counsel to represent their interests. Such court resolution or order shall be communicated to the civil parties, who have to inform the prosecutor or the court if they refuse to be represented by such counsel appointed by the court. All process acts communicated to the representative or of which such representative took knowledge are presumed to be known by the represented persons.

(7) If a right related to the remedy of damages was transmitted conventionally to other persons, such persons may no longer initiate a civil action in criminal proceedings. If such right is transmitted after the person in question became a civil party in criminal proceedings, a civil action may be disjoined.

#B

(8) A civil action seeking to hold person with civil liability both the defendant and the party with civil liability, filed with a criminal or civil court, is exempted from judicial stamp fees.

ART. 21

Introduction of a party with civil liability in criminal proceedings

#M2

(1) A party with civil liability may be introduced in criminal proceedings upon request by the party entitled under the civil law, within the term set by Art. 20 par. (1).

#B

(2) When a civil action is initiated, the prosecutor is under an obligation to request introduction of a party with civil liability in the criminal proceedings, under the terms of par. (1).

#M2

(3) A party with civil liability may intervene in criminal proceedings until completion of the judicial examination conducted by the court of first instance, and shall continue procedures from the stage where they are at the moment of intervention.

#B

(4) In respect of a civil action, a party with civil liability benefits from all rights established by the law for a defendant.

ART. 22

Waiver of civil claims

(1) A civil party may waive all or part of the claims raised by it until completion of debates in appeal.

(2) Such waiver may take place either through a written application or verbally, in the court hearing.

(3) A civil party may not change its mind in respect of such waiver and may not file an action with a civil court in relation to the same claims.

ART. 23

Settlement, mediation of acknowledgment of civil claims

(1) In respect of civil claims, during the course of criminal proceedings, the defendant, the civil party and the party with civil liability may conclude a settlement or mediation agreement, under the law.

(2) The defendant, based on the consent of the party with civil liability, may accept all or part of the civil party's claims.

(3) In case of acceptance of civil claims, the court shall order indemnifications, to the extent of such acknowledgment. In respect of non-accepted claims, evidence may be produced.

ART. 24

Use of a civil action by or against successors

(1) A civil action shall remain under the competence of jurisdiction of the criminal court in case of death, reorganization, winding up or dissolution of a civil party, if its heirs or, as applicable, successors in title or liquidators explicit their choice to continue the civil action, within maximum two months as from the date of such death or reorganization, winding up or dissolution.

#M2

(2) In case of death, reorganization, winding up or dissolution of a party with civil liability, a civil action shall remain under the competence of jurisdiction of the criminal court if the civil party indicates the heirs or, as applicable,

successors in title or liquidators of the party with civil liability within maximum two months as from the date when it took knowledge of the relevant circumstance.

*(3) *** Repealed*

#B

ART. 25

Settlement of a civil action in criminal proceedings

#M2

(1) The court shall decide both on the criminal action and on the civil action through the same judgment.

#B

(2) When a civil action seeks remedy of material damages through the restitution of a specific object, and such restitution is possible, the court shall order that the relevant object be returned to the civil party.

(3) The court, even if a party did not become a civil party in criminal proceedings, shall decide on the entire or partial nullification of a deed or on restoring the status prior to the committed offense.

#M2

*(4) *** Repealed*

(5) In case of acquittal of a defendant or of termination of criminal proceedings, under [Art. 16](#) par. (1) lett. b), first indent, lett. e), f), g), i) and j), as well as in the situation set by [Art.486](#) par. (2), the court shall leave the civil action unsettled.

(6) The court shall leave the civil action unsettled also in a situation where the heirs or, as applicable, successors in title or liquidators of a civil party do not explicit their option to continue the civil action or, as applicable, the civil party fails to indicate the heirs, successors in title or liquidators of the party with civil liability within the term set by [Art. 24](#) par. (1) and (2).

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ART. 26

Disjoinder of a civil action

#M2

(1) The court may order disjoinder of a civil action when its settlement leads to exceeding the reasonable term for the settlement of the criminal action. The settlement of the civil action shall remain under the competence of jurisdiction of the criminal court.

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*(2) Disjoinder shall be ordered by the court *ex officio* or upon request by the prosecutor or the parties.*

#M2

(3) Evidence produced until disjoinder shall be used in the settlement of the disjoined civil action.

*(4) *** Repealed*

#B

(5) A court resolution disjoining a civil action is final.

ART. 27

Circumstances in which civil action are settled by civil courts

(1) If it does not become a civil party in criminal proceeding, a victim or its successors may file an action for the remedy of damages caused by an offense with a civil court.

#M2

(2) A victim or its successors who became civil parties in criminal proceedings may file an action with a civil court if, through a final sentence, the criminal court left the civil action unsettled. Evidence produced during the course of criminal proceedings may be used before that civil court.

#B

(3) A victim or its successors who became civil parties in criminal proceedings may file action with a civil court if the criminal trial was suspended. If criminal proceedings are resumed, the action filed with the civil court shall be suspended under the terms specified by par. (7).

(4) A victim or its successors who initiated an action before a civil court may leave this court and address the criminal investigation body, the judge or the court, if the criminal action was initiated subsequently or if criminal proceedings were resumed following suspension. A civil court may not be abandoned if it rendered a court decision, even a non-final one.

(5) In the event that civil action was initiated by the prosecutor, if from the evidence it results that damages were not fully covered through the final sentence of the criminal court, the difference may be claimed through action filed with a civil court.

(6) A victim or its successors may file an action with a civil court for the remedy of damages resulted or discovered after they became a civil party in criminal proceedings.

#M2

(7) In the situation specified by par. (1), the trial before the civil court shall be suspended after the initiation of criminal action and until settlement of the criminal case by the court of first instance, but no longer than a year.

#B

ART. 28

Authority of a criminal sentence in a civil trial and effects of a civil sentence in criminal proceedings

(1) A final sentence of a criminal court has *res judicata* authority before the civil court examining the civil action, in respect of the existence of the act and of the person having committed it. The civil court is not bound by a final sentence deciding acquittal or termination of criminal proceedings in respect of the damages or guilt of an author of an illegal act.

(2) The final sentence of a civil court through which a civil action was settled does not have *res judicata* authority before criminal judicial bodies in respect of the existence of a criminal act, the person having committed it and their guilt.

TITLE III

Participants in criminal proceedings

CHAPTER I

General stipulations

ART. 29

Participants in criminal proceedings

The participants in criminal proceedings are: judicial bodies, counsels, parties, main subjects, as well as other litigants.

ART. 30

Judicial bodies

The state's specialized bodies performing judicial activities are:

- a) criminal investigation bodies;
- b) prosecutors;
- c) Judges for Rights and Liberties;
- d) Preliminary Chamber Judges;
- e) courts.

#M2

ART. 31

Counsels

Counsels assist or represent the parties or litigants under the law.

#B

ART. 32

Parties

(1) Parties are litigants who file judicial action or against whom judicial action is filed.

(2) Parties to criminal proceedings are: the defendant, the civil party and the party with civil liability.

ART. 33

Main subjects

- (1) The main subjects are the suspect and the victim.
- (2) The main subjects have the same rights and obligations as the parties, except for those granted by law exclusively to them.

ART. 34

Other parties

In addition to the participants listed under [Art. 33](#), the following are litigants: witnesses, experts, interpreters, procedural agents, specialized fact-finding bodies, as well as any other persons or bodies set by the law as having specific rights, obligations and prerogatives in criminal judicial proceedings.

CHAPTER II

Jurisdiction of judicial bodies

SECTION 1

Functional jurisdiction of courts based on legal matter and capacity of person

ART. 35

Jurisdiction of District Courts

- (1) District Courts examine all offenses in first instance, except for those assigned by law under the jurisdiction of other courts.
- (2) District Courts settle also other cases assigned to them specifically by law.

ART. 36

Jurisdiction of Tribunals

- (1) Tribunals examine in first instance:

#M2

a) offenses set by the Criminal Code under [Art. 188](#) – 191, [Art. 209](#) – 211, [Art. 254](#), [263](#), [282](#), [Art. 289](#) – 294, [Art. 303](#), [304](#), [306](#), [307](#), [309](#), [345](#), [346](#), [354](#) and [Art. 360](#) – 367;

b) offenses with oblique intent and which resulted in the death of a person;

#B

c) offenses in respect of which the criminal investigation was conducted by the Directorate for the Investigation of Organized Crime and Terrorism or by the National Anticorruption Directorate, unless assigned by law under the jurisdiction of other hierarchically superior courts;

#M2

c^1) money laundering offenses and tax evasion offenses listed under [Art. 9](#) of Law no. 241/2005 on Preventing and Combating Tax Evasion, as amended;

#B

d) other offenses assigned by law under their jurisdiction.

(2) Tribunals settle conflicts of jurisdiction between District Courts under their territorial jurisdiction, as well as challenges filed against decisions rendered by District Courts in cases set by the law.

(3) Tribunals also rule in other cases specifically assigned to them by law.

ART. 37

Jurisdiction of the military Tribunal

(1) The military Tribunal examines in first instance all offenses committed by servicemen up to the rank of colonel, including, except for those assigned by law under the jurisdiction of other courts.

(2) The military Tribunal also rules in other cases specifically assigned to it by law.

ART. 38

Jurisdiction of Courts of Appeals

(1) Courts of Appeals examine in first instance:

a) offenses set by the Criminal Code under Art. 394 – 397, 399 – 412 and 438 – 445;

b) offenses related to the national security of Romania, established by special laws;

c) offenses committed by judges of District Courts, Tribunals and by prosecutors de la prosecutors' offices attached to such courts;

#M2

d) offenses committed by counsels, public notaries, bailiffs, financial auditors of the Court of Audits, as well as external public auditors;

e) offenses committed by heads of religious denominations organized under the law and by other members of the high clergy, who have at least a rank of bishop or an equivalent to it;

f) offenses committed by assistant magistrates of the High Court of Review and Justice, by judges of Courts of Appeals and the Military Court of Appeals, as well as by prosecutors of prosecutors' offices attached to such courts;

g) offenses committed by members of the Court of Audits, the President of the Legislative Council, the Ombudsman, by deputies of the Ombudsman and by generals;

h) case transfer applications, in situations established by law.

#B

(2) Courts of Appeals rule on appeals filed against criminal sentences returned in first instance by District Courts and Tribunals.

(3) Courts of Appeals rule on conflicts of jurisdiction occurred between courts under their territorial jurisdiction other than those listed under Art. 36 par. (2), as well as upon appeals filed against sentences returned by Tribunals in situations established by law.

(4) Courts of Appeals also rule on other cases specifically assigned to them by law.

ART. 39

Jurisdiction of the Military Court of Appeals

(1) The Military Court of Appeals examines in first instance:

- a) offenses set by the Criminal Code under Art. 394 – 397, 399 – 412 and 438 – 445, committed by servicemen;
- b) offenses related to the national security of Romania, established by special laws, committed by servicemen;
- c) offenses committed de judges of military Tribunals and by military prosecutors of military prosecutors' offices attached to such courts;

#M2

- d) *offenses committed by generals, marshals and admirals;*
- e) *case transfer applications, in situations established by law*

#B

(2) The Military Court of Appeals rule on appeals filed against sentences returned by military Tribunals.

(3) The Military Court of Appeals rule on conflicts of jurisdiction occurred between military Tribunals under its jurisdiction, as well as upon appeals filed against sentences returned by these in the situations established by law.

(4) The Military Court of Appeals also rules on other cases specifically assigned to it by law.

ART. 40

Jurisdiction of the High Court of Review and Justice

#M2

(1) The High Court of Review and Justice examines in first instance high treason offenses, offenses committed by Senators, Deputies and Romanian members in the European Parliament, Government members, judges of the Constitutional Court, members of the Higher Council of Magistrates, judges of the High Court of Review and Justice, and prosecutors of the Prosecutor's Office under the High Court of Review and Justice.

#B

(2) The High Court of Review and Justice rules on appeals filed against criminal sentences returned in first instance by Courts of Appeals, military Courts of Appeals and the Criminal Section of the High Court of Review and Justice.

(3) The High Court of Review and Justice rules on appeals on law in review filed against final criminal sentences, as well as appeals in the interest of the law.

#M2

(4) The High Court of Review and Justice rules on conflicts of jurisdiction in cases where it is the joint superior court for courts in conflict, in cases where the course of justice is interrupted, in case transfer applications, in situations established by law, as well as upon challenges filed against sentences returned by Courts of Appeals in the situations established by law.

#B

(5) The High Court of Review and Justice also rules on other cases specifically assigned to it by law.

SECTION 2

Territorial jurisdiction of courts of law

ART. 41

Jurisdiction to rule on offenses committed on the territory of Romania

(1) The territorial jurisdiction is established, in this order, by:

- a) the venue where an offense was committed;
- b) the venue where a suspect or defendant was caught;
- c) the domicile of a natural-person suspect or defendant, or, as applicable, the office of a legal-entity defendant, at the moment when the act was committed;
- d) the domicile or, as applicable, the office of the victim.

(2) The venue where an offense was committed means the venue where the criminal activity was performed, in full or in part, or the venue where its consequences occurred.

(3) In the event that, according to par. (2), an offense was committed under the territorial jurisdiction of several courts, any of these has the competence of jurisdiction to rule on it.

(4) When none of the venues specified under par. (1) is known or when two or several courts of those specified under par. (1) are seized successively, the competence of jurisdiction rests with the court that was seized first.

(5) The priority order specified under par. (1) shall apply where two or several courts are seized simultaneously or the criminal investigation was conducted in breach of such order.

(6) An offense committed on a ship sailing under Romanian flag shall fall under the competence of jurisdiction of the court under which territorial jurisdiction the first Romanian harbor where the ship anchors is located, except for situations where the law establishes otherwise.

(7) An offense committed on an aircraft registered in Romania falls under the competence of jurisdiction of the court under which territorial jurisdiction the first landing site on the Romanian territory is located.

(8) If a ship does not anchor in a Romanian harbor or an aircraft does not land on the Romanian territory, and the jurisdiction cannot be established as per par. (1), the competence of jurisdiction shall be that set by par. (4).

ART. 42

Jurisdiction to rule on offenses committed outside the territory of Romania

(1) Offenses committed outside the territory of Romania shall be ruled on by the courts under whose territorial jurisdiction the domicile of a natural-person suspect or defendant or, as applicable, the office of a legal-entity defendant is located.

(2) If a defendant does not live or, as applicable, does not have its office in Romania, and the offense falls under the jurisdiction of a District Court, this shall be ruled on by the 2nd District Court of Bucharest, while in other cases, by the Bucharest City court having jurisdiction based on the matter of law or on the capacity of the person, except for situations where the law stipulates otherwise.

(3) An offense committed on a ship falls under the jurisdiction of the court under whose territorial jurisdiction the first Romanian harbor where the ship anchors is located, except for cases where the law establishes otherwise.

(4) An offense committed on an aircraft falls under the jurisdiction of the court under whose territorial jurisdiction the first landing site on the Romanian territory is located.

(5) If a ship does not anchor in a Romanian harbor or an aircraft does not land on the Romanian territory, the competence of jurisdiction shall be that set by par. (1) and (2), except for cases where the law establishes otherwise.

SECTION 3

Special stipulations regarding the jurisdiction of courts

ART. 43

Joinder of cases

(1) The court shall order joinder of cases in case of continued offenses, of formal multiple offenses, or in any other cases when two or more material acts compose a single offense.

(2) The court may order joinder of cases, provided that this does not delay the trial, in the following situations:

- a) when two or more offenses were committed by the same person;
- b) when two or more persons participated in the commission of an offense;
- c) when there is a connection between two or more offenses and joinder of cases is required for a proper rendering of justice.

#M2

(3) The stipulations of par. (1) and (2) are also applicable when several cases, having the same subject matter, are pending with the same court.

#B

ART. 44

Jurisdiction in situations of joinder of cases

(1) In situations of joinder of cases, if in relation to various perpetrators or various acts, the jurisdiction belongs, under the law, to several courts of an equal level, the competence of jurisdiction to rule on all facts and on all perpetrators shall rest upon the court first seized, and if, depending on the nature of facts or on the capacity of persons, the competence of jurisdiction belongs to courts of different levels, the competence of jurisdiction to rule on all joined cases rests with the court of the higher level.

(2) The jurisdiction to rule on joined cases remains adjudicated even if for the act of the perpetrator who determined the jurisdiction of a specific court, disjoinder or termination of criminal proceedings was ordered or an acquittal was returned.

(3) Concealing and aiding and abetting a perpetrator and failure to report any offenses fall under the jurisdiction of the court deciding upon the offense to which these are related, and if the jurisdiction based on the capacity of persons belongs to courts of different rank, the competence of jurisdiction to rule on all joined cases rests with the court of the higher level.

(4) If one of the courts is a civilian and the other is military one, the competence of jurisdiction rests with the civil court.

(5) If the military court is of a higher rank, the competence of jurisdiction rests with the civil court having an equivalent rank and has jurisdiction as under [Art. 41](#) and [42](#).

ART. 45

Case joinder procedure

(1) Joinder of cases may be ordered upon request by the prosecutor or the parties and *ex officio* by the court of competent jurisdiction.

(2) Cases may be joined if they are in first instance, even after overthrow or review of the court sentence, or before the Court of Appeals.

(3) The court shall decide through a court resolution, which may be appealed only together with the merits of the case.

ART. 46

Disjoinder of cases

(1) For well-grounded reasons related to the proper conducting of the trial, the court may order disjoinder of a case in respect of some defendants or some offenses.

(2) Disjoinder of a case shall be ordered by the court through a court resolution, *ex officio* or upon request by the prosecutor or the parties.

ART. 47

Objections against jurisdiction

(1) An objection against substantive jurisdiction or against jurisdiction based on a person's capacity of a court of a rank lower than the one having competence of

jurisdiction under the law may be raised all along the trial, until the final sentence is rendered.

(2) An objection against substantive jurisdiction or against jurisdiction based on the person's capacity of a court of a rank higher than that of the one having competence of jurisdiction under the law may be raised until commencement of judicial investigation.

(3) An objection against territorial jurisdiction may be raised under the terms of par. (2).

(4) Objections against jurisdiction may be raised *ex officio*, by the prosecutor, by the victim or by the parties.

ART. 48

Jurisdiction in case of change of the defendant's capacity

#M2

(1) When the jurisdiction of a court is established based on the capacity of a defendant, the court shall remain with the competence of jurisdiction to rule on the case, even if the defendant, after having committed the offenses, no longer has the same capacity, in situations where:

- a) the act is related to the professional duties of the offender;*
- b) the indictment was read.*

#B

(2) Capacity acquired after the offense was committed does not change the jurisdiction, except for offenses committed by persons listed under [Art. 40](#) par. (1).

ART. 49

Jurisdiction in case of change in the charges or of the qualification of an act

(1) A court seized with the examination of an offense retains competence of jurisdiction to rule on it, even if, after the charges were changed, that offense falls under the jurisdiction of a court of a lower rank.

(2) A change in an act qualification through a new law, issued during the course of a case examination, shall not trigger the lack of jurisdiction of the court, except for the situation where that law stipulates otherwise.

ART. 50

Waiver of jurisdiction

(1) A court waiving its jurisdiction shall send, forthwith, the case file to the court assigned as having competence of jurisdiction through the waiver decision.

(2) If waiver was determined by the substantive jurisdiction or by that based on a person's capacity, the court to which the case was referred may maintain, on a justified basis, the evidence produced, that acts performed and the measures ordered by the court that waived its competence of jurisdiction.

(3) In case of waiver for lack of territorial jurisdiction, the evidence produced, that acts performed and the measures ordered shall be maintained.

(4) A court decision waiver of jurisdiction is not subject to avenues of appeal.

ART. 51

Conflict of jurisdiction

(1) When two or more courts admit their competence of jurisdiction to rule on the same case or mutually waive their jurisdiction, the positive or negative conflict of jurisdiction shall be settled by the shared hierarchically superior court.

(2) In case of a positive conflict, the shared hierarchically superior court is seized by the court having acknowledged its jurisdiction last, and in case of negative conflict, by the court having waived its jurisdiction last.

(3) The shared hierarchically superior court may also be seized by the prosecutor or by the parties.

(4) Until settlement of a positive conflict of jurisdiction, the trial shall be suspended.

(5) The court having waived or the one having acknowledged its jurisdiction last shall take steps and fulfill formalities that require an urgent settlement.

(6) The shared hierarchically superior court shall decide on a conflict of jurisdiction on an emergency basis, through a court resolution that is not subject to any avenue of appeal.

(7) When a court seized with the settlement of a conflict of jurisdiction finds that the relevant case falls under the jurisdiction of a court other than the ones between which a conflict occurred and for which this is not the shared hierarchically superior court, it shall send the case file to the shared hierarchically superior court.

(8) The court to which the case is sent based on a decision establishing jurisdiction may no longer waive competence of jurisdiction, except for situations where new elements that entail the jurisdiction of other courts appear.

(9) The court to which a case was sent shall apply the stipulations of [Art. 50](#) par. (2) and (3) accordingly.

ART. 52

Preliminary aspects

(1) A criminal court has the competence of jurisdiction to rule on any matters preliminary to a case settlement, even though, through its nature, this aspect falls under the jurisdiction of other court, except for situations where the settlement jurisdiction does not belong to judicial bodies.

(2) Preliminary aspects are examined by a criminal court according to the rules and evidence related to the matter of law to which that aspect belongs.

(3) Final sentences returned by courts, other than criminal ones, on preliminary aspects in criminal proceedings have *res judicata* authority before the criminal court, except for the circumstances related to the existence of offenses.

SECTION 4

Jurisdiction of Judges for Rights and Liberties and of Preliminary Chamber Judges

ART. 53

Jurisdiction of Judges for Rights and Liberties

A Judge for Rights and Liberties is a judge who, in court, according to its jurisdiction, during the course of the criminal investigation, decides upon applications, proposals, complaints, challenges or any other motions referring to:

- a) preventive measures;
- b) asset freezing;
- c) temporary safety measures;
- d) acts performed by prosecutors, in cases explicitly stipulated by law;

#M2

e) approval of searches, of the use of special surveillance or investigation methods and techniques or of other methods of proof, under the law;

f) anticipated hearing procedures;

#B

- g) other situations explicitly stipulated by law.

ART. 54

Jurisdiction of Preliminary Chamber Judges

A Preliminary Chamber Judge is a judge who, in court, according to its jurisdiction:

- a) verifies lawfulness of the prosecutions ordered by prosecutors;
- b) verifies lawfulness of evidence production and of the performance of process acts by criminal investigation bodies;
- c) rules on challenges against decisions to not initiate a criminal investigation or to drop charges;
- d) rules on other situations explicitly stipulated by law.

SECTION 5

Criminal investigation bodies and their competence of jurisdiction

ART. 55

Criminal investigation bodies

(1) Criminal investigation bodies are:

- a) prosecutors;
- b) criminal investigation bodies of the judicial police;

c) special criminal investigation bodies.

(2) Prosecutors are organized in prosecutors' offices that operate attached to courts of law and exercise their responsibilities within the Public Ministry.

(3) In criminal proceedings, a prosecutor has the following responsibilities:

a) to supervise or conduct the criminal investigation;

b) to notify the Judge for Rights and Liberties and the court;

c) to initiate and use criminal action;

d) to initiate and use civil action, in situations established by law;

e) to enter plea bargaining agreements, under the law;

f) to file and use challenges and avenues of appeal set by the law against court decisions;

g) to fulfill any other responsibilities set by law.

(4) The responsibilities of criminal investigation bodies of the judicial police are carried out by specialized employees within the Ministry of Administration and Interior especially appointed under a special law, who received the assent of the Prosecutor General of the Prosecutors' Office attached to the High Court of Review and Justice or the assent of the prosecutor appointed for this purpose.

(5) The responsibilities of special criminal investigation bodies are carried out by officers appointed especially under the law, who received the assent of the prosecutor general of the Prosecutors' Office attached to the High Court of Review and Justice.

(6) Criminal investigation bodies of the judicial police and special criminal investigation bodies perform their criminal investigation activities under the coordination and supervision of prosecutors.

ART. 56

Jurisdiction of prosecutors

#M2

(1) A prosecutor coordinates and controls directly criminal investigation activities performed by the judicial police and by special criminal investigation bodies set by law. Also, a prosecutor makes sure that criminal investigation acts are performed in compliance with the legal stipulations.

#B

(2) A prosecutor may perform any criminal investigation act in the cases they coordinate and supervise.

#M2

(3) It is mandatory that the criminal investigation be conducted by a prosecutor:

a) in case of offenses for which the competence of jurisdiction to examine the case in first instance belongs to the High Court of Review and Justice or to Courts of Appeals;

#M4

b) in case of offenses specified by [Art. 188](#) - 191, [Art. 257](#), [Art. 276](#), [Art. 277](#), [Art. 279](#), [Art. 280-283](#) and [Art. 289](#) - 294 of the Criminal Code;

#M2

c) in case of offenses with oblique intent and which resulted in the death of a person;

d) in case of offenses in respect of which the competence of jurisdiction to conduct the criminal investigation belongs to the Directorate for the Investigation of Organized Crime or Terrorism Offenses or to the National Anticorruption Directorate;

e) in other situations established by law.

(4) The criminal investigation in case of offenses committed by the military shall be conducted compulsorily by military prosecutors.

(5) Military prosecutors from military prosecutors' offices or from military sections of prosecutors' offices conduct the criminal investigation according to the jurisdiction of the prosecutors' office to which they belong, in respect of all participants in the commission of offenses committed by the military, and the court of competent jurisdiction shall be seized as per [Art. 44](#).

#M4

(6) A prosecutor of the prosecutors' office corresponding to the court that, under the law, examines a case in first instance, has the competence of jurisdiction to conduct or, as applicable, to coordinate and supervise the criminal investigation, except for situations where the law stipulates otherwise.

#B

ART. 57

Jurisdiction of criminal investigation bodies

(1) The criminal investigation bodies of the judicial police conduct the criminal investigation in relation to any offense that is not assigned by law under the jurisdiction of special criminal investigation bodies or of a prosecutor, as well as in other situations stipulated by law.

(2) Special criminal investigation bodies perform criminal investigation acts only under the terms of [Art. 55](#) par. (5) and (6), corresponding to the specialization of the structure with which they work, in case of offenses committed by the military or of corruption and abuse of office offenses set by the [Criminal Code](#) committed by the maritime personnel of the merchant marine, if such act jeopardized or could jeopardize the safety of the ship, of the sailing or of the personnel.

ART. 58

Verification of jurisdiction

(1) Criminal investigation bodies have the duty to verify their jurisdiction immediately after they are seized.

(2) If a prosecutor finds that they lack jurisdiction to conduct or supervise a criminal investigation, they shall waive jurisdiction forthwith, through a prosecutorial order, and shall refer the case to the prosecutor who has competent jurisdiction.

#M2

(3) If a criminal investigation body finds that it lacks jurisdiction to conduct the criminal investigation, it shall refer the case forthwith to the prosecutor in charge of supervision, in order for the latter to seize the body of competent jurisdiction.

#B

ART. 59

Extension of territorial jurisdiction

(1) When particular criminal investigation acts have to be performed outside the territorial jurisdiction in which the investigation is conducted, the prosecutor or, as applicable, the criminal investigation body may perform them on their own or the prosecutor may order their performance through a letter rogatory or a delegation.

(2) Within the same locality, the prosecutor or the criminal investigation body, as applicable, shall perform all criminal investigation acts, even though some of these have to be performed outside their territorial jurisdiction.

ART. 60

Urgent situations

The prosecutor or the criminal investigation body, as applicable, is under an obligation to perform criminal investigation acts that cannot be delayed, even if these concern a case that does not fall under their jurisdiction. Work prepared in such cases shall be sent forthwith to the prosecutor who has jurisdiction.

ART. 61

Acts concluded by fact-finding bodies

(1) Whenever there is a reasonable suspicion related to the commission of an offense, the following are under an obligation to prepare minutes on the identified circumstances:

a) bodies of state inspections, of other state bodies, as well as of public authorities, public institutions or of other public-law legal entities, for offenses representing violations of orders and obligations the observance of which they control under the law;

b) control and management bodies of public administration authorities, of other public authorities, public institutions or of other public-law legal entities, for service offenses committed by those under their supervision or control;

c) public order and national security bodies, for offenses identified during the exercise of responsibilities set by law.

(2) Bodies specified by par. (1) are under the obligation to take steps to preserve the location where offenses were committed and to collect or preserve material evidence. In case of in-the-act offenses, the same bodies have the right to conduct bodily and vehicle searches, to apprehend the offender and bring them forthwith before the criminal investigation bodies.

(3) When a perpetrator or persons present at the crime scene have objections to raise or specifications to make, or have to offer explanations in respect of the aspects mentioned in the fact-finding minutes, the fact-finding body is under an obligation to record these in such minutes.

(4) Concluded acts, together with the material evidence shall be transmitted forthwith to criminal investigation bodies.

(5) The minutes concluded as per the stipulations of par. (1) represents an act seizing the criminal investigation bodies and may not be subject to administrative litigation challenge.

ART. 62

Acts concluded by ship and aircraft commanders

(1) Ship and aircraft commanders have the jurisdiction to conduct bodily or vehicle searches and to inspect objects held or used by perpetrators during the time while the ships and aircrafts commanded by them are outside harbors or airports and in respect of offenses committed on such ships or aircrafts, having at the same time the obligations and rights set by [Art. 61](#).

(2) Acts concluded by these, together with the material evidence, shall be transmitted to criminal investigation bodies as soon as the ship or aircraft arrives in the first Romanian harbor or airport.

(3) In case of in-the-act offenses, ship and aircraft commanders have the right to conduct bodily or vehicle searches, to catch the perpetrator and to bring them forthwith before the criminal investigation body.

(4) The minutes concluded as per the stipulations of par. (1) represents an act seizing the criminal investigation bodies and may not be subject to administrative litigation control.

ART. 63

Joint stipulations

(1) The stipulations set by [Art. 41](#) - 46 and [48](#) shall also apply accordingly during the course of the criminal investigation.

(2) The stipulations of [Art. 44](#) par. (2) shall not apply at the stage of the criminal investigation.

#M2

(3) The criminal investigation of offenses committed under the terms of [Art. 41](#) shall be conducted by the criminal investigation body under the territorial jurisdiction of the court having the competent jurisdiction to rule on the case, unless the law stipulates otherwise.

(4) A conflict of jurisdiction between two or more prosecutors shall be settled by the shared hierarchically superior prosecutor. When a conflict occurs between two or more criminal investigation bodies, the competence of jurisdiction is established by the prosecutor who supervises the criminal investigation activity of such bodies. If the prosecutor does not supervise the activity of all criminal investigation bodies between which a conflict occurred, the competence of jurisdiction is established by the chief-prosecutor of the prosecutors' office under whose territorial jurisdiction the criminal investigation bodies are located.

#M2

SECTION 6

Incompatibility and case transfer

#B

ART. 64

Incompatibility of judges

(1) Judges are incompatible if:

- a) they were representatives or counsels of a party or of a main trial subject, even in another case;
- b) are blood or in-law relative, up to the 4th degree included, or are in one of the situations listed under [Art. 177](#) of the Criminal Code with one of the parties, with a main trial subject, with their counsel or representative;
- c) were experts or witnesses in the case;
- d) are guardians or trustees of a party or of a main trial subject;
- e) conducted criminal investigation acts in the case or participated, as a prosecutor, in any proceedings conducted before a judge or of a court of law;
- f) there is a reasonable suspicion that the judge's impartiality is impaired.

(2) Judges who are spouses, blood or in-law relatives, up to the 4th degree included, or are in one of the situations listed under [Art. 177](#) of the Criminal Code may not be part of the same judicial panel.

(3) Judges who participated in the trial of a case may no longer participate in the trial of the same case in appeal or when the case is reexamined after the court decision was annulled or reviewed.

#M2

(4) A Judge for Rights and Liberties may not participate, in the same case, in preliminary chamber procedure, in the examination of the case on the merits or in appeal.

(5) Judges who participated in the settlement of challenges to decisions to not initiate a criminal investigation or to drop charges may not participate, in the same case, in the examination of the case on the merits or in appeal.

(6) Judges who ruled on a measure subject to challenge may not participate in the settlement of such challenge.

#B

ART. 65

Incompatibility of prosecutors, criminal investigation bodies, assistant magistrates and court clerks

(1) The stipulations of [Art. 64](#) par. (1) items a) - d) and f) shall apply to prosecutors and to criminal investigation bodies.

(2) The stipulations of [Art. 64](#) par. (1) shall apply to assistant magistrates and court clerks.

(3) The stipulations of [Art. 64](#) par. (2) shall apply to prosecutors and assistant magistrates or, as applicable, to court clerks, when a reason for incompatibility exists between them or between them and the Judge for Rights and Liberties, the Preliminary Chamber Judges or one of the members of the judicial panel.

#M2

(4) A prosecutor who participated as a judge in a case may not, in the same case, perform the criminal investigation and may not argue in the trial of the same case in first instance and in appeal.

#B

ART. 66

Abstention

(1) An incompatible person is under an obligation to state, as applicable, to the court president, to the prosecutor supervising the criminal investigation or to the hierarchically superior prosecutor that they refrain from participating in the criminal proceedings, by mentioning the reason for incompatibility and the factual grounds representing the grounds for abstention.

(2) An abstention statement shall be given immediately after the person who is under an obligation to do so learned of the existence of a state of incompatibility.

ART. 67

Challenge to disqualify

(1) If an incompatible person did not give an abstention statement, the parties, the main subjects or the prosecutor may file a challenge to disqualify as soon as they learn of the existence of such state of incompatibility.

(2) A challenge to disqualify is filed only against a member of the criminal investigation body, the prosecutor or the judge performing judicial activities in the case. Challenge to disqualify the judge or the prosecutor appointed to rule on a challenge to disqualify is inadmissible.

(3) The stipulations of par. (2) shall apply accordingly in case of challenge to disqualify of assistant magistrates and court clerks.

#M2

(4) A challenge to disqualify shall be made verbally or in writing and shall mention, for each person, the reason invoked for incompatibility and the factual grounds known at the moment of filing such application. A challenge to disqualify made verbally shall be recorded in a report or, as applicable, in the hearing report.

#B

(5) Non-compliance with the requirements set by par. (2) - (4) or the filing of a challenge to disqualify against the same person, for the same reason for incompatibility and based on the same factual grounds invoked in a previous challenge to disqualify, which was denied, shall entail inadmissibility of a challenge to disqualify. Inadmissibility shall be ascertained by the prosecutor or the judicial panel with which the challenge to disqualify was filed.

(6) The Judge for Rights and Liberties, the Preliminary Chamber Judge or the judicial panel with which a challenge to disqualify was filed shall decide on preventive measures, with the participation of the disqualified judge.

ART. 68

Procedure for the settlement of abstention or challenge to disqualify

(1) The abstention or challenge to disqualify of a Judge for Rights and Liberties and of a Preliminary Chamber Judge shall be ruled on by a judge from the same court.

(2) The abstention or challenge to disqualify of judges who are part of a judicial panel shall be ruled on by another judicial panel.

(3) The abstention or challenge to disqualify of assistant magistrates shall be ruled on by a judicial panel.

(4) The abstention or challenge to disqualify of court clerks shall be ruled on by a Judge for Rights and Liberties, a Preliminary Chamber Judge or, as applicable, a judicial panel.

(5) An abstention or challenge to disqualify shall be ruled on within maximum 24 hours, in chambers. If the judge or the judicial panel, as applicable, deems it necessary for the settlement of such application, these may conduct any verification and may hear the prosecutor, the main subjects, the parties and the person who abstains or whose challenge to disqualify is requested.

(6) In case of admission of an abstention or challenge to disqualify, the court shall establish to what extent the acts performed or the measures ordered are maintained.

(7) A court resolution deciding upon an abstention or challenge to disqualify is not subject to any avenue of appeal.

(8) In the event that, for the settlement of an abstention or challenge to disqualify, a judge of the same court cannot be appointed, such application shall be ruled on by a judge of the hierarchically superior court.

(9) If an abstention or challenge to disqualify is sustained and a judge of the court of competent jurisdiction cannot be appointed for the case settlement,

judges from the hierarchically superior court shall appoint another court, of a rank equal to the court before which the abstention statement or challenge to disqualify was filed, under the territorial jurisdiction of the same Court of Appeals or under the territorial jurisdiction of a neighboring Court of Appeals.

(10) The stipulations of par. (8) and (9) shall apply accordingly also in the case of settlement of abstention or challenge to disqualify of judges who are part of a judicial panel.

ART. 69

Procedure for the settlement of the abstention or challenge to disqualify of a person conducting the criminal investigation

(1) The abstention or challenge to disqualify of a person conducting the criminal investigation shall be ruled on by the prosecutor supervising that the criminal investigation.

#M2

(2) A challenge to disqualify shall be filed either with the disqualified person or with the prosecutor. If such application is filed with the person who performs the criminal investigation, such person is under an obligation to forward it, together with the necessary explanations, within 24 hours, to the prosecutor, without interrupting the course of the criminal investigation.

#B

(3) The prosecutor shall rule on an abstention or challenge to disqualify within a maximum of 48 hours, through a prosecutorial order, which is not subject to any avenue of appeal.

(4) In case an abstention or challenge to disqualify is sustained, a decision will have to be made as the extent to which the acts performed or the measures ordered are maintained.

ART. 70

Procedure for the settlement of abstention or challenge to disqualify of prosecutors

(1) Throughout the criminal proceedings, the abstention or challenge to disqualify of a prosecutor shall be ruled on by the hierarchically superior prosecutor.

(2) An abstention statement or a challenge to disqualify shall be filed, under penalty of inadmissibility, with the hierarchically superior prosecutor. Inadmissibility shall be ascertained by the prosecutor, the judge or the judicial panel with which the challenge to disqualify was filed.

(3) The hierarchically superior prosecutor shall rule on an application within 48 hours.

(4) The hierarchically superior prosecutor shall rule through a prosecutorial order, which is not subject to any avenue of appeal.

(5) A disqualified prosecutor may participate in the settlement of the application referring to such preventive measure and may perform acts or order any steps that justify emergency.

(6) In case an abstention or challenge to disqualify is sustained, a decision will have to be made as the extent to which the acts performed or the measures ordered are maintained.

#M2

ART. 71

Grounds for case transfers

The High Court of Review and Justice shall transfer the examination of a case from a Court of Appeals of competent jurisdiction to another Court of Appeals, and a Court of Appeals shall transfer the examination of a case from a Tribunal or, as applicable, from a District Court under its territorial jurisdiction to another court of the same level under its territorial jurisdiction, when there is a reasonable suspicion that the impartiality of judges of that court is impaired due to the case circumstances, the capacity of parties or that there is a threat of a public order disturbance. A case transfer from a military court of competent jurisdiction to another military court of the same level shall be ordered by the Military Court of Appeals, and the stipulations of this section regarding the case transfer by Courts of Appeals of competent jurisdiction shall be applicable.

#B

ART. 72

Case transfer applications and their effects

#M2

(1) A case transfer may be requested by the parties or by the prosecutor. A case transfer application may not be filed during the course of preliminary chamber procedure.

#B

(2) Such application shall be filed with the court from where the case transfer is requested, and has to contain the grounds for case transfer, as well as the factual and legal reasoning.

(3) Documents on which such application is based shall be appended to it.

(4) The application shall mention whether the defendant is subject to any preventive measure.

#M2

(5) Such application shall be transmitted forthwith to the High Court of Review and Justice or to the Court of Appeals of competent jurisdiction, together with the documents appended to it.

(6) The High Court of Review and Justice or the Court of Appeals of competent jurisdiction may request information from the president of the court from which the case transfer is requested or from the president of the court of a rank higher

than the one of the court from which the case transfer is requested, and, at the same time, shall communicate the hearing term set for the settlement of the case transfer application. When the High Court of Review and Justice is the hierarchically superior court, information shall be requested from the president of the Court of Appeals where the case is pending for which the transfer is requested. When a Court of Appeals of competent jurisdiction is the hierarchically superior court, information shall be requested from the president of the Tribunal with which the case the transfer of which is requested is pending.

#B

(7) In the event that a case transfer application is rejected, a new application, based on the same reasons, may no longer be filed in the same case.

(8) Filing for case transfer shall not suspend a case trial.

ART. 73

Procedure for the settlement of case transfer applications

(1) Case transfer applications are decided in a public hearing, with the participation of the prosecutor, within a maximum of 30 days of the application registration date.

(2) The president of the hierarchically superior court to the court where the case is pending shall take steps to inform the parties on the filing of a case transfer application, and on the hearing term set for its settlement, with the mention that the parties may transmit memoranda and may come to court on the set hearing term for the application settlement.

#M2

(3) In the information sent to the High Court of Review and Justice or to Courts of Appeals, an explicit mention shall be included referring to the fulfillment of the informing formalities, and proof of their communication shall be attached.

(4) Absence of the parties shall not prevent the application settlement. If a defendant is subject to preventive arrest or house arrest, the High Court of Review and Justice or the Court of Appeals of competent jurisdiction may order them brought to the examination of the case transfer, if it deems that their presence is necessary for the application settlement.

(5) The High Court of Review and Justice or the Court of Appeals of competent jurisdiction shall give the floor to the party who filed the case transfer application, to the other attending parties, as well as to the prosecutor. If the prosecutor is the one having filed the application, they shall be given the floor first.

#B

ART. 74

Settlement of applications

#M2

(1) The High Court of Review and Justice or the Court of Appeals of competent jurisdiction shall rule on a case transfer application through a sentence.

(2) If it finds that the application is founded, the High Court of Review and Justice shall order the case transferred to a Court of Appeals neighboring to the court from which the case transfer is requested, and Courts of Appeals shall order the case trial transfer to one of the courts of the same rank as the court from which the case transfer is requested, which is under its territorial jurisdiction.

(3) The High Court of Review and Justice or the Court of Appeals of competent jurisdiction shall decide to what extent the acts performed before the court from which the case was transferred are to be maintained.

#B

(4) The court from which the case was transferred, as well as the court to which the case was transferred shall be informed immediately of the case transfer application having been sustained.

(5) If the court from which the case was transferred has in the meantime ruled on the case, its decision shall be annulled as an effect of the case transfer application having been sustained.

(6) The sentence specified under par. (1) is not subject to any avenue of appeal.

ART. 75

Other stipulations

(1) After a case transfer, challenges and other avenues of appeals shall be ruled on by the corresponding courts that are under the territorial jurisdiction of the court to which the case was transferred.

#M2

(2) The stipulations of [Art. 71](#) - 74 shall also apply, accordingly, to preliminary chamber procedure.

(3) If a case transfer is ordered during the course of preliminary chamber procedure, the case shall be ruled on by the court to which the case was transferred.

(4) If a transfer of an appeal is ordered, the case shall be retried, in case of nullification of the sentence and sending to retrial, by a court having the same rank as the one that ruled on the merits, located under the territorial jurisdiction of the one to which the case was transferred, mentioned in the nullification decision.

#M2

ART. 76

Appointment of other court to rule on a case

(1) The prosecutor conducting or supervising the criminal investigation may request the High Court of Review and Justice to appoint a Court of Appeals

other than the one that would have the jurisdiction to examine the case in first instance, which would be seized in the event that the indictment is issued.

(2) The prosecutor conducting or supervising the criminal investigation may request the Court of Appeals of competent jurisdiction to appoint a Tribunal or, as applicable, a District Court other than the one that would have the jurisdiction to examine the case in first instance, which would be seized in the event that the indictment is issued.

(3) The stipulations of [Art. 71](#) shall apply accordingly.

(4) The High Court of Review and Justice or the Court of Appeals of competent jurisdiction shall decide on such application in chambers, within 15 days.

(5) The High Court of Review and Justice or the Court of Appeals of competent jurisdiction shall order, through a reasoned court resolution, either rejection of the application or its admission and appointment of a court of an equal rank as the one that would have jurisdiction to rule on the case in first instance, which would be seized in the event that the indictment is issued.

(6) A court resolution through which the High Court of Review and Justice or the Court of Appeals of competent jurisdiction rules on an application is not subject to any avenue of appeal.

(7) In case of denial of an application for the appointment of another court to decide on a filed case, a new application, based on the same reasons, may no longer be filed in the same case.

#B

CHAPTER III

Main subjects and their rights

ART. 77

Suspect

A person in respect of whom, from the data and evidence existing in a case, there exists a reasonable suspicion that they committed an act stipulated by the criminal law, is a suspect.

ART. 78

Rights of a suspect

A suspect has the rights set by law in respect of the defendant, unless the law stipulates otherwise.

ART. 79

Victim

A person who suffered a physical injury or a material or moral prejudice as a result of a criminal act is a victim.

ART. 80

Appointment of a representative of victims

#M2

(1) In situations where there is a large number of victims, who do not have contrary interests, these may appoint a person to represent their interests within criminal proceedings. If the victims did not appoint a joint representative, for the proper conducting of criminal proceedings, the prosecutor or the court may appoint, through an order, or through a reasoned court resolution, a court appointed counsel to represent their interests. Such court resolution or order shall be communicated to the victims, who have to inform the prosecutor or the court, within 3 days after receipt of such communication, that they refuse to be represented by such counsel appointed by the court. All procedural acts communicated to the representative or of which such representative took knowledge are presumed to be known by the represented persons.

#B

(2) A representative of victims shall make use of all rights afforded them by law.

ART. 81

(1) Rights of victims

In criminal proceedings, a victim has the following rights:

- a) to be informed of its rights;
- b) to propose production of evidence by the judicial bodies, to raise objections and to make submissions;
- c) to file any other applications related to the settlement of the criminal part of the case;
- d) to be informed, within a reasonable term, on the status of the criminal investigation, upon explicit request, provided that they indicate an address on the territory of Romania, an e-mail address or a electronic messaging address, to which such information can be communicated;
- e) to consult the case file, under the law;
- f) to be heard;
- g) to ask questions of the defendant, witnesses and experts;

#M2

g[^]1) to receive an interpreter, free of charge, when they cannot understand, cannot express themselves properly or cannot communicate in the Romanian language;

#B

- h) to be assisted or represented by a counsel;
- i) to use a mediator, in cases permitted by law;
- j) other rights set by law.

#M2

(2) A person who suffered physical harm or a material or moral prejudice as a result of a criminal act in relation to which the criminal action is initiated ex

officio, and who does not want to participate in criminal proceedings has to inform the judicial body of this, and the latter can hear such person as a witness if it deems it necessary.

#B

CHAPTER IV

Defendants and their rights

ART. 82

The defendant

A person against whom criminal action was initiated becomes a party to criminal proceedings and is called a defendant.

ART. 83

Rights of defendants

During the course of criminal proceedings, a defendant has the following rights:

a) not to give any statements during criminal proceedings, and their attention shall be drawn to the fact that their refusal to make any statements shall not cause them to suffer any unfavorable consequences, and that any statement they do make may be used as evidence against them;

#M2

a¹) to be informed of the act for which they are under investigation and the charges against them;

#B

b) to consult the case file, under the law;

c) to have a retained counsel and, if they cannot afford one, in cases of mandatory legal assistance the right to have a court-appointed counsel;

d) to propose production of evidence under the terms set by law, to raise objections and to argue in court;

e) to file any other applications related to the settlement of the criminal and civil part of the case;

f) to an interpreter free of charge, when they cannot understand, cannot express themselves properly or cannot communicate in the Romanian language;

g) to use a mediator, in cases permitted by law;

#M2

g¹) to be informed of their rights;

#B

h) other rights set by law.

CHAPTER V

Civil parties and their rights

ART. 84

Civil party

(1) A victim who initiates a civil action within criminal proceedings is party to the criminal proceedings and is called a civil party.

(2) The heirs of a victim also have the capacity of civil parties, if they initiate a civil action within criminal proceedings.

ART. 85

Rights of civil parties

(1) During the course of criminal proceedings, a civil party has the rights listed under [Art. 81](#).

#M2

(2) The capacity as civil party of a person who suffered a prejudice as a result of an offense does not preclude their right to participate as a victim in the same case.

#B

(3) The stipulations of [Art. 80](#) shall apply accordingly in the situation where there is a very large number of civil parties.

CHAPTER VI

Parties with civil liability and their rights

#M2

ART. 86

Parties with civil liability

A person who, under civil law, has the legal or conventional obligation to remedy, in full or in part, individually or jointly, a loss caused by an offense, and who is summoned to respond in the trial is a party to criminal proceedings and is named a party with civil liability.

#B

ART. 87

Rights of parties with civil liability

(1) During the course of criminal proceedings, parties with civil liability have the rights listed under [Art. 81](#).

(2) The rights of a party with civil liability shall be used within the limits and for the purposes of settling the civil action.

CHAPTER VII

Counsels. Legal assistance and representation

ART. 88

Counsels

(1) Counsels assist or represent parties or main subjects in criminal proceedings, under the law.

(2) The following persons may not be a counsel of a party or of a main subject:

- a) the spouse or a relative up to the 4th degree with the prosecutor or the judge;
- b) witnesses summoned in the case;
- c) those who participated in the same case as a judge or prosecutor;
- d) other parties or other trial subjects.

#M2

(3) A retained or court-appointed counsel is under an obligation to provide legal assistance to parties or to main subjects.

(4) Parties or main subjects who have conflicting interests may not be assisted or represented by the same counsel.

#B

ART. 89

Legal assistance provided to a suspect or defendant

(1) A suspect or a defendant has the right to be assisted by one or more counsels all along the criminal investigation, the preliminary chamber procedure and the trial, and judicial bodies are under an obligation to inform them on such right. Legal assistance is ensured when at least one of the counsels is present.

(2) A person detained or arrested has the right to contact their counsel, and confidentiality of communications shall be ensured to them, in compliance with necessary measures of visual supervision, guard and security, and the conversations between them shall not be wiretapped or recorded. Evidence obtained in breach of this paragraph shall be inadmissible.

ART. 90

Mandatory legal assistance provided to a suspect or defendant

Legal assistance is mandatory:

- a) when a suspect or defendant is underage, is admitted to a detention center or an educational center, when they are detained or arrested, even in a different case, and when in respect of such person a safety measure was ordered remanding them to a medical facility, even in a different case, as well as in other situations established by law;
- b) when a judicial body believes that a suspect or defendant could not prepare their defense on their own;
- c) during the course of trial, in cases where the law establishes life detention or an imprisonment penalty exceeding 5 years for the committed offense.

ART. 91

Court appointed counsels

(1) In the situations listed under [Art. 90](#), if a suspect or defendant did not select a counsel, the judicial body shall take steps to provide them with a court appointed counsel.

#M2

(2) During the entire course of criminal proceedings, when legal assistance is mandatory, if a retained counsel is unjustifiably absent, does not ensure a replacement or refuses unjustifiably to ensure the defense, even though the use of all procedure rights was ensured, the judicial body shall take steps to obtain appointment by the court of a counsel to replace them, by providing such replacement with a reasonable term and with facilities required for the preparation of an effective defense. This aspect shall be mentioned in a report or, as applicable, in the hearing report. During the course of the trial, when legal assistance is mandatory, if a retained counsel is unjustifiably absent from the hearing term, does not ensure a replacement or unjustifiably refuses to defend, even though the use of all procedure rights was ensured, the court shall take steps to appoint an ex officio counsel to replace them, by providing such replacement with a minimum term of 3 days to prepare the defense.

(3) The court appointed counsel is under an obligation to appear whenever they are called by the judicial body, by ensuring a concrete and effective defense in the case.

#B

(4) The mandate of an *ex officio* counsel ceases when the selected counsel appears.

(5) If during the trial the counsel is absent and cannot be replaced under the terms of par. (2), the case shall be continued.

#M2

ART. 92

Rights of the suspect's and defendant's counsels

(1) During the course of the criminal investigation, the suspect's and defendant's counsels have the right to witness the performance of any criminal investigation act, except for:

- a) in the situation where special surveillance or investigation methods, set by [Chapter IV of Title IV](#) are used;*
- b) bodily or vehicle searches, in case of in-the-act offenses.*

#B

(2) A suspect's or defendant's counsel may request to be informed of the date and time when a criminal investigation act is performed or of the hearing conducted by the Judge for Rights and Liberties. Such information takes place through a notification via phone, fax, e-mail or other such means, and a report shall be prepared for this purpose.

(3) Absence of the counsel shall not prevent performance of a criminal investigation act or the hearing, if there is proof that they was informed under the terms of par. (2).

(4) A suspect's or defendant's counsel has also the right to participate in any hearing of any person conducted by the Judge for Rights and Liberties, to file complaints, applications and memoranda.

(5) In case of a home search, the information set by par. (2) can also be transmitted after the criminal investigation body appears at the domicile of the person to be subject to search.

#M2

(6) If a suspect's or defendant's counsel is present at the moment when a the criminal investigation is performed, this aspect, as well as any possible objections raised, shall be recorded, and such document shall also be signed by the counsel.

(7) During the course of preliminary chamber procedure and of the trial, a counsel has the right to consult documents of the case file, to assist the defendant, to make use of the defendant's procedure rights, to file complaints, applications, motions, exceptions and objections.

#B

(8) A suspect's or defendant's counsel has the right to benefit from the time and facilities necessary for the preparation and implementation of an effective defense.

ART. 93

Legal assistance provided to victims, civil parties and parties with civil liability

#M2

(1) During the course of the criminal investigation, the counsel of a victim, a civil party or a party with civil liability has the right to be informed, under the terms of Art. 92 par. (2), to be present when any criminal investigation act is performed under the terms of Art. 92, the right to consult documents of the case file, and to file applications and memoranda. The stipulations of Art. 89 par. (1) shall apply accordingly.

#B

(2) The counsel of a victim, a civil party or a party with civil liability has the right set by Art. 92 par. (8).

(3) During the course of trial, the counsel of a victim, a civil party or of a party with civil liability shall exercise the rights of the assisted person, except for those exercised by such party in person, and the right to consult documents of the case file.

(4) Legal assistance is mandatory when a victim or civil party lacks mental competence or has a limited mental competence.

(5) When a judicial body believes that, for various reasons, a victim, civil party or party with civil liability cannot prepare their defense on their own, it shall order steps for securing a court appointed counsel.

ART. 94

Case file consultation

#M2

(1) Counsels of parties and of main subjects have the right to request consultation of the case file throughout the criminal proceedings. Such right may not be exercised or restricted abusively.

#B

(2) Case file consultation implies the right to read its documents, the right to write down data or information from the case file, and the right to obtain photocopies, at the client's expense.

#M2

(3) During the course of the criminal investigation, the prosecutor shall set the date and duration of consultation within a reasonable term. Such right may be delegated to criminal investigation bodies.

(4) During the course of the criminal investigation, the prosecutor may restrict, on a reasoned basis, the case file consultation, if this could harm the proper conducting of the criminal investigation. Following initiation of criminal action, such restriction may be ordered for maximum 10 days.

#B

(5) During the course of the criminal investigation, a counsel is under an obligation to keep confidentiality or secrecy of the data and documents they took knowledge of on the occasion of the case file consultation.

(6) In all cases, a counsel's right to consult the statements of the party or main trial subject they assist or represents may not be restricted.

(7) For the preparation of defense, a defendant's counsel has the right to learn of the entire material in the criminal investigation case file in the proceedings conducted before the Judge for Rights and Liberties regarding right deprivation or restriction measures in which the counsel participates.

#M2

(8) The stipulations of this Article shall apply accordingly in relation to the right of parties and of main subjects to consult the case file.

#B

ART. 95

Right to file complaints

(1) A counsel has the right to file complaints, as per [Art. 336](#) – 339.

(2) In the situations specified by [Art. 89](#) par. (2), [Art. 92](#) par. (2) and [Art. 94](#), the hierarchically superior prosecutor is under an obligation to rule on a

complaint and to communicate their decision, as well as its reasoning, within maximum 48 hours.

ART. 96

Representation

During the course of criminal proceedings, a suspect, a defendant, the other parties, as well as a victim may be represented, except for instances where their presence is mandatory or is deemed necessary by the prosecutor, the judge or the court, as applicable.

TITLE IV

Evidence, methods of proof and evidentiary processes

CHAPTER I

General rules

ART. 97

Evidence and methods of proof

(1) Any factual element serving to the ascertaining of the existence or non-existence of an offense, to the identification of a person who committed such offense and to the knowledge of the circumstances necessary to a just settlement of a case, and which contribute to the finding of the truth in criminal proceedings represents evidence.

(2) Evidence is obtained in criminal proceedings through the following means:

- a) statements by suspects or defendants;
- b) statements by victims;
- c) statements by civil parties or of parties with civil liability;
- d) statements by witnesses;

#M2

e) documents, expert reports or fact finding reports, minutes, pictures, physical evidence;

#B

f) any other methods of proof that are not prohibited by law.

#M2

(3) An evidentiary process is the legal method for obtaining evidence.

#B

ART. 98

Object of evidence

The following are items of evidence:

- a) the existence of an offense and its commission by a defendant;
- b) facts regarding the civil liability, when there is a civil party;
- c) facts and factual circumstances on which the application of law depends;
- d) any circumstance necessary for a just settlement of a case.

ART. 99

Burden of proof

- (1) In a criminal action, the burden of proof rests primarily with the prosecutor, while in a civil action it rests with the civil party or, as applicable, upon the prosecutor initiating the civil action, if the victim lacks mental competence or has limited mental competence.
- (2) A suspect or defendant benefits from the presumption of innocence, has no obligation to prove their innocence, and has the right not to contribute to their own incrimination.
- (3) In criminal proceedings, victims, suspects and parties have the right to propose the production of evidence to judicial bodies.

ART. 100

Production of evidence

- (1) During the criminal investigation, criminal investigation bodies gather and produce evidence both in favor and against a suspect or a defendant, *ex officio* or upon request.
- (2) During the trial, the court produces evidence upon request by the prosecutor, the victim or the parties and, subsidiarily, *ex officio*, when it deems it necessary for the creation of its own conviction.

#M2

(3) *An application regarding the production of evidence filed during the criminal investigation or the trial is sustained or denied, on a justified basis, by the judicial bodies.*

#B

- (4) Judicial bodies may reject an application regarding the production of evidence when:
 - a) a piece of evidence is not relevant to the object of evidentiary in a case;
 - b) it is decided that sufficient evidence has been produced for proving a factual element representing the object of evidentiary;
 - c) a piece of evidence is not necessary, as the fact is of notoriety;
 - d) a piece of evidence is impossible to obtain;
 - e) an application was filed by a person who has no such right;
 - f) production of evidence is contrary to the law.

ART. 101

Principle of loyalty in producing evidence

- (1) It is prohibited to use violence, threats or other coercion means, as well as to promises or inducements for the purpose of obtaining evidence.
- (2) Hearing methods or techniques affecting the capacity of persons to remember and tell conscientiously and voluntarily facts representing the object of the taking of evidence may not be used. Such prohibition applies even if a

person subject to such hearing gives their consent in relation to the use of such hearing methods and techniques.

(3) Criminal judicial bodies or other persons acting on their behalf are prohibited from entrapping a person into committing or continuing commission of a criminal act for the purpose of obtaining evidence.

ART. 102

Exclusion of evidence obtained illegally

(1) Evidence obtained through torture, as well as evidence deriving from such may not be used in criminal proceedings.

(2) Evidence obtained unlawfully may not be used in criminal proceedings.

#M2

(3) The nullity of a document ordering or authorizing the production of evidence or based on which such evidence was produced triggers exclusion of that evidence.

#B

(4) Derived pieces of evidence are excluded if these were obtained directly from evidence obtained unlawfully and could not be obtained in other way.

#M2

*(5) *** Repealed*

#B

ART. 103

Assessment of evidence

(1) Pieces of evidence do not have a value pre-established by law and are subject to the free discretion of the judicial bodies, based on the assessment of all pieces of evidence produced in a case.

(2) In making a decision the existence of an offense and on a defendant's guilt, the court decides, on a justified basis, on the basis of all the assessed pieces of evidence. Conviction is ordered only when the court is convinced that the charge was proven beyond any reasonable doubt.

#M2

(3) A court sentence ordering a conviction, waiver of penalty, or delay of penalty may not be based decisively on statements of the investigator, of informants or of protected witnesses.

#B

CHAPTER II

Hearing of persons

SECTION 1

General rules for hearing of persons

ART. 104

Persons subject to hearing during criminal proceedings

During criminal proceedings, under the terms set by the law, the following persons may be subject to hearing: suspects, defendants, victims, civil parties, parties with civil liability, witnesses and experts.

ART. 105

Hearing through an interpreter

(1) Whenever a person subject to hearing cannot understand, cannot speak or cannot express themselves properly in Romanian, their hearing shall be conducted through an interpreter. Such interpreter may be appointed by the judicial bodies or by the parties or victims from among interpreters certified under the law.

(2) Exceptionally, in a situation when the urgent taking of procedure measures is required or when a certified interpreter cannot be provided, a hearing may be conducted in the presence of any person who can communicate with the person subject to hearing. However, judicial bodies are under an obligation to resume the hearing through an interpreter as soon as this is possible.

(3) If a person subject to hearing is deaf, dumb or deaf & dumb, the hearing shall be conducted with the participation of a person who has the capacity to communicate through the special language. In such situation, communication may also take place in writing.

#M2

(4) In exceptional situations, if an authorized person, who can communicate through the special language, is not present, and communication cannot take place in writing, the hearing of persons listed under par. (3) shall be conducted with the help of any person having such communication skills, and The stipulations of par. (2) shall apply accordingly.

#M2

ART. 106

Special rules regarding the hearing

(1) If, during the hearing of a person, such person shows visible signs of excessive fatigue or symptoms of a disease that affect their physical or psychological capacity to participate in the hearing, judicial bodies shall order cessation of the hearing and, if the case, shall procure that the person is examined by a physician.

(2) A detained person may be heard at the detention facility through videoconference, in exceptional situations and if judicial bodies decide that this does not harm the proper conducting of the trial or the rights and interests of the parties.

(3) *In the situation set by par. (2), if a person subject to hearing finds themselves in any of the situations set by [Art. 90](#), their hearing may be conducted only in the presence of their counsel at the detention facility.*

#B

SECTION 2

Hearing of a suspect or defendant

ART. 107

Questions regarding the person of a suspect or defendant

#M2

(1) In the beginning of the first hearing, judicial bodies ask a suspect or defendant questions regarding their surname and first name, nickname, birth date and place, personal identification number, surname and first name of their parents, their citizenship, civil status, military status, education, profession or occupation, working place, domicile and address where they actually live, and the address where they want the procedure documents to be served, their criminal record or whether other criminal proceedings are conducted against them, whether they request an interpreter, in the event that they cannot understand, speak or express themselves properly in Romanian, as well as regarding any other data intended to establish their personal status.

#B

(2) The questions specified under par. (1) shall be repeated in subsequent hearings only when judicial bodies deem it necessary.

ART. 108

Communication of rights and obligations

(1) Judicial bodies shall communicate to a suspect or defendant the capacity in which they are heard for the act set forth by the criminal law for the commission of which they are suspected or in respect of which a criminal action was initiated, as well as its legal classification.

(2) A suspect or defendant shall be informed of their rights listed under [Art. 83](#), as well as of the following obligations:

a) the obligation to go to court on receiving summons from the judicial bodies, drawing their attention that, for failure to comply with this obligation, a bench warrant can be issued against them, and that in case of avoidance, the judge may order their pre-trial arrest;

b) the obligation to communicate in writing, within 3 days, any change of address, by drawing their attention that, for failure to comply with this obligation, summons and any other documents communicated to the first address shall remain valid and shall be deemed as brought to their knowledge.

#M2

(3) *During the criminal investigation, before the first hearing of a suspect or defendant, they shall be informed of the rights and obligations listed under par. (2). Such rights and obligations shall also be communicated to them in writing and, in the event that they are unable or refuses to sign, a report shall be prepared.*

(4) *Judicial bodies have to inform a defendant of the possibility to enter, during the criminal investigation, a guilty plea agreement, and of the possibility for them to receive a reduction of the penalty set by the law as a result of admitting their guilt during the trial.*

#B

ART. 109

Manner of hearing

(1) Following fulfillment of the procedures set forth by the provisions of [Arts. 107](#) and [108](#), a suspect or defendant shall be allowed to declare everything they want referring to the act set forth by the criminal law that was communicated to them, after which questions can be asked.

(2) A suspect or defendant has the right to consult their counsel both prior to and during the hearing, and judicial bodies, when they deem it necessary, may allow them to use their own notes.

#M2

(3) *During the hearing, a suspect or defendant may use their right to remain silent in respect of any of the facts or circumstances about which they are asked.*

#B

ART. 110

Recording of statements

#M2

(1) *Statements by a suspect or defendant shall be recorded in writing. In the written statement, the questions asked during the hearing shall be recorded, by mentioning the person asking them, and the time when the hearing started and when the hearing ended shall be mentioned every time.*

#B

(2) If they agree with the content of the written statement, the suspect or defendant shall sign it. If a suspect or defendant wants to make additions, corrections or clarifications, these shall be indicated at the end of the statement, being followed by the suspect's or defendant's signature.

(3) When a suspect or defendant is unable or refuses to sign, the judicial body shall mention this in the written statement.

#M2

(4) *The written statement shall also be signed by the criminal investigation bodies having conducted the hearing of a suspect or defendant, by the Judge for Rights and Liberties or by the presiding judge and the court clerk, by the*

counsel of the suspect, the defendant, the victim, the civil party or the party with civil liability, if these were present, as well as by the interpreter, when such statement was taken through an interpreter.

#B

(5) During the criminal investigation, the hearing of a suspect or defendant shall be recorded with audio or audio-video devices. When such recording is not possible, this fact shall be mentioned in the statement of the suspect or defendant, indicating the actual reason why such recording was not possible.

SECTION 3

Hearing of victims, civil parties and parties with civil liability

ART. 111

Hearing of victims

(1) At the beginning of the first hearing, judicial bodies shall ask a victim the questions listed under [Art. 107](#), which applies accordingly.

(2) A victim shall be informed of the following rights and obligations:

- a) the right to be assisted by a counsel, and in case of mandatory legal assistance, the right to have a counsel appointed *ex officio*;
- b) the right to use a mediator in the situations permitted by law;
- c) the right to propose production of evidence, to raise objections and to argue in court, under the terms set by the law;
- d) the right to be informed of the conducting of proceedings, the right to file a prior complaint, as well the right to become a civil party in the trial;
- e) the obligation to come to court when summoned by the judicial bodies;
- f) the obligation to notify of any change of address.

#M2

g) *** *Repealed*

#B

(3) The stipulations of [Art. 109](#) par. (1) and (2) and of [Art. 110](#) shall apply accordingly.

(4) During the criminal investigation, the hearing of a victim shall be recorded with audio or audio-video devices, when criminal investigation bodies deem this necessary or when the victim requests this specifically, and such recording is possible.

(5) On the occasion of the first hearing, a victim shall be informed of the fact that, in the event that the defendant is deprived of freedom or convicted to a custodial sentence, the former can be informed of their release in any manner.

ART. 112

Hearing of civil parties and parties with civil liability

(1) Hearing of civil parties and of parties with civil liability shall be conducted as per the provisions of [Art. 111](#) par. (1), (3) and (4), which apply accordingly.

(2) Civil parties and parties with civil liability are informed of the following rights:

- a) the right to be assisted by a counsel, and in case of mandatory legal assistance, the right to have counsel appointed *ex officio*;
- b) the right to use a mediator in the situations permitted by law;
- c) the right to propose production of evidence, to raise objections and to argue in court in relation to the settlement of the civil side of the case, under the terms set by the law.

ART. 113

Protection of victims and civil parties

When the requirements established by law in respect of the status of threatened or vulnerable witnesses are met, or for the protection of private life or dignity, criminal investigation bodies may order protection measures specified under [Arts. 125](#) – 130 in respect of a victim or a civil party. Such provisions shall apply accordingly.

SECTION 4

Hearing of witnesses

ART. 114

Persons heard as witnesses

(1) Any person having knowledge of facts or factual circumstances representing evidence in a criminal case may be heard as witness.

(2) Any person summoned as a witness has the following obligations:

- a) to come to court when summoned by the judicial bodies, at the location, on the day and at the time indicated in the summons;
- b) to take an oath or a solemn statement before the court;
- c) to tell the truth.

(3) The capacity as witnesses prevails on the capacity as expert or counsel, mediator or representative of either party or as main subject in respect of facts and factual circumstances known to a person before they acquired this capacity.

(4) Persons who prepared minutes under [Arts. 61](#) and [62](#) may also be heard as witnesses.

ART. 115

Capacity to testify

(1) Any person may be summoned and heard as witness, except for the parties and the main trial subjects.

(2) Persons who are in a situation of nature to reasonably question their capacity to testify may be heard only when judicial bodies establish that the person is able to consciously present facts and factual circumstances according to reality.

(3) In order to decide on a person's capacity to testify, judicial bodies shall order, upon request or *ex officio*, any necessary examination, through means set by the law.

ART. 116

Subject matter and limits of witness statements

(1) Witnesses are heard in relation to facts or factual circumstances that represent the object of the taking of evidence in cases in respect of which they were summoned.

(2) Hearing of witnesses may be extended to all circumstances necessary to verify their credibility.

#M2

(3) Those facts or circumstances the lawful secrecy or confidentiality of which can be raised before judicial bodies cannot be the subject matter of a witness statement.

#B

(4) Facts or circumstances specified by par. (3) can be the subject matter of a witness statement when the relevant authority or the entitled person expresses their consent for this purpose or when there is another legal reason for removing the obligation to keep secrecy or confidentiality.

#M2

*(5) *** Repealed*

#B

ART. 117

Persons entitled to refuse to testify

(1) The following persons are entitled to refuse to testify:

- a) a suspect's or defendant's spouse, ancestors and descendants in direct line, as well as their siblings;
- b) persons who were a suspect's or defendant's spouse.

(2) Following communication of rights and obligations as per [Art. 120](#), judicial bodies shall communicate to the persons listed under par. (1) their right to refuse to testify.

(3) If persons listed under par. (1) agree to testify, the provisions regarding the rights and obligations of witnesses are applicable in their respect.

#M2

(4) A person having one of the capacities listed under par. (1) in relation to one of the suspects or defendants shall be also exempted from the obligation to testify against the other suspects or defendants, in case their statement cannot be limited only to the latter.

#M2

ART. 118

Right of witnesses to avoid self-incrimination

A witness statement given by a person who had the capacity as suspect or defendant before such testimony or subsequently acquired the capacity of suspect or defendant in the same case, may not be used against them. At the moment when they record the statement, judicial bodies are under an obligation to mention their previous capacity.

#B

ART. 119

Questions regarding a witness' person

- (1) [Art. 107](#) shall apply accordingly in the hearing of witnesses.
- (2) Witnesses shall be told the case subject matter and afterwards they shall be asked whether they are family members or former spouse of the suspect, the defendant, the victim or of other parties to criminal proceedings, whether they have friendship or enmity relations with such persons, or whether they suffered any damages as a result of the offense.
- (3) Witnesses shall not be asked questions related to their person when an identity data protection measure was ordered in their respect.

ART. 120

Communication of rights and obligations

- (1) Judicial bodies shall communicate to witnesses the capacity in which they are heard and the facts or factual circumstances for the proving of which they were proposed as witnesses.
- (2) Witnesses shall be afterwards informed of the following rights and obligations:
 - a) the right to be subject to protection measures and to receive reimbursement of expenses incurred by their being summoned before judicial bodies, when the requirements established by law are met;
 - b) the obligation to come to court when summoned by the judicial bodies, by drawing their attention that, in case of failure to comply with such obligation, a bench warrant may be issued against them;
 - c) the obligation to communicate in writing, within 5 days, any change of the address where the summons is served, by drawing their attention that, in case of failure to comply with such obligation, the penalty set forth by [Art. 283](#) par. (1) may be ordered against them;
 - d) the obligation to tell the truth, by drawing their attention that the law punishes the offense of perjury.

[ART. 121](#)

Witnesses' oath and solemn declaration

- (1) During the criminal investigation and the trial, after fulfillment of the formalities set by the provisions of [Arts. 119](#) and [120](#), criminal investigation

bodies and the presiding judge shall request witnesses to take an oath or to give a solemn declaration.

(2) Criminal investigation bodies and the presiding judge shall ask witnesses whether they would like to take a religious oath or to give a solemn declaration.

(3) The text of the oath is as follows: “I swear to tell the truth and to not conceal anything of what I know. So help me God!” The reference to divinity contained in the oath shall be changed depending on the religious faith of witnesses.

(4) While taking an oath, with the exceptions imposed by the religious belief, witnesses shall keep their right hand on a cross or on the Bible.

(5) If a witness chooses to give a solemn declaration, its text shall be as follows: “I undertake to tell the truth and not to conceal anything of what I know.”

#M2

(6) The stipulations of par. (1) - (5) shall apply accordingly in anticipated hearing proceedings before the Judge for Rights and Liberties.

#B

ART. 122

Hearing of witnesses

(1) Each witness is heard separately and without the presence of other witnesses.

(2) Witnesses are allowed to declare everything they know in relation to the facts or factual circumstances for the proving of which they were proposed as witnesses, after which they can be asked questions.

(3) Witnesses may not be asked questions related to their political, ideological or religious options or to other personal or family circumstances, except for the situation when such are strictly necessary for finding the truth in a case or for verifying a witness' credibility.

ART. 123

Recording of testimony

(1) Testimony shall be recorded as per the provisions of [Art. 110](#), which apply accordingly.

(2) During the criminal investigation, the hearing of witnesses shall be recorded with audio or audio-video technical devices, if criminal investigation bodies deem this necessary or if the witness request this specifically and such recording is possible.

ART. 124

Special cases of witness hearing

(1) Hearing of underage witnesses up to 14 years of age shall take place in the presence of one of the parents, of the guardian or of the person or representative of the institution to which the minor is entrusted for raising and education.

(2) If the persons mentioned under par. (1) cannot be present or have the capacity of suspect, defendant, victim, civil party, party with civil liability or

witness in the case, or if there is a reasonable suspicion that these can influence the minor's statement, their hearing shall take place in the presence of a representative of the guardianship authority or of a relative having full legal capacity, established by the judicial bodies.

(3) If they deem it necessary, upon request or *ex officio*, criminal investigation bodies or the court may order that a psychologist be present during the hearing of underage witnesses.

(4) Hearing of underage witnesses must avoid the causing of any negative impact on their psychological state.

(5) Underage witnesses who, on the hearing date, has not 14 years of age shall not be communicated the obligations listed under [Art. 120](#) par. (2) item d), but shall be cautioned that they need to tell the truth.

#M2

(6) *** *Repealed*

(7) *** *Repealed*

#B

SECTION 5

Witness protection

& 1. Protection of threatened witnesses

ART. 125

Threatened witness

If there is a reasonable suspicion that the life, physical integrity, freedom, assets or professional activity of a witness or of a member of their family could be jeopardized as a result of the data provided by them to judicial bodies or of their statements, the judicial bodies of competent jurisdiction shall grant them the status of threatened witness and shall order one or more of the protection measures set by [Arts. 126](#) or [127](#), as applicable.

ART. 126

Protection measures ordered during the criminal investigation

(1) During the criminal investigation, once that the status of threatened witness was granted, the prosecutor shall order the application of one or more of the following measures:

- a) surveillance and guard of the witness' residence or providing of a temporary dwelling space;
- b) accompanying and ensuring protection to the witness or to their family members during travels;
- c) protection of identity data, by issuing them a pseudonym under which the witness shall sign their statement;

- d) hearing of a witness without them being physically present, through audio-video transmission devices, with their voice and image distorted, when the other measures are not sufficient.
- (2) The prosecutor orders the application of protection measures *ex officio* or upon request by the witness, one of the parties or a main trial subject.
- (3) In case of application of the protection measures listed under par. (1) items c) and d), witness statements shall not include their real address or their identity data, these being recorded in a special register to which only criminal investigation bodies, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court have access, under confidentiality terms.
- (4) The prosecutor orders the granting of the status of threatened witness and the application of protection measures through a reasoned order, which is stored under confidentiality terms.
- (5) The prosecutor checks, at reasonable time intervals, whether the conditions having imposed the taking of protection measures continue to exist, and if not, they shall order, through a reasoned order, their termination.
- (6) The measures set by par. (1) shall be maintained throughout the criminal proceedings if the state of danger did not cease.
- (7) If a state of danger occurred during preliminary chamber procedure, the Preliminary Chamber Judge, *ex officio* or upon notification by the prosecutor, shall order protection measures set by [Art. 127](#). The provisions of [Art. 128](#) shall apply accordingly.
- (8) The protection measures set under par. (1) item a) and b) shall be communicated to the authority appointed to enforce such measures.

ART. 127

Protection measures ordered during the trial

During the trial, once that the status of threatened witness was granted, the court shall order the application of one or more of the following measures:

- a) surveillance and guard of the witness' residence or providing of a temporary dwelling space;
- b) accompanying and ensuring protection to the witness or to their family members during trips;
- c) closed court sessions during the hearing of witnesses;
- d) hearing of witnesses without them being physically present in the court room, through audio-video transmission devices, with their voice and image distorted, when the other measures are not sufficient;
- e) protection of identity data, by issuing a pseudonym under which the witness shall testify.

ART. 128

Ordering a witness protection measure during the trial

- (1) The court orders the application of protection measures *ex officio*, upon request by the prosecutor, the witnesses, the parties or the victim.
- (2) A proposal filed by the prosecutor includes:
 - a) name of the witnesses to be heard at the trial stage and in whose respect the ordering of a protection measure is sought;
 - b) an actual reasoning of the danger seriousness and of such measure need.
- (3) When such application is filed by other persons listed under par. (1), the court may order that the prosecutor conduct verifications, on an emergency basis, in respect of the soundness of such protection request.
- (4) Such application shall be ruled on in chambers, without the participation of the person who filed it.
- (5) The prosecutor's attendance is mandatory.
- (6) The court shall decide through a reasoned court resolution, which is not subject to avenues of appeal.
- (7) The court resolution ordering a protection measure shall be stored under confidentiality terms. If witness protection is necessary also after the court sentence remains final, provisions of the special law are applicable.
- (8) The protection measures set under [Art. 127](#) items a) and b) shall be communicated to the authority appointed to enforce such measures.

ART. 129

Hearing protected witnesses

#M2

(1) In the situations listed under [Art. 126](#) par. (1) item d) and [Art. 127](#) item d), the hearing of witnesses may be conducted through audio-video devices, without the physical presence of the witness at the venue where judicial bodies are.

*(2) *** Repealed*

(3) Main trial subjects, parties and their counsels may cross examine witnesses who testify under the terms set by par. (1). Judicial bodies shall deny questions that may lead to a witness' identification.

#B

(4) Statements of protected witnesses shall be recorded using audio and video technical devices and shall be fully transcribed in a written format.

(5) During the criminal investigation, statements are signed by criminal investigation bodies or, as applicable, by the Judge for Rights and Liberties and by the prosecutor who attended the hearing of witnesses, and shall be included in the case file. Transcribed witness statements shall also be signed by these and shall be stored with the case file submitted to the prosecutors' office, in a special place, under confidentiality terms.

(6) During the trial, witness statements are signed by the judicial panel's presiding judge.

(7) The medium on which witness statements were recorded, in original, sealed with the seal of the prosecutors' office or, as applicable, of the court before

which the statement was given, shall be stored under confidentiality terms. The medium containing the recordings made during the criminal investigation shall be submitted at the end of the criminal investigation to the court of competent jurisdiction, together with the case file, and shall be stored under the same confidentiality terms.

& 2. Protection of vulnerable witnesses

ART. 130

Vulnerable witnesses

(1) The prosecutor or, as applicable, the court may decide to grant the status of vulnerable witness to the following categories of persons:

- a) witnesses who suffered a trauma as a result of the committed offense or of the subsequent behavior of a suspect or defendant;
- b) underage witnesses.

(2) At the moment of granting the status of vulnerable witness, the prosecutor and the court may order protection measures set by [Art. 126](#) par. (1) items b) and d) or, as applicable, by [Art. 127](#) items b) - e), which apply accordingly. Distortion of the voice and image is not mandatory.

(3) Provisions of [Arts. 126](#) and [128](#) shall apply accordingly.

SECTION 6

Confrontation

[ART. 131](#)

Confrontation

(1) When it is found that there are contradictions between the statements of persons heard in the same case, one shall proceed to their confrontation, if this is necessary to clarify the case.

(2) Confronted persons are heard on the facts and circumstances in respect of which the statements given previously contradict with each other.

(3) Criminal investigation bodies or the court may agree that the confronted persons ask each other questions.

[#M2](#)

(4) Questions and answers shall be recorded in a report.

[#B](#)

CHAPTER III

Identification of persons and objects

ART. 132

Purpose and scope of this measure

(1) Identification of persons or objects may be ordered if this is necessary to clarify the circumstances of a case.

(2) Identification of persons or objects may be ordered by the prosecutor or by the criminal investigation bodies during the criminal investigation, or by the court during the trial.

ART. 133

Preliminary hearing of a person making an identification

(1) After ordering such measure and before an identification is made, the person making the identification has to be heard in relation to the person or object they are to identify.

#M2

(2) Such hearing consists of a description of all features of that person or object, as well as of the circumstances under which these have been seen. A person making an identification is asked whether they participated before in other identification proceedings concerning the same person or object or whether the person or object to be identified were previously indicated or described to them.

#B

ART. 134

Identification of persons

(1) A person to be identified is presented together with other 4 – 6 unknown persons, having features similar to the ones described by the person making the identification.

(2) The stipulations of par. (1) are applicable accordingly also in the identification of persons based on pictures.

(3) Identification takes place in such a way that the persons to be identified are unable to see the person who identifies them.

(4) A person's identification, as well as the statements of the person making the identification are recorded in a report.

(5) Such minutes have to include, in addition to the mentions set by [Art. 135](#) par. (2), the first and family names and addresses of the persons who were introduced in the identification group or whose pictures were presented to the person making the identification, the surname and first name of the identified person, as well as the order or court resolution ordering the identification of persons.

(6) During the criminal investigation, if criminal investigation bodies deem it necessary, the identification activity is recorded with audio-video devices. The identification recording is attached to the minutes as an inherent part of it and may be used as evidence.

ART. 135

Identification of objects

(1) Objects about which it is presumed that they can contribute to the finding of truth in relation to the commission of an offense are presented for identification

purposes, after the person making the identification has described them in advance. If such objects cannot be brought to be presented, the person making the identification can be taken to the location where the objects are.

(2) An object identification activity, as well as the statements of the person making the identification are recorded in a report, which has to include mentions referring to: the order or court resolution ordering the measure, the place where it was concluded, the date, the time when such activity started and when such activity ended, and mention of any interruption moment, the surname and first names of the attending persons and the capacity in which they attended, the surname and first name of the person making the identification, and a detailed description of the identified objects.

(3) During the criminal investigation, if criminal investigation bodies deem it necessary, an identification activity is recorded using audio video-devices. The identification recording is attached to the minutes as an integral part of it and may be used as evidence.

ART. 136

Other identifications

Identification of voices, sounds or other sensory perception elements is ordered and conducted in compliance with the procedure set by [Art. 134](#).

ART. 137

Plurality of identification

(1) In the event that several persons are called to identify the same person or the same object, judicial bodies of competent jurisdiction shall take steps to avoid communication among those having made the identification and those who are to make such identification.

(2) If the same person is to participate in several procedures to identify persons or objects, judicial bodies of competent jurisdiction shall take steps so that the person subject to identification be included among persons different from those who participated in previous proceedings, and that the object subject to identification be placed among objects different from those used previously.

[#M2](#)

CHAPTER IV

Surveillance or investigation special methods

[#B](#)

[ART. 138](#)

General provisions

[#M2](#)

(1) *The following are surveillance or investigation special methods:*

a) *wiretapping of communications or of any type of remote communication;*

- b) accessing a computer system;*
- c) video, audio or photo surveillance;*
- d) tracking or tracing with the use of technical devices;*
- e) obtaining data regarding the financial transactions of individuals;*
- f) withholding, delivery or search of mail deliveries;*
- g) use of undercover investigators and informants;*
- h) authorized participation in specific activities;*
- i) controlled delivery;*
- j) obtaining data generated or processed by providers of public electronic communication networks or by providers of electronic communication services intended for the public, other than the content of communications, stored by these under the special law on storing data generated or processed by providers of public electronic communication networks and by providers of electronic communication services intended for the public.*

(2) Wiretapping of communications or of any type of messages designates the wiretapping, accessing, monitoring, collection or recording of communications via phone, computer system or any other communication device.

#B

(3) Accessing a computer system designates the penetration of a computer system or of other data storage device either directly or from a distance, through specialized programs or through a network, for the purpose of identifying evidence.

(4) A computer system is any device or combination of devices interconnected between them or in a functional relationship, one or more of which provide the automatic data processing by means of a computer program.

(5) Computer data is any representation of facts, information or concepts in a form appropriated for processing in a computer system, including a program able to determine the performance of a function by a computer system.

(6) Video, audio or photo surveillance is the taking of pictures of persons, the observation or recording of their conversations, gestures or other activities.

(7) Tracking or tracing with the use of technical devices is the use of devices that establish the location of the person or the object to which such devices are attached.

(8) Search of mail deliveries designates the inspection, through physical or technical methods, of letters or other mail deliveries or objects transmitted through any other means.

#M2

(9) Obtaining of data regarding the financial transactions of individuals designates operations that provide knowledge of the contents of financial transactions and other operations performed or to be performed through a credit institution or through other financial entity, as well as the obtaining from a credit institution or other financial entities of documents or information held by it referring to the transactions or operations of a person.

(10) Use of undercover investigators and informants designates the use of a person with an identity other than their real one, for the purpose of obtaining data and information regarding the commission of an offense.

(11) Authorized participation in specific activities means the commission of acts similar to the objective component of a corruption offense, the performance of transactions, operations or any other kind of arrangements related to an asset or to a person who is presumed missing, a victim of trafficking in human beings or of kidnapping, the performance of operations involving drugs, as well as the providing of services, based on an authorization from the judicial bodies of competent jurisdiction for the purpose of obtaining evidence.

#B

(12) Controlled delivery designates a surveillance and investigation technique allowing for the entry, transit or exit from the territory of the country of goods in respect of which there is a suspicion related to the illicit nature of their possession or obtaining, under the surveillance of or based on an authorization from the competent authorities, for the purpose of investigating an offense or of identifying the persons involved in its commission.

#M2

(13) Electronic surveillance is the use of any of the methods listed under par. (1) items a) - e).

#B

ART. 139

Electronic surveillance

(1) Electronic surveillance is ordered by the Judge for Rights and Liberties when the following requirements are cumulatively met:

- a) there is a reasonable suspicion in relation to the preparation or commission of one of the offenses listed under par. (2);
- b) such measure is proportional to the restriction of fundamental rights and freedoms, considering the particularities of the case, the importance of information or evidence that are to be obtained or the seriousness of the offense;
- c) evidence could not be obtained in any other way or its obtaining implies special difficulties that would harm the investigation, or there is a threat for the safety of persons or of valuable goods.

#M2

(2) Electronic surveillance may be ordered in case of offenses against national security stipulated by the Criminal Code and by special laws, as well as in case of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism, money laundering, counterfeiting of currency or securities, counterfeiting electronic payment instruments, offenses against property, blackmail, rape, deprivation of freedom, tax evasion, corruption offenses and offenses assimilated to corruption, offenses against the European Union's

financial interests, offenses committed by means of computer systems or electronic communication devices, or in case of other offenses in respect of which the law sets forth a penalty of no less than 5 years of imprisonment.

#B

(3) The recordings set forth by this chapter, done by the parties or by other persons, represent evidence when they concern their own conversations or communications with third parties. Any other recordings may constitute evidence unless prohibited by law.

#M2

(4) The relationship between a counsel and a person assisted or represented by them may be subject to electronic surveillance only when there is information that the counsel perpetrates or prepares the commission of any of the offenses listed under par.(2). If during or after the performance of such measure it results that the activities of electronic surveillance also targeted the relations between the counsel and the suspect or defendant defended by the former, the evidence obtained this way may not be used in a criminal proceeding, and shall be destroyed forthwith by the prosecutor. The judge having ordered such measure shall be informed forthwith by the prosecutor. When deemed necessary, the judge may order the information of the counsel.

#B

ART. 140

Procedure for the issuance of an electronic surveillance warrant

(1) Electronic surveillance may be ordered during the criminal investigation, for a term of maximum 30 days, upon request by the prosecutor, the Judge for Rights and Liberties of the court having the competence of jurisdiction to examine the case in first instance or of the court corresponding to its level under whose territorial jurisdiction the premises of the prosecutors' office to which the prosecutor who filed the application belongs are located.

(2) Such application filed by the prosecutor has to contain: the electronic surveillance measures that are requested for authorization, the name or the identification data of the person against whom such measure is to be ordered, if known, the evidence or data giving rise to a reasonable suspicion related to the commission of an offense in respect of which such measure may be ordered, the facts and the charges, and, in case of a video, audio or photo surveillance measure, whether an approval for criminal investigation bodies to enter private spaces indicated for activating and deactivating the technical devices to be used for the enforcement of the electronic surveillance measure is also requested, and a justification of the proportional and subsidiary nature of the measure. The prosecutor has to submit the case file to the Judge for Rights and Liberties.

(3) An application requesting approval of electronic surveillance shall be ruled on in chambers, on the same day, without summoning the parties. The prosecutor's attendance is mandatory.

(4) If they decide that the application is justified, the Judge for Rights and Liberties shall order admission of the prosecutor's application, through a court resolution, and shall issue forthwith a electronic surveillance warrant. Writing of a report is mandatory.

(5) The court resolution of the Judge for Rights and Liberties and the warrant have to contain:

- a) name of the court;
- b) warrant issuance date, time and venue;
- c) surname, first name and capacity of the person returning the court resolution and issuing the warrant;
- d) description of the concrete approved measure;
- e) time period and purpose for which the measure was authorized;
- f) name of the person subject to a electronic surveillance measure or their identification data, if known;
- g) indication, if necessary given the nature of the approved measure, of the identification elements of each phone device, of the access point to a computer system, and of any known data for the identification of a communication channel or of an account number;
- h) in case of a measure of video, audio or photo surveillance in private spaces, mention of approving permission to criminal investigation bodies to enter private spaces in order to activate and deactivate the technical devices to be used for the enforcement of the electronic surveillance measure;
- i) signature of the judge and stamp of the court.

(6) In the event that the Judge for Rights and Liberties decides that the requirements set by [Art. 139](#) and The stipulations of par. (1) of this Article are not met, they shall deny the application for approving a electronic surveillance measure, through a court resolution.

(7) A court resolution under which the Judge for Rights and Liberties rules on electronic surveillance measures is not subject to avenues of appeal.

(8) A new application for the approval of the same measure may be filed only if new facts or circumstances, which were not known at the moment when the Judge for Rights and Liberties ruled on the previous application, occurred or were discovered.

#M2

(9) Upon justified request by an victim, the prosecutor may request the judge to authorize the wiretapping or recording of communications, as well as of any types of communications performed by them through any communication device, irrespective of the nature of the offense subject to investigation. The stipulations of par. (1) - (8) shall apply accordingly.

#B

ART. 141

Authorization of electronic surveillance measures by the prosecutor

(1) The prosecutor may authorize, for a time period of maximum 48 hours, electronic surveillance measures when:

a) there is an emergency situation, and the obtaining of a electronic surveillance warrant under the terms of [Art. 140](#) would lead to a substantial delay of investigations, to the loss, alteration or destruction of evidence, or would jeopardize the safety of the victim, of witnesses or of their family members; and

b) the requirements set by [Art. 139](#) par. (1) and (2) are met.

(2) A prosecutorial order authorizing electronic surveillance measures has to contain the mentions specified by [Art. 140](#) par. (5).

(3) Within a maximum of 24 hours following expiry of a measure, the prosecutor is under an obligation to notify the Judge for Rights and Liberties of the court having the competence of jurisdiction to examine the case in first instance or of the court corresponding to its level under whose territorial jurisdiction the premises of the prosecutors' office to which the prosecutor who issued the order belongs are located, in order for them to confirm the measure and, at the same time, shall forward a report presenting a summary of the electronic surveillance activities performed and the case file.

(4) If the Judge for Rights and Liberties decides that the requirements set by par. (1) were met, they shall confirm the measure ordered by the prosecutor within 24 hours, through a court resolution, returned in chambers, without summoning the parties.

(5) In respect of computer data identified through accessing a computer system, the prosecutor may order, through a prosecutorial order:

a) making and preservation of a copy of such computer data;

b) prohibition of access to or removal of such computer data from the computer system.

Copies shall be made by means of appropriate technical devices and procedures, of nature to ensure the integrity of information contained by these.

(6) If the Judge for Rights and Liberties decides that the requirements set by par. (1) were not met, they shall nullify the measure taken by the prosecutor and shall order destruction of the evidence thus obtained. The prosecutor shall destroy the evidence obtained this way and shall prepare a report in this sense.

(7) Together with the application for a confirmation of their measure, or separately, the prosecutor may request the Judge for Rights and Liberties to warrant electronic surveillance measures under the terms of [Art. 140](#).

(8) A court resolution through which the Judge for Rights and Liberties rules on the measures ordered by the prosecutor is not subject to avenues of appeal.

ART. 142

Enforcement of electronic surveillance warrants

(1) The prosecutor shall enforce an electronic surveillance measure or may order that this be enforced by criminal investigation bodies or by specialized

employees of the law enforcement bodies or of other specialist bodies of the state.

#M2

(2) Providers of public electronic communication networks or providers of electronic communication services intended for the public or of communication or financial services are under an obligation to cooperate with the criminal investigation bodies, the authorities listed under par. (1), within the limits of their authority, for the enforcement of electronic surveillance warrants.

#B

(3) Persons who are called to provide technical support for the enforcement of surveillance measures are under an obligation to keep secrecy in respect of the performed operation, under penalties set by the criminal law.

(4) The prosecutor is under an obligation to cease electronic surveillance forthwith before expiry of the warrant term if the reasons justifying such measure no longer exist, by immediately informing the judge having issued the warrant.

(5) Data resulted from electronic surveillance measures may be used also in other criminal case if they contain eloquent and useful data or information regarding the preparation or commission of another crime of those set forth by Art. 139 par. (2).

(6) Data resulted from surveillance measures that do not concern the act subject to investigation or that do not contribute to the identification or locating of persons, if such are not used in other criminal cases as per par. (5), shall be archived at the premises of the prosecutors' office, in special places, by ensuring their confidentiality. *Ex officio* or upon request by the parties, the vested judge or judicial panel may request the sealed data if there is new evidence from which it results that part of these concern an act subject to investigation. One year after the final settlement of a case, these are destroyed by the prosecutor, who shall prepare a report in this sense.

#M2

ART. 142¹

(1) Any authorized person conducting electronic surveillance activities, under this law, has the possibility to ensure the electronic signing of data resulting from electronic surveillance activities, by using an extended electronic signature based on a qualified certificate issued by an accredited certification services provider.

(2) Any authorized person who transmits data resulting from electronic surveillance activities under this law, has the possibility to sign the transmitted data by using an extended electronic signature based on a qualified certificate issued by an accredited certification services provider, which allows for the unambiguous identification of the authorized person, the latter taking this way responsibility for the integrity of the transmitted data.

(3) Any authorized person who receives data resulting from electronic surveillance activities under this law, has the possibility to check the integrity of the received data and to certify such integrity by signing them by means of an extended electronic signature based on a qualified certificate issued by an accredited certification services provider, which allows for the unambiguous identification of the authorized person.

(4) Each person certifying data under electronic signature is liable for the security and integrity of such data under the law.

#B

ART. 143

Recording of electronic surveillance activities

(1) Prosecutors or criminal investigation bodies shall prepare a report for each electronic surveillance activity, in which they shall record the results of activities conducted in respect of an act subject to investigation or that contribute to the identification or localization of persons, the identification data of the medium containing the results of electronic surveillance activities, the names of persons to whom these refer, if known, or other identification data, as well as, as applicable, the date and time when such electronic surveillance activity started and the date and time when it ended.

(2) A copy of the medium containing the results of electronic surveillance activities shall be attached to the reports, in a sealed envelope. Such medium or a certified copy of it shall be kept at the premises of the prosecutors' office, in special places, in a sealed envelope, and shall be made available to the court upon request. Following seizure of the court, a copy of the medium containing electronic surveillance activities and copies of the reports shall be kept at the court's registry office, in special places, in a sealed envelope, at the exclusive disposal of the judge or judicial panel vested with the case disposition.

#M2

(2^1) Any authorized person making copies of a computer data storage medium containing results of electronic surveillance activities has the possibility to check the integrity of the data included in the original medium and, after making a copy, to sign the data included in it, by means of an extended electronic signature based on a qualified certificate issued by an accredited certification services provider, which allows for the unequivocal identification of the authorized person, the latter taking this way responsibility for the integrity of data.

#B

(3) Phone conversations, communications or discussions in a language other than Romanian shall be transcribed in Romanian, by means of an interpreter, who is under an obligation to keep their confidentiality.

#M2

(4) Wiretapped and recorded phone conversations, communications or discussions concerning an act subject to investigation or which contribute to the identification or localization of persons, shall be transcribed by the prosecutor or the criminal investigation bodies in a report that shall mention the warrant issued for their conducting, the phone numbers, the identification data of computer systems or of access points, names of the persons who made such communications, if known, and the date and time of each conversation or communication. Such report shall be certified by the prosecutor for authenticity purposes.

#B

(5) After termination of a surveillance measure, the prosecutor shall inform the Judge for Rights and Liberties on the performed activities.

ART. 144

Extension of an electronic surveillance warrant

(1) An electronic surveillance warrant may be extended, for well-grounded reasons, by the Judge for Rights and Liberties of the court of competent jurisdiction, upon reasoned request by the prosecutor, in situations where the requirements set by [Art. 139](#) are met; however, each such extension may not exceed 30 days.

(2) The Judge for Rights and Liberties shall rule in chambers, without summoning the parties, through a court resolution that is not subject to avenues of appeal. Preparation of a session minutes shall be mandatory.

#M2

(3) The total duration of an electronic surveillance measure, related to the same person and the same act, may not exceed, in the same case, 6 months, except for the measure of video, audio or photo surveillance in private spaces, which may not exceed 120 days.

#B

ART. 145

Information of persons subject to surveillance

(1) Following termination of an electronic surveillance measure, the prosecutor shall inform each subject of the warrant for electronic surveillance enforced against them, in writing, within maximum 10 days.

(2) Following such information, a person subject to surveillance has the right to learn, upon request, of the content of the minutes recording the electronic surveillance activities performed. Also, the prosecutor has to ensure, upon request, the listening to discussions, communications or conversations, or the watching of images resulted from each electronic surveillance activity.

(3) The term for filing a request in this sense is of 20 days as of the date of communication of the written information set under par. (1).

(4) The prosecutor may postpone such information or the presentation of media on which electronic surveillance activities are stored or the minutes transcribing them, in a justified way, if this could result in:

- a) disruption or jeopardizing of the proper conducting of the criminal investigation in the case;
- b) jeopardizing of the safety of the victim, witnesses or members of their families;
- c) difficulties in the electronic surveillance of other persons involved in the case.

(5) The postponement set under par. (4) may be ordered until completion of the criminal investigation or until the case closure, at the latest.

ART. 146

Preservation of materials resulted from electronic surveillance

(1) If a decision to close a case was returned in a case, against which a complaint was not filed within the legal term set by [Art. 340](#) or such complaint was denied, the prosecutor shall inform the Judge for Rights and Liberties of this forthwith.

(2) The Judge for Rights and Liberties shall order preservation of the material medium or of the certified copy of it, by archiving it at the premises of the court, in special places, in a sealed envelope, in order to ensure confidentiality.

#M2

(3) If in a case the court returned a conviction sentence, a waiver of penalty or penalty reprieve, an acquittal or a termination of criminal proceedings, which remained final, the material medium or its copy shall be preserved by being archived together with the case file at the premises of the court, in special places, by ensuring confidentiality.

#B

ART. 147

Withholding, surrender and search of postal deliveries

(1) Withholding, surrender and search of postal deliveries may be ordered by the Judge for Rights and Liberties of the court on which would rest the competence of jurisdiction to settle the case in first instance or by the court having a corresponding level within the territorial jurisdiction of which falls the prosecutors' office to which the prosecutor having prepared the proposal belongs, in respect of letters, postal dispatches or items sent or received by a perpetrator, suspect, defendant or by any person suspected to receive or send, by any means, such goods from/to a perpetrator, suspect or defendant, or goods intended to it, if:

- a) there is a reasonable suspicion related to the preparation or commission of an offense;

- b) such step is necessary and proportional to the restriction of fundamental rights and freedoms, considering the particularities of the case, the importance of information or of evidence to be obtained or the offense seriousness;
- c) evidence could not be obtained in other way, or obtaining it would imply extreme difficulties that would harm the investigation or there is a threat against the safety of persons or of high value goods.
- (2) Withholding, surrender and search of mail or of postal deliveries sent or received based on the relation between the counsel and the suspect, defendant or any other person defended by them shall be prohibited, except for situations where there is data that the counsel perpetrates or prepares the commission of any of the offenses listed under [Art. 139](#) par. (2).
- (3) [Art. 140](#) shall apply accordingly.
- (4) In emergency situations, when the obtaining of a warrant for the withholding, surrender and search of postal deliveries under the terms of [Art. 140](#) would result in a substantial delay of the investigations, in the loss, alteration or destruction of evidence or would endanger the safety of the victim or of other persons, and the requirements set by par. (1) and (2) are met, the prosecutor may order, for a term of maximum 48 hours, the measures set by par. (1). [Art. 141](#) par. (2) - (8) shall apply accordingly.
- (5) Postal or transport entities and any other natural persons or legal entities performing transport or information transfer activities are under an obligation to keep and surrender to the prosecutor letters, postal deliveries or items referred to in the warrant ordered by the judge or in the authorization issued by the prosecutor.
- (6) Mail, postal deliveries or items seized and searched that have no connection with the case shall be returned to the recipient.
- (7) Following performance of the authorized activities, the prosecutor shall inform each subject of a warrant on the measure taken against them, in writing, within maximum 10 days. After the moment of such information, the person whose mail, postal deliveries or items were seized and searched has the right to learn of the activities performed.
- (8) [Art. 145](#) par. (4) and (5) shall apply accordingly.
- (9) Such measure can be extended under the terms of [Art. 144](#).

#M2

ART. 148

Use of undercover or real-identity investigators and of informants

(1) Authorization of the use of undercover investigators may be ordered by the prosecutor supervising or conducting the criminal investigation, for a time period of maximum 60 days, if:

- a) there is a reasonable suspicion related to the preparation or commission of an offense against national security set forth by the Criminal Code and by*

other special laws, as well as in case of offenses of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism or acts assimilated to those, terrorism financing, money laundering, counterfeiting of currency or other securities, counterfeiting of electronic payment instruments, blackmail, deprivation of freedom, tax evasion, corruption offenses, offenses assimilated to corruption offenses, offenses against the European Union's financial interests, of offenses committed by means of a computer systems or electronic communication devices, or in case of other offenses in respect of which the law requires a penalty of no less than 7 years of imprisonment, or when there is a reasonable suspicion that a person is involved in criminal activities that are related to the above-mentioned offenses;

b) such measure is necessary and proportional to the restriction of fundamental rights and freedoms, considering the particularities of the offense, the importance of information or of evidence to be obtained, or the seriousness of the offense;

c) evidence or the offender's, the suspect's or defendant's localization or identity could not be obtained in other way or obtaining it would imply extreme difficulties that would harm the investigation, or there is a threat to the safety of persons or of high value goods.

(2) Such measure is ordered by the prosecutor, ex officio or upon request by criminal investigation bodies, through an order that needs to include, in addition to the mentions specified by [Art. 286](#) par. (2), the following:

a) the activities an undercover investigator is authorized to perform;

b) the time interval for which the measure was authorized;

c) the identity awarded to the undercover investigator.

(3) If the prosecutor deems it necessary for the undercover investigator to be able to use technical devices in order to obtain pictures or audio and video recordings, they shall notify the Judge for Rights and Liberties requesting an electronic surveillance warrant. The provisions of [Art. 141](#) shall apply accordingly.

(4) Undercover investigators are intelligence employees within the judicial police. In case of investigation of offenses against national security and of terrorism offenses, intelligence employees within the state bodies performing, under the law, intelligence activities for ensuring national security can be also used as undercover investigators.

(5) Undercover investigators collect data and information based on an order issued under par. (1) - (3), which shall be provided by them in full to the prosecutor conducting or supervising the criminal investigation, by preparing a report for this purpose.

(6) If the activity of an investigator requires authorized participation in specific activities, the prosecutor shall act as per the provisions of [Art. 150](#).

(7) Judicial bodies may use or make available to undercover investigators any documents or items necessary to the performance of authorized activities. The

activity of a person making available or using such documents or items does not constitute an offense.

(8) Undercover investigators may be heard as witnesses in criminal proceedings under the same terms and conditions as threatened witnesses.

(9) The duration of such measure may be extended for well-grounded reasons, in the event that the requirements set by par. (1) are met, but each such extension may not exceed 60 days. The total duration of such measure, in the same case and in respect of the same person, may not exceed one year, except for offenses against life, national security, drug trafficking, weapons trafficking, and trafficking in person, acts of terrorism, money laundering, as well as for offenses against the European Union's financial interests.

(10) In exceptional situations, provided that the requirements set by par. (1) are met, and the use of undercover investigators is not sufficient for obtaining data or information or such obtaining is not possible, the prosecutor supervising or conducting the criminal investigation may authorize the use of an informant, to whom an identity different from their real one can be attributed.

The stipulations of par. (2) - (3) and (5) - (9) shall apply accordingly.

#M2

ART. 149

Measures for the protection of undercover investigators and informants

(1) The real identity of undercover investigators and of informants having an identity other than their real one may not be disclosed.

(2) The prosecutor, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court have the right to know the real identity of undercover investigators and informants, subject to the observance of professional secrecy.

(3) Undercover investigators, collaborators, informants, as well as their family members or other persons subject to threats, intimidation or violence acts in connection with the activity performed by undercover investigators, informants or collaborators, can receive specific witness protection measures, under the law.

#M2

ART. 150

Authorized participation in specific activities

(1) Authorized participation in specific activities under the terms of [Art. 138 par. \(11\)](#) may be ordered by the prosecutor supervising or conducting the criminal investigation, for a time period of maximum 60 days, if:

a) there is a reasonable suspicion related to the preparation or commission of drug trafficking, weapons trafficking, trafficking in human beings, terrorism, money laundering, counterfeiting of currency or other securities, blackmail, deprivation of freedom, tax evasion, corruption offenses, of

offenses assimilated to corruption and offenses against the European Union's financial interests, or in case of other offenses in respect of which the law establishes a penalty of no less than 7 years of imprisonment, or when there is a reasonable suspicion that a person is involved in criminal activities that are related to the above-mentioned offenses, as per [Art. 43](#);

b) such measure is necessary and proportional to the restriction of fundamental rights and freedoms, considering the particularities of the offense, the importance of information or of evidence to be obtained or the seriousness of the offense;

c) evidence could not be obtained in other way or obtaining it would imply extreme difficulties that would harm the investigation, or there is a threat for the safety of persons or of high value goods.

(2) Such measure is ordered by the prosecutor, ex officio or upon request by criminal investigation bodies, through an order that needs to include, in addition to the mentions specified by [Art. 286](#) par. (2), the following:

a) the activities the undercover investigator is authorized to perform;

b) the duration for which the measure was authorized;

c) the person performing the authorized activities.

(3) Authorized activities may be performed by criminal investigation bodies, by investigators under their real identity, by undercover investigators or by informants.

(4) Performance of authorized activities by any of the persons listed under par.

(2) item c) does not constitute an infraction or an offense.

(5) Enforcement of such measures shall be recorded in a report, which shall contain: dates when the measure started and when it was ended, data referring to the persons having performed authorized activities, description of technical devices used, if the use of electronic surveillance devices was authorized by the Judge for Rights and Liberties, identity of the persons in whose respect the measure was applied.

(6) A person who performed authorized activities may be heard as witness in criminal proceedings, in compliance with the provisions on the hearing of threatened witnesses, if judicial bodies deem that their hearing is necessary.

(7) Judicial bodies may use or make available to persons performing authorized activities any documents or items necessary to the performance of authorized activities. A person making available or using such documents or items does not perpetrate an offense by performing such activities, in the event that such activities do constitute offenses.

(8) An ordered measure may be extended by the prosecutor, for well-grounded reasons, provided that the requirements set by par. (1) are met; however, each such extension may not exceed 60 days.

(9) The total duration of such measure may not exceed one year in respect of the same person and the same act.

#B

ART. 151

Controlled delivery

- (1) A controlled delivery may be authorized by the prosecutor supervising or conducting the criminal investigation, through a prosecutorial order, upon request by institutions or bodies of competent jurisdiction.
- (2) A controlled delivery may be authorized only in the following situations:
 - a) if persons involved in illegal transport of drugs, weapons, stolen items, explosive or nuclear materials, radioactive materials, money amounts and other proceeds resulting from illegal activities or of items used for the purpose of perpetrating offenses could not be discovered or arrested in other ways or if this implies extreme difficulties that would harm the investigation or would be a threat against the safety of persons or of high value goods;
 - b) if the discovery or proving of offenses committed in relation to the delivery of illegal or suspicious transports is impossible or extremely difficult in other way.
- (3) A controlled delivery can be performed under the terms established by the prosecutor supervising or conducting the criminal investigation who orders such measure, and makes sure that the transited states' authorities:
 - a) agree with the entry of the illegal or suspicious transport on their territory and with its exit from their territory;
 - b) guarantee that the illegal or suspicious transport is permanently monitored by the competent authorities;

#M2

c) guarantee that a prosecutor, law enforcement body or other competent state authorities are informed of the results of the criminal investigation against persons accused of the offense subject to this special investigation method referred to at par. (1).

#B

- (4) The stipulations of par. (3) shall not apply in a situation where a treaty to which Romania is a party contains contrary provisions.
- (5) A prosecutorial order has to contain: the name of the suspect or defendant, if known, evidence attesting the illegal nature of the goods that are to enter, transit or exit from the territory of the country, and the ways in which surveillance is to be performed. A prosecutor has to issue an order for each controlled delivery they authorize.
- (6) A controlled delivery is performed by law enforcement bodies or by other competent authority. A prosecutor establishes, coordinates and controls the performance of a controlled delivery.
- (7) Performance of a controlled delivery does not represent an offense.

#M2

(8) Upon completion of a controlled delivery on the territory of Romania, the bodies listed under par. (6) are under an obligation to prepare a report regarding the performed activities, which shall be forwarded to the prosecutor.

#M2

ART. 152

Obtaining data generated or processed by providers of public electronic communications networks or providers of electronic communication services intended for the public, other than the content of communications, and stored by these.

(1) Criminal investigation bodies, based on a prior authorization from the Judge for Rights and Liberties, may request a provider of public electronic communication networks or a provider of electronic communication services intended for the public to transmit the data stored by it, based on the special law on storage of data generated or processed by providers of public electronic communication networks and providers of electronic communication services intended for the public, other than the content of communications, in the event that there is a reasonable suspicion related to the commission of an offense and there are grounds to believe that the requested data represent evidence for the categories of offenses set forth by the law on the storage of data generated or processed by providers of public electronic communication networks and by providers of electronic communication services intended for the public.

(2) The Judge for Rights and Liberties shall rule within 48 hours on requests transmitted by criminal investigation bodies regarding the transmission of data, through a reasoned court resolution, in chambers.

(3) Providers of public electronic communication networks and providers of electronic communication services intended for the public that cooperate with criminal investigation bodies are under an obligation to keep secrecy of the conducted operations.

#M2

ART. 153

Obtaining data regarding the financial status of a person

(1) The prosecutor, based on a prior approval from the Judge for Rights and Liberties, may request a credit institution, or any other institution holding data regarding the financial status of a person, to communicate data referring to the existence and content of accounts and of other financial statements of a person if there is probable cause in respect of the commission of an offense, and there are grounds to believe that the requested data represent evidence.

(2) The measure set under par. (1) is ordered *ex officio* or upon request by criminal investigation bodies, through an order that has to contain, in addition to the mentions set by Art. 286 par. (2), the following: the institution holding or having data under control, the name of the suspect or defendant, a specification

that the requirements set by par. (1) are met, and the obligation of the institution to communicate the requested data forthwith, under confidentiality terms.

(3) The institution specified under par. (1) is under an obligation to provide the requested data forthwith.

#M2

CHAPTER V

Preservation of computer data

#M2

ART. 154

Preservation of computer data

(1) If there is a reasonable suspicion in relation to the preparation or commission of an offense, for the purpose of collecting evidence or of identifying a perpetrator, suspect or defendant, the prosecutor supervising or conducting the criminal investigation may order immediate preservation of computer data, including of data referring to information traffic, that were stored by means of a computer system and that is in the possession or under the control of a provider of public electronic communication networks or of a provider of electronic communication services intended for the public, in the event that there is a danger that such data may be lost or altered.

(2) Such preservation is ordered by the prosecutor, ex officio or upon request by criminal investigation bodies, for a term of maximum 60 days, through an order that has to contain, in addition to the mentions set by [Art. 286](#) par. (2), the following: the providers of public electronic communication networks or the providers of electronic communication services intended for the public in whose possession or under whose control such computer data is, the name of the perpetrator, suspect or defendant, if known, a description of the data that have to be preserved, a justification for the fulfillment of the requirements set by par.

(1), the time interval for which this was issued, the obligation of the person or of providers of public electronic communication networks or of providers of electronic communication services intended for the public to immediately preserve the indicated computer data and to maintain their integrity, under confidentiality terms.

(3) A preservation measure may be extended by the prosecutor, only once, for well-grounded reasons, for a term of maximum 30 days.

(4) A prosecutorial order is transmitted forthwith to any provider of public electronic communication networks or provider of electronic communication services intended for the public holding the data specified under par. (1) or having control on such data, and the latter are under an obligation to preserve it immediately, under confidentiality terms.

(5) If data referring to information traffic is held by several providers of public electronic communication networks or providers of electronic communication

services intended for the public, a provider holding or controlling the computer data is under an obligation to provide the criminal investigation bodies forthwith with the information necessary for the identification of other providers, in order to enable them to learn of all elements of the used communication chain.

(6) Within the term set under par. (2) and (3), the prosecutor supervising or conducting the criminal investigation, based on a prior authorization from the Judge for Rights and Liberties, may request a provider of public electronic communication networks or a provider of electronic communication services intended for the public to transmit the data preserved under the law or may order cancellation of such measure. The stipulations of [Art. 170](#) par. (2¹) - (2⁵), par. (4) and (5) and of [Art. 171](#) shall apply accordingly.

(7) The Judge for Rights and Liberties shall rule on requests transmitted by criminal investigation bodies regarding the transmission of data within 48 hours, through a reasoned court resolution, in chambers.

(8) Before completion of the criminal investigation, the prosecutor is under an obligation to inform in writing the persons against whom the criminal investigation is conducted and whose data were preserved.

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ART. 155 *** Repealed

#M2

CHAPTER VI

Search and seizure of objects and documents

#B

ART. 156

Common provisions

(1) Searches may be executed on: homes, persons, computers or vehicles.

(2) Searches are conducted by observing human dignity and without being a disproportionate interference in a person's private life.

SECTION 1

Home search

#M2

ART. 157

Situations and terms under which a home search may be ordered

(1) A home search or a search of goods found in a residence may be ordered if there is a reasonable suspicion that a person committed an offense or that such person is holding objects or documents that are connected to an offense and it is assumed that the search could lead to the discovery and collection of evidence

related to such offense, to the preservation of traces left by the committed offense or to the capturing of the suspect or defendant.

(2) Home means a dwelling or any other space demarcated in any other way belonging to or being used by a natural person or legal entity.

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ART. 158

Procedure for the issuance of a home search warrant

(1) Home search may be ordered during the criminal investigation, upon request by the prosecutor, by the Judge for Rights and Liberties of the court that would have the competence of jurisdiction to examine the case in first instance or of the court of a level corresponding to it within the territorial jurisdiction of which the premises of the prosecutors' office to which the prosecutor conducting or supervising the criminal investigation belongs are located. During the trial, search is ordered by the court vested to rule in the case, *ex officio* or upon request by the prosecutor.

(2) An application filed by the prosecutor has to contain:

a) a description of the location where search is to be conducted, and if there is reasonable suspicion regarding the existence of a possibility of transferring searched evidence, data or persons to neighboring places, a description of such places;

#M2

b) indication of evidence or data from which a reasonable suspicion related to the commission of an offense or to the holding of objects or documents linked to the offense results;

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c) indication of the offense, of evidence or data from which it results that a suspect or defendant can be found or evidence related to the commission of an offense or traces of the committed offense are located at the location the search of which is requested;

#M2

d) the surname and first name and, if necessary, a description of the suspect or defendant in whose respect there are suspicions that they are at the location where the search is conducted, as well as indication of traces of a committed offense or of other objects that are assumed to exist at the venue to be subject to search.

#B

(3) In the event that, during a search, it is found that sought evidence or data were transferred or that searched persons were hidden in neighboring places, the search warrant shall also be valid, under the law, for such places. A search continuation under these circumstances shall be approved by the prosecutor.

(4) A prosecutor shall submit an application together with the case file to the Judge for Rights and Liberties.

(5) Applications requesting approval of a home search are ruled on within 24 hours, in chambers, without summoning the parties. The prosecutor's attendance is mandatory.

(6) The judge rules, through a court resolution, to sustain an application when this is well-grounded and approve the search, and issues a search warrant forthwith. Preparation of a hearing report is mandatory.

(7) The court resolution and the search warrant have to contain:

- a) name of the court;
- b) date, time and venue of issuance;
- c) surname, first name and capacity of the person having issued the search warrant;
- d) time frame for which the warrant was issued, which may not exceed 15 days;
- e) purpose for which the warrant was issued;
- f) a description of the location where the search is to be conducted or, if the case may be, also of the places adjacent to it;
- g) name or moniker of the person at whose domicile, residence or office the search is to be conducted, if known;
- h) name of the offender, suspect or defendant, if known;

#M2

i) a description of the perpetrator, suspect or defendant who is assumed to be in the place where the search is to be conducted, indication of traces of the committed offense or of other objects that are presumed to exist at the location to be subject to search;

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- j) a mention that the search warrant may be used only once;
- k) the judge's signature and the court's stamp.

#M2

(8) If the Judge for Rights and Liberties decides that the requirements set by [Art. 157](#) are not met, they shall order, through a court resolution, dismissal of the application for conducting a home search.

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(9) A court resolution through which the Judge for Rights and Liberties rules on an application for the approval of a home search is not subject to avenues of appeal.

(10) A new application for conducting a home search at the same location may be filed only if new facts or circumstances, which were not known at the moment when the previous application was ruled on by the judge, occurred or were discovered.

(11) During the trial, *ex officio* or upon request by the prosecutor, the court may order the conducting of a search for the purpose of enforcing a warrant for the pre-trial arrest of a defendant, as well as in situations where there is a reasonable suspicion that material evidence that is connected with the offense that is the

subject matter of the case exists at the location where search is requested. The stipulations of par. (2) - (8) and of [Art. 157](#) shall apply accordingly.

ART. 159

Conducting of home search

- (1) A search warrant shall be communicated to the prosecutor, who shall take steps for its enforcement.
- (2) Searches are conducted by a prosecutor or by criminal investigation bodies, accompanied, as applicable, by intelligence employees.
- (3) A home search may not be initiated before 6:00AM or after 8:00PM, except for in-the-act offenses or when a search is to be conducted in a place open to the public at that time.
- (4) If necessary, during a search, judicial bodies may restrict the freedom of circulation of present persons or the access of other persons in the place where such search is conducted.
- (5) Prior to beginning a search, judicial bodies shall identify themselves and hand a copy of the warrant issued by the judge to the person whose domicile will be subject to search, to their representative or family member or, in their absence, to any other person having full mental competence who knows the person whose domicile will be subject to search and, if the case, to a trustee.
- (6) In case of search conducted at the premises of a legal entity, the search warrant shall be handed to its legal representative or, in the absence of such representative, to any other person having full mental competence who is on the premises or is an employee of that legal entity.
- (7) In case searches are extended to the neighboring dwellings, under the terms of [Art. 158](#) par. (3), persons found in such spaces shall be informed of the search extension.
- (8) Prior to the initiation of a search, the persons listed under par. (5) and (6) shall be requested to hand over voluntarily the persons or objects that are sought. A search shall no longer be conducted if the persons or objects indicated in the warrant are handed over.
- (9) Persons listed under par. (5) and (6) shall be informed of their right of having a counsel participate in the search conducting. If the presence of a counsel is requested, the search initiation shall be postponed until their arrival, but no longer than two hours of the moment when this right was communicated, and steps for the preservation of the venue to be subject to search shall be taken. In exceptional situations, requiring the conducting of a search on an emergency basis, or when the counsel cannot be contacted, a search can be started even prior to the expiry of the two-hour term.

#M2

(10) Also, a person subject to search shall be allowed to be assisted or represented by a trustworthy person.

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(11) When a person whose domicile is searched is held in custody or arrested, they shall be brought to assist to the search. If they cannot be brought, the seizure of objects and documents and the home search shall take place in the presence of a representative or a community witness.

(12) Judicial bodies conducting a search have the right to open, by means of force, the rooms, spaces, furniture and other objects in which objects, documents or traces of an offense or persons sought could be found, in the event that their owner is not present or does not want to open them voluntarily. When opening such, the judicial bodies conducting the search have to avoid unjustified damages.

(13) Judicial bodies are under an obligation to limit only to the seizure of objects and documents that are related to the act in relation to which the criminal investigation is conducted. Objects or documents the circulation or holding of which is prohibited or in relation to which there is a suspicion that they may have connection with the commission of an offense in respect of which a criminal action is initiated ex officio shall be always seized.

(14) Exceptionally, a search may be started without handing a copy of the search warrant, without a prior request to hand over the person or objects, and without prior information the possibility to request the presence of a counsel, or of a trustworthy person, in the following cases:

a) when it is obvious that preparations are made in order to cover traces or to destroy evidence or elements that are of importance to the case ;

b) if there is a suspicion that in the space where search is to be conducted, there is a person whose life or bodily integrity is threatened;

#M2

c) if there is a suspicion that the wanted person may avoid the procedure.

#B

(15) In the event that in the space where search is to be conducted there is no person, this shall be conducted in the presence of a community witness.

(16) In the situations listed under par. (14) and (15), a copy of the search warrant shall be handed over as soon as possible.

(17) Judicial bodies conducting a search may resort to force, in an adequate and proportional manner, in order to enter a domicile:

a) if there are well-grounded reasons to anticipate armed resistance or other types of violence or if there is a threat related to the destruction of evidence;

b) in case of a refusal or if a response was not received to any of the requests of the judicial bodies to enter the domicile.

(18) The fulfillment of process acts in the same case, which, through their nature, prevent a person whose domicile is searched to participate in its conducting shall be prohibited simultaneously with the search, except for situations where these are fulfilled, in the same case, simultaneously with other searches.

(19) The place where a search is conducted, as well as the persons or objects found during the search may be photographed or audio or video recorded.

(20) Audio-video recordings or pictures taken are to be attached to the search report and are an inherent part of it.

ART. 160

Identification and storage of objects

(1) After identification, objects and documents are presented to the person from whom they are seized and to the persons in attendance, in order to be recognized and to be marked by these, so that they cannot be replaced, after which they are labeled and sealed.

(2) Objects that cannot be marked or on which labels and seals cannot be applied shall be wrapped or boxed, together if at all possible, after which seals shall be applied.

(3) Objects that cannot be seized shall be left in the custody of the person having them or of a custodian. A person to whom objects are left to keep shall be warned that they are under an obligation to keep and preserve them, and to make them available to criminal investigation bodies, upon request by these, under the sanction set forth by [Art. 275](#) of the Criminal Code.

(4) Evidence intended for analysis shall be taken at least in sets of two and shall be sealed. One piece of evidence shall be left with the person from which this is seized and, in their absence, to one of the persons listed under [Art. 159](#) par. (11).

ART. 161

Search reports

(1) Activities performed during a search are recorded in a report.

(2) Such report has to contain:

a) surname and first name and capacity of the person preparing it;

b) number and date of the search warrant;

c) venue where it is prepared;

d) dates and times when the search started and when the search ended, by mentioning any interruptions occurred;

e) surname and first name, profession and address of the persons who were present during the search, with mention of their capacity;

f) the fact that the person to be subject to search was informed of their right to contact a counsel who would participate in the search;

g) a detailed description of the places and conditions under which documents, objects of offense traces were discovered and seized, their listing and detailed description, in order to be recognized; mentions on the place or circumstances under which the suspect or defendant was captured;

h) objections and explanations by the persons who participated in the search, as well as mentions referring to the audio-video recordings or pictures taken;

i) mentions of the objects that were not seized but were left in custody;

- j) mentions set forth by law for special cases.
- (3) Such report shall be signed on each page and at the end by the one preparing it, by the person whose domicile was subject to search, by their counsel, if present, as well as by persons listed under par. (2) lett. e). If any of these persons is unable or refuses to sign, a mention shall be made of this, as well as of the reasons for their inability or refusal to sign.
- (4) A copy of the report shall be left with the person whose domicile was subject to search or from whom objects or documents were seized or to any of the persons listed under [Art. 159](#) par. (5) or (6) who took part in the search.

ART. 162

Measures regarding seized objects or documents

- (1) Seized objects or documents representing methods of proof shall be attached to the case file or kept in a different manner, and traces of a committed offense shall be seized and preserved.
- (2) Seized objects, documents and traces that are not attached to the case file can be photographed. Pictures are initialed by the criminal investigation bodies and are attached to the case file.
- (3) Physical evidence shall be kept by criminal investigation bodies or by the court keeping the case file until the final settlement of the case.

#M2

- (4) Objects that have no connection with the case shall be returned to the person to whom they belong, except for those subject to forfeiture, under the law.*
- (5) Objects serving as evidence, unless subject to forfeiture, under the law, may be returned, even prior to the final settlement of the case, to the person to whom they belong, except for the situation where their restitution would impair the finding of the truth. Criminal investigation bodies or the court draws the attention of the person to whom the objects were returned that they are under an obligation to keep them until the final settlement of the case.*

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ART. 163

Storage or disposal of seized objects

Objects serving as evidence, if these are among those specified by [Art. 252](#) par. (2) and are not returned, shall be stored or disposed of according the provisions of [Art. 252](#).

ART. 164

Special provisions on searches conducted at a public authority, public institution or at other public-law legal entities

A search at a public authority, public institution or other public-law legal entities shall be conducted according to the provisions of this section, as follows:

- a) the judicial bodies shall identify themselves and shall hand a copy of the search warrant to the representative of such authority, institution or public-law legal entity;
- b) the search shall be conducted in the presence of the representative of such authority, institution or public-law legal entity or of other persons having full legal capacity;
- c) a copy of the search report shall be left with the representative of such authority, institution or public-law legal entity.

SECTION 2

Other forms of searches

ART. 165

Cases and situations when a bodily search is conducted

- (1) Bodily search implies the examination of the exterior of a person's body, oral cavity, nose, ears, hair, clothing and of objects a person has with them or under their control at the moment of search.
- (2) If there is a reasonable suspicion that, by conducting a bodily search, traces of an offense, physical evidence or other objects having importance for finding the truth in the case can be discovered, judicial bodies or any other authority having responsibilities in ensuring public order and safety shall proceed to conducting it.

ART. 166

Conducting of bodily searches

- (1) Judicial bodies have to take steps so that a bodily search is conducted in observance of human dignity.
- (2) Bodily searches are conducted by a person of the same sex as the person subject to search.
- (3) Prior to beginning a bodily search, a person subject to search shall be requested to surrender the searched objects voluntarily. If the searched objects are surrendered, the search shall no longer be conducted, except for situations when its conducting is deemed useful for the search of other objects or traces.
- (4) A search report has to contain:
 - a) surname and first name of the person subject to search;
 - b) surname and first name and capacity of the person having conducted the search;
 - c) a list of objects found on the occasion of search;
 - d) the place where the search is concluded;
 - e) date and time when the search began and date and time when the search ended, with mention of any interruptions occurred;
 - f) a detailed description of the place and circumstances under which the documents, objects or offense traces were discovered and seized, their listing

and detailed description, in order to be recognized; mentions on the place and circumstances under which the suspect or defendant was found.

- (5) Such report has to be signed on each page and at the end by the one preparing it and by the person subject to search. If the person subject to search is unable or refuses to sign, this fact shall be mentioned, along with the reasons for such inability or refusal to sign.
- (6) A copy of the report shall be left with the person subject to search.
- (7) [Art. 162](#) shall apply accordingly.

ART. 167

Vehicle search

- (1) A vehicle search consists of the examination of the exterior or interior of a vehicle or of any other means of transportation or of their components.
- (2) A vehicle search is conducted under the terms set by [Art. 165](#) par. (2).
- (3) [Arts. 162](#), [165](#) and [166](#) shall apply accordingly.

#M2

ART. 168

Computer search

#B

(1) A computer system search or a computer data storage medium search designates the procedure for the investigation, discovery, identification and collection of evidence stored in a computer system or in a computer data storage medium, performed by means of adequate technical devices and procedures, of nature to ensure the integrity of the information contained by these.

#M2

(2) During a the criminal investigation, the Judge for Rights and Liberties of the court that would have the competence of jurisdiction to examine the case in first instance or of the court corresponding to its level under whose territorial jurisdiction the premises of the prosecutors' office with which the prosecutor conducting or supervising the criminal investigation is working are located may order the conducting of a computer search, upon request by the prosecutor, when the investigation of a computer system or of a computer data storage medium is necessary for the discovery and collection of evidence.

#B

- (3) The prosecutor shall submit an application requesting the approval of a computer search together with the case file to the Judge for Rights and Liberties.
- (4) Such application is ruled on in chambers, without summoning the parties. The prosecutor's attendance is mandatory.
- (5) The judge orders, through a court resolution, to sustain the application, when this is well-grounded, to approve the computer search, and issues a search warrant forthwith.
- (6) Such court resolution has to contain:

- a) name of the court;
- b) date, time and place of issuance;
- c) surname, first name and capacity of the person who issued the warrant;
- d) the time frame for which the warrant was issued and within which the ordered activity has to be performed;
- e) purpose for which it was issued;

#M2

f) the computer system or computer data storage medium that is to be subject to search, as well as the name of the suspect or defendant, if known;

#B

g) signature of the judge and stamp of the court.

(7) A court resolution through which the Judge for Rights and Liberties decides upon an application for the approval of a computer search is not subject to avenues of appeal.

#M2

(8) In the event that, on the occasion of a search of a computer system or of a computer data storage medium, it is found that the sought computer data is stored in a different computer system or a computer data storage medium, and is accessible from the initial system or medium, the prosecutor shall immediately order the preservation and copying of the identified computer data and shall request the issuance of a warrant on an emergency basis. The stipulations of par. (1) - (7) shall apply accordingly.

#B

(9) In conducting the ordered search, in order to ensure integrity of the computer data stored on the seized objects, the prosecutor shall order the making of copies of them.

(10) If the seizure of objects containing computer data set under par. (1) seriously hinders the performance of activities by the persons holding such objects, the prosecutor may order the making of copies of them, which would serve as methods of proof. Copies are made with adequate technical devices and procedures, of nature to ensure the integrity of the information contained by these.

#M2

(11) A computer system or computer data storage medium search is conducted in the presence of a suspect or a defendant, and the provisions of [Art. 159](#) par. (10) and (11) shall apply accordingly.

(12) A computer system or computer data storage medium search is conducted by a specialist working with the judicial bodies or an external one, in the presence of the prosecutor or of the criminal investigation bodies.

#B

(13) A computer search report has to contain:

#M2

a) name of the person from whom a computer system or computer data storage media is seized or name of the person whose computer system is subject to search;

#B

b) name of the person having conducted the search;

c) names of the persons present during the search conducting;

d) a description and list of the computer systems or computer data storage media against which search was ordered;

e) a description and list of the performed activities;

f) a description and list of the computer data discovered on the occasion of the search;

g) signature or stamp of the person having conducted the search;

h) signature of the persons present during the search conducting.

(14) Criminal investigation bodies have to take steps in order to make sure that the search is conducted without making facts and circumstances of the private life of the person subject to search public in an unjustified manner.

(15) Computer data of a secret nature identified during such search is kept under the law.

#M2

(16) During the trial, computer search is ordered by the court, ex officio or upon request by the prosecutor, by the parties or the victim, in the situations set by par. (2). A warrant for a computer search ordered by the court shall be communicated to the prosecutor, who shall act as per par. (8) - (15).

#M2

SECTION 3

Seizure of objects and documents

#B

ART. 169

Seizure of objects and documents

Criminal investigation bodies or the court are under an obligation to seize objects and documents that can serve as evidence in criminal proceedings.

ART. 170

Surrender of objects, documents or computer data

#M2

(1) In the event that there is a reasonable suspicion in relation to the preparation or commission of an offense and there are reasons to believe that an object or document can serve as evidence in a case, the criminal investigation bodies or the court may order the natural person or legal entity holding them to provide and surrender them, subject to receiving proof of surrender.

(2) Also, under the terms of par. (1), criminal investigation bodies or the court may order:

a) any natural person or legal entity on the territory of Romania to communicate specific computer data in their possession or under their control that is stored in a computer system or on a computer data storage medium;

b) any provider of public electronic communication networks or provider of electronic communication services intended for the public to communicate specific data referring to subscribers, users and to the provided services that is in its possession or under its control, other than the content of communications and then those specified by [Art. 138](#) par. (1) item j).

(2¹) Natural persons or legal entities, including providers of public electronic communication networks or providers of electronic communication services intended for the public, can ensure the signing of the data requested under par.

(2), by using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider.

(2²) Any authorized person transmitting data requested under par. (2) can sign the transmitted data by using an extended electronic signature based on a qualified certificate issued by an accredited certification service provider, and which allows for an unambiguous identification of the authorized person, thus taking responsibility for the integrity of the transmitted data.

(2³) Any authorized person receiving data requested under par. (2) can check the integrity of the received data and certify such integrity by signing them, by means of an extended electronic signature based on a qualified certificate issued by an accredited certification service provider, and which allows for an unambiguous identification of the authorized person.

(2⁴) Each person certifying data based on an electronic signature shall be liable for the integrity and security of such data under the law.

(2⁵) The stipulations of par. (2¹) - (2⁴) shall be applied by following the procedures set by the implementation regulations for the applicability of this law.

(3) *** Repealed

#B

(4) An order by criminal investigation bodies or a court resolution has to contain: the person having ordered the surrender, the name of the person having the obligation to surrender an object, document or computer data, a description of the object, document or computer data that need to be surrendered, as well as the date and place where they need to be surrendered.

(5) If criminal investigation bodies or the court decide that a copy of a document or of computer data can also serve as evidence, they shall retain only such copy.

(6) If an object, document or computer data are of a secret or confidential nature, these shall be provided or surrendered under conditions ensuring their secrecy or confidentiality.

ART. 171

Forced seizure of objects and documents

(1) If a requested object or document is not surrendered voluntarily, criminal investigation bodies, through a prosecutorial order, or the court, through a court resolution, shall order their forced seizure. During the trial, an order regarding the forced seizure of objects and documents is communicated to the prosecutor, who takes steps to implement such measure, through criminal investigation bodies.

(2) Against a measure ordered as per par. (1) or against the manner in which such measure is implemented, a complaint may be filed by any interested person. The provisions of [Art. 250](#) shall apply accordingly.

#M2

CHAPTER VII

Expert reports and fact finding

#M2

ART. 172

Ordering an expert report or of a finding of fact

(1) *An expert report is ordered when the opinion of an expert is also required for the ascertaining, clarification or assessment of facts or circumstances that have importance for finding the truth in a case.*

(2) *An expert report shall be ordered under the terms of [Art. 100](#), upon request or ex officio, by criminal investigation bodies, through a reasoned order, while during the trial, this is ordered by the court, through a reasoned court resolution.*

(3) *An application for the development of an expert report has to be filed in writing, indicating the facts and circumstances subject to assessment and the objectives that need to be clarified by the expert.*

(4) *An expert report can be conducted by official experts from specialist laboratories or institutions or by independent authorized experts from the country or from abroad, under the law.*

(5) *A forensic medical examination and expert report shall be conducted within forensic medical institutions.*

(6) *An order of the criminal investigation bodies or a court resolution ordering the development of an expert report has to indicate the facts or circumstances that need to be confirmed, clarified and assessed by the expert, the objectives they have to meet, the time frame within which they have to develop the expert report, as well as the appointed institution or experts.*

(7) *In strictly specialized areas, if specific knowledge or other such knowledge is necessary for the understanding of evidence, the court or criminal investigation bodies may request the opinion of specialists working within judicial bodies or*

of external ones. The provisions referring to the hearing of witnesses shall apply accordingly.

(8) During the conducting of an expert report, independent authorized experts, appointed upon request by the parties or main trial subjects, may also participate.

(9) When there is a danger related to the disappearance of evidence or to the change of a factual situation, or when the urgent clarification of facts or circumstances of the case is necessary, criminal investigation bodies may order, through a prosecutorial order, the conducting of a finding of fact.

(10) Such fact finding is conducted by a specialist working with the judicial bodies or by an external one.

(11) A forensic medical report has the value of a fact finding report.

(12) Following completion of a fact finding report, when judicial bodies believe that an expert opinion is necessary or when the conclusions of the fact finding report are challenged, the development of an expert report is ordered.

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ART. 173

Appointment of experts

(1) Experts are appointed by prosecutorial order or by court resolution.

#M2

(2) *As a rule, criminal investigation bodies or the court appoint a single expert, except for situations where, due to the complexity of an expert examination, specialist knowledge from distinct disciplines is required, so they appoint two or more experts.*

(3) **** Repealed*

#B

(4) Parties and main trial subjects have the right to request that an expert recommended by them participate in the conducting of an expert examination. In the event that an expert report is ordered by the court, the prosecutor may request that an expert recommended by them participate in the conducting of that expert examination.

(5) Upon request by the expert, an expert, forensic medical institution, specialist institute or laboratory may request, when they deem it necessary, the participation of specialists of other institutions or their endorsement.

(6) A forensic medicine institution, specialist institute or laboratory shall communicate the names of the appointed experts to the judicial bodies having ordered the conducting of such expert examination.

ART. 174

Incompatibility of experts

(1) A person who is in any of the states of incompatibility listed under [Art. 64](#) may not be appointed as an expert and, if they have been appointed, a court

decision may not be based on their conclusions. The reason for incompatibility has to be proven by the party raising it.

(2) A person who had such capacity in the same case may not be appointed as expert again, except for situations where this is recommended by the parties or by the prosecutor.

(3) A person working in the same forensic medical institution, specialist institute or laboratory as the expert appointed by the management of the relevant institution upon request by judicial bodies may not be appointed as expert recommended by the parties in the same case.

(4) [Arts. 66](#) - 68 shall apply accordingly.

ART. 175

Rights and obligations of experts

(1) An expert has the right to refuse performing the expert examination for the same reasons for which witnesses may refuse to testify.

(2) An expert has the right to learn of the materials in the case file necessary for the conducting of an expert examination.

(3) An expert may request clarifications from the judicial bodies having ordered the performance of an expert examination, about specific facts or circumstances of the case that need to be assessed.

(4) An expert may request clarifications from the parties and main trial subjects, based on an approval from and under the terms established by the judicial bodies.

(5) An expert has the right to receive a fee for their work in performing an expert examination, for expenses they would bear or has borne in conducting the expert report. The amount of such fee is established by the judicial bodies, depending on the nature and complexity of the case and on the expenses incurred or to be incurred by the expert. If an expert examination is conducted by a forensic medical institution or a specialist institute or laboratory, the cost of such expert report is established under the terms set by the special law.

(6) An expert may also receive protection measures, under the terms set by [Art. 125](#).

(7) An expert is under an obligation to come before criminal investigation bodies or the court whenever they are called and to prepare their expert report by observing the deadline set in the order of the criminal investigation bodies or in the court resolution. The deadline set in the order of the criminal investigation bodies or in the court resolution may be extended, upon request by the expert, for well-grounded reasons, but such aggregate extension may not be longer than 6 months.

(8) Delays in or unjustified refusal to conduct an expert examination entails the enforcement of judicial fines, as well as the civil liability of the expert or of the institution appointed to conduct it for the damages caused.

ART. 176

Replacement of experts

- (1) An expert may be replaced if they refuse or, without well-grounded reasons, fails to complete an expert report until the set deadline.
- (2) Such replacement is ordered by order of the criminal investigation bodies or by court resolution, after summoning the expert, and shall be communicated to the professional association or corps to which they belongs.
- (3) An expert is also replaced when their statement of abstention or disqualification is sustained or when they are unable to conduct or complete an expert examination objective grounds.
- (4) Under the penalties set by [Art. 283](#) par. (4), a replaced expert has to provide judicial bodies forthwith with all documents or objects entrusted to them and with their observations regarding the activities performed until the moment of their replacement.

ART. 177

Procedure for conducting an expert report

- (1) When ordering the conducting of an expert report, the criminal investigation bodies or the court set a term on which the parties, main trial subjects, and the expert, if appointed, are summoned.
- (2) On the set term, the prosecutor, the parties, the main trial subjects and the expert are informed of the scope of the expert report and of the questions that require answers from the expert, and the court draws their attention to the fact that they have the right to make observations on such questions and that they may request their modification or supplementing. Also, as applicable, the objects that are to be subject to the expert's review are indicated.
- (3) An expert is informed of the fact that they are under an obligation to analyze the objects subject to expert examination, to indicate precisely any observation or finding, and to express an unbiased opinion the facts or circumstances assessed by them, in compliance with the rules of science and the professional expert report.
- (4) Parties and main trial subjects are informed that they have the right to request appointment of an expert recommended by each of them, and to participate in the expert examination.
- (5) Following examination of objections raised and requests submitted by parties, main trial subjects and the expert, the criminal investigation bodies or the court shall draw the expert's attention to the time frame within which the expert examination has to be conducted, and, at the same time, shall inform them that parties or main trial subjects will participate in its conducting.
- (6) When an expert examination is to be performed by a forensic medical institution, a forensic laboratory or by any specialist institute, the provisions of [Art. 173](#) par. (3) are applicable, and the presence of the expert before judicial bodies is not required.

ART. 178

Expert reports

- (1) Following an expert report, the expert's findings, clarifications, assessments and opinion are recorded in a report.
- (2) When there are several experts, a single expert report shall be prepared. Separate opinions shall be justified in the same report.
- (3) An expert report shall be submitted to the judicial bodies that ordered the expert report.
- (4) An expert report shall contain:
 - a) an introductory part, mentioning the judicial bodies that ordered the expert report, the date when its conducting was ordered, the expert's surname and first name, the questions the expert has to answer, the date when the expert examination was performed, materials based on which the expert examination was performed, proof of having informed the parties, whether these participated and offered explanations during the expert examination, and the expert report preparation date;
#M2
 - b) *a descriptive part, describing the operations through which the expert examination was performed, the methods, programs and equipment used;*
#B
 - c) the conclusions, which answer the questions set by the judicial bodies, as well as any other specifications and findings resulted from the expert examination conducted in relation to its objectives.
- (5) If an expert examination was performed in the absence of the parties or main trial subjects, these or their counsels shall be informed of the preparation of the expert report and of their right to consult such report.

ART. 179

Hearing of experts

- (1) During the criminal investigation or the trial, an expert can be heard by criminal investigation body or by the court, upon request by the prosecutor, the parties, the main trial subjects or *ex officio*, if judicial body believes that such hearing is necessary to clarify the expert's findings or conclusions.
- (2) If an expert examination was performed by a forensic medical institution, specialist institute or laboratory, that institution shall appoint an expert from among the persons who participate in the expert examination to be heard by criminal investigation bodies or by the court.
- (3) An expert hearing is conducted according to the provisions regarding the hearing of witnesses.

ART. 180

Supplement to an expert examination

(1) When the criminal investigation body or the court find, upon request or *ex officio*, that an expert report is incomplete, and such flaws cannot be remedied by hearing the expert, these shall order the conducting of an additional expert examination by the same expert. When the appointment of the same expert is not possible, they shall order the conducting of another expert examination by another expert.

(2) When an expert examination was performed by a forensic medical institution or a specialist institute or laboratory, the criminal investigation body or the court shall request that the relevant institution perform an additional expert examination.

ART. 181

Performing a new expert examination

(1) The criminal investigation body or the court shall order the conducting of a new expert examination when the conclusions of an expert report are ambiguous or contradictory or when there are contradictions between the content and the conclusions of an expert report, and such flaws cannot be remedied by hearing the expert.

(2) When the criminal investigation body or the court order the conducting of a new expert examination by a forensic medical institution, such expert examination shall be conducted by a committee, under the law.

#M2

ART. 181¹

Scope of judicial finding and fact finding reports

(1) The criminal investigation body establishes through an order the scope of a judicial finding, the questions to be answered by the specialist and the time frame within which the work is to be completed.

(2) A fact finding report includes a description of the operations performed by the specialist, of the methods, programs and equipment used, and of the finding conclusions.

#B

ART. 182

Clarifications requested from the issuing institution

In cases related to counterfeiting currency and other securities, the criminal investigation body or the court may request clarifications from the issuing institution.

ART. 183

Providing of comparison documents

(1) In cases of document forgery offenses, the criminal investigation body or the court may order the providing of documents for comparison purposes.

- (2) If such documents are in public storage, the lawful authorities are under an obligation to release them.
- (3) If such documents are with an individual, the criminal investigation body or the court shall order them to provide them.
- (4) Documents shall be inserted in a sealed envelope, which is endorsed by the criminal investigation body or by the judicial panel's presiding judge and are signed by the person providing them.
- (5) The criminal investigation body or the court may request a suspect or a defendant to provide a document written by their own hand or to write after dictation.
- (6) If the suspect or defendant refuses to do so, this fact shall be mentioned in the report. A refusal to comply with a request from the criminal investigation body or the court may not be held against the suspect or defendant.

ART. 184

Forensic psychiatric examination

#M2

(1) In case of offenses committed by juveniles aged between 14 and 16, in case of killing or injury of a new-born infant or of a fetus by the mother, as well as when the criminal investigation body or the court have doubts on the judgment of a suspect or defendant at the moment of commission of the offense subject to indictment, these shall order a forensic psychiatric expert examination, by establishing at the same time the term of their appearance for examination.

#B

(2) In a forensic medical institution, an expert examination shall be conducted by a committee created under the law.

#M2

(3) A forensic psychiatric expert examination is conducted after obtaining the written consent of the person to be subjected to examination, expressed in the presence of a selected or court appointed counsel, before judicial bodies, and, in case of underage persons, in the presence of their legal guardian.

#B

(4) If during the criminal investigation a suspect or defendant refuses to be subject to an expert examination or fails to appear for examination before the forensic psychiatric examination committee, the criminal investigation body shall notify the prosecutor or the Judge for Rights and Liberties for the issuance of a bench warrant to bring them before the forensic psychiatric examination committee. [Art. 265](#) par. (4) - (9) shall apply accordingly.

(5) If the forensic psychiatric expert examination committee deems that a more complex examination is necessary, which requires the medical admission of the suspect or defendant in a specialized medical institution, and they refuse such admission, the committee shall notify criminal investigation bodies or the court on the need to take an involuntary admission measure.

(6) If, during the criminal investigation, the prosecutor deems that the request of the forensic psychiatric expert examination committee is well-founded, they may request that the Judge for Rights and Liberties of the court having the competence of jurisdiction to examine the case in first instance or of the court corresponding to its level under whose territorial jurisdiction the admission venue or the premises of the prosecutors' office to which the prosecutor who prepared the request belongs are located, order such involuntary admission for a maximum of 30 days for the conducting of a psychiatric expert examination.

(7) The prosecutor's proposal regarding the ordering involuntary admission has to contain, as applicable, mentions concerning: the act in respect of which the criminal investigation is conducted, the offense's legal classification, the charges, facts and circumstances confirming doubts on the suspect's or defendant's judgment, notification of the psychiatric expert examination committee on the refusal of the suspect or defendant to get admitted, a justification of the need of such admission and its proportionality to the pursued goal. Such proposal, together with the case file, shall be submitted to the Judge for Rights and Liberties.

(8) The Judge for Rights and Liberties shall set a date and time for the settlement of the proposal to order involuntary admission, within maximum 3 days of the notification date, having the obligation to summon the suspect or defendant for the set term. The term shall be communicated to the prosecutor, as well as to the suspect's or defendant's counsel, who is granted, upon request, the right to study the case file and the proposal filed by the prosecutor.

(9) The proposal to order involuntary admission shall be ruled only in the presence of the suspect or defendant, except for situations where they are missing, avoid coming to court or when, due to their health condition or to *force majeure* events or a state of necessity, they are unable to come.

(10) Participation by the prosecutor and the suspect's or defendant's retained or court appointed counsel is mandatory.

(11) In case the order for involuntary admission is returned, the court resolution by the judge has to contain:

- a) the suspect's or defendant's identification data;
- b) a description of the acts for which the suspect or defendant is charged, the offense's legal classification and name;
- c) facts and circumstances generating doubts on the psychological condition of the suspect or defendant;
- d) a justification of the need for such involuntary admission for the conducting of a forensic psychiatric expert examination and its proportionality to the pursued goal;
- e) the time frame of such involuntary admission measure.

(12) After such step is taken, the suspect or defendant is informed forthwith, in a language they understand, of the reasons of such admission, and a report shall be concluded for this purpose.

(13) After ordering such admission, if the suspect or defendant is held in custody, the Judge for Rights and Liberties shall inform the management of the detention facility of the admission measure and shall order the transfer of the arrested person to a psychiatric ward of a hospital penitentiary.

#M2

(14) A court resolution by the Judge for Rights and Liberties can be challenged before the Judge for Rights and Liberties of the hierarchically superior court by the suspect, defendant or by the prosecutor within 24 hours of its return. A challenge filed against a court resolution ordering involuntary admission shall not suspend enforcement.

#B

(15) A challenge filed by a suspect or defendant against a court resolution ordering involuntary admission is ruled on within 3 days of its registration date and does not suspend enforcement.

#M2

(16) To rule on a challenge filed by the prosecutor, the judge of the hierarchically superior court shall order summoning of the suspect or defendant. Participation of the suspect's or defendant's selected or court appointed counsel is mandatory.

#B

(17) For the settlement of a challenge filed by a suspect or defendant, the judge of the hierarchically superior court shall communicate to them and to the prosecutor the date set for the challenge examination, and shall offer them the possibility to submit written observations by that date, except for situations where they believe that the presence of the suspect or defendant, the participation of the prosecutor and the submission of oral conclusions by these are necessary for a just settlement of the challenge.

(18) In case of admission of a challenge filed by a suspect or defendant, the judge of the hierarchically superior court shall order dismissal of the admission proposal, and the immediate discharge, if the case, of the suspect or defendant, if they are not held in custody or arrested, even in another case.

(19) The case file shall be returned to the prosecutor within 24 hours after the challenge was ruled on. If the court resolution of the Judge for Rights and Liberties is not appealed by a challenge, they shall return the case file to the prosecutor within 24 hours as of the expiry of the challenge filing time frame.

(20) During the trial, if a defendant refuses to submit to an expert examination or fails to appear for examination before the forensic psychiatric committee, the court, *ex officio* or upon request by the prosecutor, shall issue a bench warrant against them as under [Art. 265](#).

(21) An involuntary admission may be ordered by the court during the trial upon proposal by the forensic psychiatric committee. The stipulations of par. (6) - (19) shall apply accordingly.

(22) Immediately after taking an involuntary admission order or in case of a subsequent change of the admission facility, the Judge for Rights and Liberties or, as applicable, the presiding judge of the panel having ordered the measure shall inform a member of the suspect's or defendant's family or another person appointed by them, as well as the forensic medical institution conducting the expert examination the admission location, and shall conclude a report for this purpose. The specialist institution is under an obligation to inform the judicial bodies on such change of the admission location.

(23) An order for involuntary admission is enforced by the prosecutor, through law enforcement bodies.

(24) In the event that a suspect or defendant is in detention, the Judge for Rights and Liberties or the court having ordered admission to a specialist institution for the conducting of a forensic psychiatric examination shall inform forthwith the management of the detention or arrest facility on the ordered measure.

(25) An order for medical admission for the conducting of a forensic psychiatric examination may be extended only once, for a term of maximum 30 days. A forensic psychiatric committee shall notify the prosecutor or, as applicable, the court on the need to extend such admission at least 7 days prior to its expiry. Such notification has to contain a description of the performed activities, the reasons why the examination was not completed during admission, and the time frame while the extension is necessary. The stipulations of par. (6) - (24) shall apply accordingly.

(26) If, prior to the expiry of an involuntary admission term, it is found that such measure is no longer necessary, the forensic psychiatric examination committee or the admitted person shall notify immediately the body that ordered the measure, for its revocation. Such notification is ruled on an emergency basis, in chambers, with the participation of the prosecutor, after hearing the selected or court appointed counsel of the admitted person. Such court resolution returned by the Judge for Rights and Liberties or by the court is not subject to any avenue of appeal.

(27) If during the conducting of a forensic psychiatric expert report, it is found that the requirements set by [Art. 247](#) are met, the forensic psychiatric examination committee shall notify the judicial bodies in order for them to take the safety measure of temporary medical admission.

(28) The time frame while a suspect or defendant was admitted to a specialist institution for the conducting of a psychiatric examination shall be deducted from the penalty term, under the terms of [Art. 72](#) of the Criminal Code.

ART. 185

Forensic autopsy

(1) Forensic autopsy is ordered by the criminal investigation body or by the court, in case of violent death or when there is a suspicion of violent death, or when the cause of death is not known, or when there is a reasonable suspicion

that a death was caused directly or indirectly by an offense or in relation to the commission of an offense. If the body of a victim was buried, exhumation is ordered for the examination of the corpse by autopsy.

(2) The prosecutor shall order immediately the conducting of a forensic autopsy if death occurred during a time frame while a person was in the custody of the police, of the National Administration of Penitentiaries, during involuntary medical admission or in case of any death raising suspicions of non-observance of human rights, to the application of torture or of inhumane treatments.

(3) In order to find whether reasons exist for the performance of a forensic autopsy, the criminal investigation body or the court may request the opinion of a forensic doctor.

(4) An autopsy is performed in a forensic medical institution, according to a special law.

(5) In performing a forensic autopsy, specialists of other medical areas may be co-opted, in order to establish the cause of death, upon request by the forensic physician, except for the physician who treated the deceased person.

(6) When performing a forensic autopsy any legal means for establishing the person's identity, including the harvesting of biological samples for establishing the judicial genetic profile, may be used.

(7) The criminal investigation body has to inform a family member on the autopsy date and on the right to appoint an independent authorized expert to witness performance of the autopsy.

(8) The forensic doctor who performed the autopsy shall prepare an expert report, which includes their findings and conclusions regarding:

a) the identity of a deceased person or identification elements, if their identity is not known;

b) type of death;

c) medical cause of the death;

d) existence of traumatic injuries, the mechanism of their causing, nature of the harmful agent and the causal link between the traumatic injuries and the death;

#M2

e) the results of laboratory investigations on the biological samples harvested from the corpse and of suspect substances that were discovered;

#B

f) the biological traces found on the body of the deceased person;

g) the probable date of death;

h) any other elements that can contribute to the clarification of the circumstances under which death occurred.

ART. 186

Exhumation

- (1) Exhumation may be ordered by the prosecutor or by the court in order to establish the type and cause of death, to identify the corpse or to establish any other elements necessary for the case resolution.
- (2) Exhumation takes place in the presence of criminal investigation bodies.
- (3) The provisions of [Art. 185](#) par. (4) - (8) shall apply accordingly.

ART. 187

Forensic autopsy of a fetus or a newly born infant

- (1) The forensic autopsy of a fetus is ordered in order to establish its intra-uterus age, its extra-uterus survival capacity, the type and cause of death, and in order to establish filiation, when the case.
- (2) The forensic autopsy of a new-born infant is ordered in order to establish whether the infant was born alive, their viability, the term of extra-uterus survival, the type and medical cause of death, the date of death, whether medical care was provided to them after birth, and in order to establish filiation, when the case.

[ART. 188](#)

Toxicological examination

#M2

- (1) *In the event that there is a suspicion related to poisoning, the conducting of a toxicological expert examination is ordered.*
- (2) *Products deemed suspect of having caused the poisoning are sent to a forensic medical institution or to another specialist institution.*

#B

- (3) Conclusions of a toxicological expert report include specialist findings related to the type of poisonous substances, their quantity, the way they were administered, as well as the potential consequences of the discovered substance and other elements that would help to find the truth.

[ART. 189](#)

Forensic medical examination of a person

- (1) Forensic medical examination of a person for the identification of traces and consequences of an offense is conducted according to a special law.
- (2) The forensic physician who conducted a forensic medical examination shall prepare a forensic medical report or, as applicable, an expert report.

#M2

- (3) *Traumatic injuries are confirmed, as a rule, by a physical examination. If such physical examination is not possible or necessary, an expert examination is conducted based on the medical documentation made available to the expert.*

#B

- (4) An expert report or a forensic medical report has to contain: a description of traumatic injuries, as well as the opinion of an expert on the nature and

seriousness of injuries, the mechanism and date when they were caused, and the consequences caused by these.

ART. 190

Physical examination

#M2

(1) Physical examination of a person implies an internal and external examination of their body, as well as the harvesting of biological samples. Criminal investigation bodies have to request in advance the written consent of persons who are to be subject to examination. In case of persons lacking mental competence, the consent to physical examination is requested from their legal representative, and in case of those having a limited mental competence, their written consent needs to be expressed in the presence of their legal guardians.

#B

(2) In the absence of a written consent by the person to be examined, of their legal representative or of an approval by the legal guardian, the Judge for Rights and Liberties shall order, through a court resolution, upon justified request by the prosecutor, the physical examination of a person, if such measure is necessary for establishing facts or circumstances that would ensure a proper conducting of the criminal investigation or for determining whether a specific trace or consequence of an offense can be found on or inside their body.

(3) An application by the criminal investigation body has to contain: name of the person whose physical examination is requested, a justification of the fulfillment of the requirements set by par. (2), the way in which such physical examination is to be conducted, and the offense of which the suspect or defendant is accused.

(4) The Judge for Rights and Liberties shall rule upon such application for the conducting of a physical examination in chambers, through a court resolution that is not subject to any avenue of appeal.

#M2

(5) In cases where a person subject to examination gives their consent in writing or in emergency cases, when the obtaining of an authorization from the judge under the terms of par. (4) would lead to significant delays in the investigations, to the loss, alteration or destruction of the evidence, the criminal investigation body may order, through an order, the conducting of a physical examination. The order of the criminal investigation body, as well as the report recording the activities performed on the occasion of a physical examination are forwarded immediately to the Judge for Rights and Liberties. If the judge decides that the terms set by par. (2) were observed, they shall order, through a reasoned court resolution, validation of the physical examination performed by the criminal investigation body. Infringement by criminal investigation bodies of the terms set by par. (2) entails exclusion of the evidence obtained through physical examination.

#B

(6) A physical examination performed by criminal investigation bodies is validated as per par. (4).

#M2

(7) An internal physical examination of a person's body or the harvesting of biological samples has to be performed by a physician, nurse or by a person having a specialized medical background, by observing private life and human dignity. An internal physical examination of an underage person who did not reach the age of 14 may be performed in the presence of either parent, upon request by that parent. Harvesting of biological samples through non-invasive methods for the performance of judicial genetic expert examination may be performed also by specialized personnel of the Romanian Police.

(8) In situations where a person drives a car under the influence of alcohol or other substance, biological samples are harvested based on an order of the bodies ascertaining the offense and with the consent of the person subject to examination, by a physician, nurse or by a person having a specialized medical background, in the shortest time, in a medical institution, under the terms set by special laws.

(9) Activities performed on the occasion of a physical examination are recorded by criminal investigation bodies in a report that has to contain: surname and first name of the criminal investigation body preparing it, the order or court resolution ordering such measure, the place where it was concluded, the date and time when such activity was started and the time when such activity ended, the surname and first name of the person subject to examination, the nature of the physical examination, a description of the performed activities, and a list of the samples harvested following such physical examination.

(10) Results obtained from the analysis of biological samples may be used also in a different criminal case, if they serve to the finding of the truth.

#B

(11) Biological samples that were not consumed on the occasion of the analyses performed shall be preserved and kept in the institution where they were processed, for a time period of at least 10 years after all ordinary avenues of appeal against the court decision were exhausted.

ART. 191

Judicial genetic examination

#M2

(1) A judicial genetic expert examination may be ordered by the criminal investigation body, through an order, during the criminal investigation, or by the court, through a court resolution, during the trial, in respect of biological samples harvested from persons or of any other evidence found or seized.

#B

(2) A judicial genetic expert report is conducted in a forensic medical institution, a specialist institution or laboratory or in any other specialized institution certified and accredited for such type of analyses.

#M2

(3) Biological samples harvested on the occasion of a bodily examination may be used only for the identification of the judicial genetic profile.

(4) A judicial genetic profile obtained under the terms of par. (3) may also be used in a different criminal case, if this serves to the finding of the truth.

#B

(5) Data obtained as a result of a judicial genetic expert report constitutes personal data and is protected under the law.

CHAPTER VIII

Crime scene investigation and reconstruction

#M2

ART. 192

Crime scene investigation

(1) Crime scene investigation is ordered by criminal investigation bodies, and, during the trial, by the court, when a direct fact-finding is necessary in order to establish or clarify factual circumstances of importance for establishing the truth, as well as whenever there are suspicions on a person's death.

#B

(2) The criminal investigation body or the court may prohibit the persons who are at the crime scene or come to that location from communicating among them or with other persons.

ART. 193

Reconstruction

(1) The criminal investigation body or the court, if they deem it necessary for the verification and ascertainment of data or evidence produced or to establish factual circumstances of importance for a case resolution, may proceed to the full or partial reconstruction of the manner and circumstances under which an act was committed.

#M2

(2) Judicial bodies shall proceed to the reconstruction of activities or situations, by considering the circumstances under which an act was committed, based on the produced evidence. In the event that the statements of the witnesses, parties or of main trial subjects regarding the activities or situations that need to be reconstructed are different, reconstruction has to be performed separately for each version of the facts described by these.

(3) When a suspect or defendant is in any of the situations listed under Art. 90, reconstruction shall be performed in their presence, assisted by a defender.

When a suspect or defendant is unable or refuses to participate in a reconstruction, this shall be performed with the participation of another person.

#B

(4) Reconstruction has to be performed in such a way as not to infringe the law or public order, not to impair the public morals and not to jeopardize the life or health of persons.

#M2

ART. 194

Presence of other persons at the crime scene investigation and reconstruction

#B

The criminal investigation body or the court may require the presence of a forensic physician or of any persons whose presence they deem necessary.

#M2

ART. 195

Crime scene investigation report or reconstruction report

(1) *In relation to the conducting of a crime scene investigation or of a reconstruction, a report shall be developed, which has to contain, in addition to the mentions listed under [Art. 199](#), the following:*

#B

- a) the prosecutorial order or the court resolution ordering such measure;
 - b) the surname and first names of the attending persons and the capacity in which they participate;
 - c) the surname and first name of the suspect or defendant, if the case;
 - d) a detailed description of the state of the scene, of the traces found, of the objects subject to examination and of the seized ones, of the position and condition of other physical evidence, so that these are recorded accurately and, to the extent possible, with their relevant sizes. In case of reconstruction, its conducting shall be also recorded in detail.
- (2) In all cases, sketches or drawings may be made or pictures may be taken, or other such works, which shall be attached to the report.
- (3) The performed activities and the expert's findings shall be recorded in a report.
- (4) Such report has to be signed on each page and at the end by the one preparing it and by persons who participated in the investigation or reconstruction. If any of these persons is unable or refuses to sign the report, this fact shall be mentioned, together with the reasons for such inability or refusal to sign.

CHAPTER IX

Taking pictures of and fingerprinting the suspect, defendant or other persons

ART. 196

Taking pictures of and fingerprinting the suspect, defendant or other persons

(1) Criminal investigation bodies may order the taking of pictures and the fingerprinting of the suspect, defendant or other persons who are under suspicion of a connection with a committed offense or that they were present at the crime scene, even in the absence of their consent.

(2) The criminal investigation body may authorize the public disclosure of a picture of a person when such measure is necessary in order to establish the identity of a person or in other cases when the publication of such picture is of importance for the proper conducting of a the criminal investigation.

#M2

(3) If it is necessary to identify fingerprints found on specific objects or persons that can be linked to the act or the location where offense was committed, criminal investigation bodies may order the fingerprinting of persons who are presumed to have been in contact with those objects, and the taking of pictures of persons who are assumed to have connections with the committed offense or to have been present at the crime scene.

#B

CHAPTER X

Physical evidence

ART. 197

Objects as evidence

(1) Objects containing or bearing traces of a committed offense, as well as any other objects that can serve to the finding of the truth are physical evidence.

(2) Physical evidence that was used or intended to serve to the commission of an offense, as well as objects representing proceeds from an offense are *corpus delicti*.

CHAPTER XI

Documents

ART. 198

Documentary evidence

#M2

(1) Documents can serve as evidence if their content indicates facts or circumstances of nature to contribute to the finding of the truth.

(2) A report including personal findings of the criminal investigation body or of the court represents evidence. Minutes prepared by the bodies specified by Art. 61 par. (1) items a) - c) constitute documents notifying the criminal investigation

bodies and do not have the value of specialized findings in criminal proceedings.

#B

ART. 199

Content and format of the report

(1) Such report shall include:

- a) surname and first name and capacity of the person preparing it;
- b) location where it is prepared;
- c) date when the report was concluded;
- d) date and time when the activity recorded in the report started and ended;
- e) surname and first name, personal identification number and address of the persons who were present at the report preparation, with mention of their capacity;
- f) a detailed description of the facts found and of the measures taken;
- g) surname and first name, personal identification number and address of the persons referred to in the report, and their objections and clarifications;
- h) the mentions set forth by law for special cases.

(2) A report has to be signed on each page and at the end by the person preparing it, as well as the persons mentioned under items e) and g). If any of those persons is unable or refuses to sign, this fact shall be mentioned, together with the reasons for such inability or refusal to sign.

ART. 200

Letters rogatory

(1) When a criminal investigation body or a court do not have the possibility to hear witnesses, to conduct a crime scene investigation, to seize objects or to perform any other procedure act, they can address other criminal investigation bodies or court, which have the possibility to conduct or perform these.

(2) The initiation of a criminal action, the taking of preventive measures, the approval of evidence and the ordering of other process acts or measures cannot be the subject to a letter rogatory.

(3) Letters rogatory may be addressed only to a body or a court of an equal level.

(4) A prosecutorial order or a court resolution ordering a letter rogatory has to include all clarifications referring to the fulfillment of the act subject to it and, in the event that a person is to be heard, the questions that person needs to be asked shall be also indicated.

(5) The criminal investigation body or the court engaged in a letter rogatory procedure may also ask other questions, if those appear necessary during the hearing.

(6) When a letter rogatory is ordered by the court, the parties may ask questions before such court, that will be transmitted to the court performing the letter rogatory procedure.

(7) At the same time, each the parties can request to be summoned for the enforcement of the letter rogatory.

(8) When a defendant is under arrest, the court that will enforce the letter rogatory shall order the appointment of an *ex officio* counsel, who shall represent them in the absence of a selected counsel.

ART. 201

Delegation

(1) The criminal investigation body or the court may order, under the terms specified by [Art. 200](#) par. (1) and (2), the conducting of process acts also based on delegation. Such delegation may be granted only to a hierarchically lower body or court.

(2) The provisions regarding the letter rogatory shall apply accordingly also in case of delegation.

TITLE V

Preventive measures and other process measures

CHAPTER I

Preventive measures

SECTION 1

General provisions

ART. 202

Purpose, general application conditions and categories of preventive measures

(1) Preventive measures may be ordered if there is evidence or probable cause leading to a reasonable suspicion that a person committed an offense and if such measures are necessary in order to ensure a proper conducting of criminal proceedings, to prevent the suspect or defendant from avoiding the criminal investigation or trial or to prevent the commission of another offense.

(2) No preventive measure may be ordered, confirmed, extended or maintained if there is a cause preventing the initiation or the exercise of criminal action.

(3) Any preventive measure has to be proportional to the seriousness of the charges brought against the person such measure is taken for, and necessary for the attainment of the purpose sought when ordering it.

(4) Preventive measures are:

- a) taking in custody;
- b) judicial control;

- c) judicial control on bail;
- d) house arrest;
- e) pre-trial arrest.

ART. 203

Judicial bodies of competent jurisdiction and the document ordering preventive measures

(1) The preventive measure specified by Article 202 par. (4) lett. a) can be taken against a suspect or defendant by criminal investigation bodies or by the prosecutor only during the criminal investigation.

#M2

(2) The preventive measures listed under [Art. 202](#) par. (4) items b) and c) can be taken against a defendant by the prosecutor and the Judge for Rights and Liberties, during the criminal investigation, by the Preliminary Chamber Judge, in preliminary chamber procedure, and by the court during the trial.

#B

(3) The preventive measures listed under [Art. 202](#) par. (4) lett. d) and e) can be taken against a defendant by the Judge for Rights and Liberties, during the criminal investigation, by the Preliminary Chamber Judge, in preliminary chamber procedure, and by the court during the trial.

(4) The criminal investigation body and the prosecutor apply preventive measures through a reasoned order.

#M2

(5) During the criminal investigation and preliminary chamber procedure, applications, proposals, complaints and challenges regarding preventive measures are ruled on in chambers, by a reasoned court resolution, which is returned in chambers.

#B

(6) During the trial, the court decides upon preventive measures through a reasoned court resolution.

(7) Court resolutions returned by the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court shall be communicated to the defendant and the prosecutor who were absent upon their reading.

ART. 204

Avenue of appeal against court resolutions ordering preventive measures during the criminal investigation

#M2

(1) Against court resolutions through which the Judge for Rights and Liberties orders preventive measures, the defendant and the prosecutor may file a challenge, within 48 hours of their return or, as applicable, as from their communication. A challenge is filed with the Judge for Rights and Liberties who returned the appealed court resolution and is forwarded, together with the case

file, to the Judge for Rights and Liberties of the hierarchically superior court within 48 hours of its registration.

(2) Challenges against court resolutions through which the Judge for Rights and Liberties of the High Court of Review and Justice orders preventive measures are ruled on by a panel comprising judges of rights and freedoms of the High Court of Review and Justice, and the stipulations of this article shall apply accordingly.

#B

(3) A challenge filed against court resolutions ordering the taking or extension of a preventive measure or ascertaining its expiry by law shall not suspend enforcement.

(4) A challenge filed by a defendant shall be ruled on within 5 days of its registration.

(5) A challenge filed by a prosecutor against a court resolution ordering the denial of a proposal regarding the extension of pre-trial arrest, the revocation of a preventive measure or the replacement of a preventive measure by another preventive measure is ruled on prior to the expiry of the term of the preventive measure ordered previously.

#M2

(6) For the resolution of a challenge, the defendant shall be summoned.

#B

(7) Such challenge is ruled on in the presence of the defendant, except for situations where they are unjustifiably absent, are missing, they avoid coming to court or cannot be brought before the judge because of their health condition or of *force majeure* events or a state of necessity.

(8) In all cases, the providing of legal assistance to the defendant by a retained or court appointed counsel is mandatory.

(9) The prosecutor's attendance is mandatory.

(10) In case a challenge filed by a prosecutor is sustained and of ordering the pre-trial arrest of the defendant, [Art. 226](#) shall apply accordingly. In case a challenge filed by a prosecutor is sustained and an extension of pre-trial arrest of the defendant is ordered, [Art. 236](#) par. (1) and (2) shall apply accordingly.

#M2

(11) If the terms set by the law are met, one of the preventive measures listed under [Art. 202](#) par. (4) lett. b) - d) or an increase of the bail amount may be ordered.

(12) In case a challenge filed by the defendant against a court resolution ordering the taking or extension of a pre-trial arrest is sustained, the court may order, under the terms set by the law, denial of the proposal to take or extend a preventive measure or, as applicable, its replacement by a less harsh preventive measure and, as applicable, the immediate release of the defendant, unless they are arrested in another case.

#B

(13) The case file shall be returned to the prosecutor within 48 hours after the challenge was ruled on.

(14) If the court resolution of the Judge for Rights and Liberties of the first instance court is not appealed by a challenge, they shall return the case file to the prosecutor within 48 hours of expiry of the time frame for filing a challenge.

ART. 205

The avenue of appeal against court resolutions ordering preventive measures in preliminary chamber procedure

(1) Against court resolutions under which the Preliminary Chamber Judge orders preventive measures, the defendant and the prosecutor may file a challenge within 48 hours of its returning or, as applicable, of its communication. Such challenge shall be filed with the Preliminary Chamber Judge who returned the appealed court resolution and shall be forwarded, together with the case file, to the Preliminary Chamber Judge of the hierarchically superior court, within 48 hours of its registration.

#M2

(2) Challenges against court resolutions under which the Preliminary Chamber Judge of the High Court of Review and Justice orders preventive measures in preliminary chamber procedure are ruled on by a different judicial panel of the same court, under the law.

#B

(3) Challenges filed against court resolutions ordering the taking or maintaining of a preventive measure or ascertaining its lawful termination shall not suspend enforcement.

(4) A challenge filed by a defendant is ruled on within 5 days of its registration.

(5) A challenge filed by a prosecutor against a court resolution ordering the revocation of a preventive measure or the replacement of a preventive measure by another preventive measure is ruled on prior to the expiry of the preventive measure ordered previously.

#M2

(6) For the resolution of a challenge, the defendant shall be summoned.

#B

(7) Such challenge is ruled on in the presence of the defendant, except for situations where they are unjustifiably absent, are missing, the avoid coming to court or cannot be brought before the judge because of their health condition or *force majeure* events or a state of necessity.

(8) In all cases, the providing of legal assistance to the defendant by a retained or court appointed counsel is mandatory.

(9) The prosecutor's attendance is mandatory.

#M2

(10) If the terms set by law are met, together with the challenge resolution, one of the preventive measures listed under [Art. 202](#) par. (4) lett. b) - d) or an increase of the bail amount may be ordered.

#B

ART. 206

Avenue of appeal against court resolutions ordering preventive measures during the trial

#M4

(1) Against court resolutions through which the court orders preventive measures, in first instance, the defendant and the prosecutor may file a challenge, within 48 hours of their return or, as applicable, of their communication. A challenge shall be filed with the court having rendered the appealed court resolution and shall be forwarded, together with the case file, to the hierarchically superior court within 48 hours of its registration.

(2) Court resolutions through which the High Court of Review and Justice orders preventive measures in first instance may be challenged before the judicial panel of competent jurisdiction of the High Court of Review and Justice.

#B

(3) Challenges are ruled on in public session, with participation of the prosecutor and by summoning the defendant.

(4) Challenges filed against court resolutions ordering the taking or maintaining of a preventive measure or ascertaining its lawful termination shall not suspend enforcement.

(5) A challenge filed by a defendant is ruled on within 5 days of its registration.

(6) A challenge filed by a prosecutor against a court resolution ordering the revocation of a preventive measure or the replacement of a preventive measure by another preventive measure is ruled on prior to the expiry of the preventive measure ordered previously.

#M2

(7) If the terms set by the law are met, the court may order the taking of one of the preventive measures listed under [Art. 202](#) par. (4) items b) - d) or an increase of the bail amount.

#B

ART. 207

Examination of preventive measures in preliminary chamber procedure

(1) When a prosecutor decides to prosecute a defendant against whom a preventive measure was ordered, the indictment, together with the case file, shall be forwarded to the Preliminary Chamber Judge of the court of competent jurisdiction, at least 5 days prior to the expiry of its term.

(2) Within 3 days of the case file registration, the Preliminary Chamber Judge shall establish *ex officio* the lawfulness and solidity of such preventive measure, prior to the expiry of its term, and summon the defendant.

(3) The provisions of [Art. 235](#) par. (4) - (6) shall apply accordingly.

(4) When they find that the grounds having determined the taking of a preventive measure are still in place or that new grounds exist that justify a preventive measure, the Preliminary Chamber Judge shall order, through a court resolution, the maintaining of such preventive measure against the defendant.

(5) When they find that the grounds having determined the taking or extension of a pre-trial arrest measure have ceased and there are no new grounds justifying it, or in the event of occurrence of new circumstances, which confirm the unlawfulness of such preventive measure, the Preliminary Chamber Judge shall order, through a court resolution, its revocation and the release of the defendant, unless they are arrested in another case.

(6) All along preliminary chamber procedure, the Preliminary Chamber Judge, *ex officio*, shall check regularly, but no later than 30 days, whether the grounds having caused the taking of a pre-trial arrest measure and of a house arrest measure subsist. The stipulations of par. (2) - (5) shall apply accordingly.

ART. 208

Examination of preventive measures during the trial

(1) The Preliminary Chamber Judge shall forward the case file to the court at least 5 days prior to the expiry of a preventive measure.

(2) The court shall establish *ex officio* if the grounds having determined the taking, extension or maintaining of a preventive measure subsist, prior to the expiry of its term, and summon the defendant.

(3) The provisions of [Art. 207](#) par. (3) - (5) shall apply accordingly.

(4) Throughout the trial, the court, *ex officio*, through a court resolution, shall check regularly, but no later than 60 days, whether the grounds that caused the maintaining of a pre-trial arrest measure and of a house arrest measure ordered against the defendant are still in place.

SECTION 2

Taking in custody

ART. 209

Taking in custody

(1) The criminal investigation body or the prosecutor may order the taking in custody, if the requirements set by [Art. 202](#) are met.

(2) A person taken in custody shall be informed forthwith, in a language they understand, of the offense they are under suspicion of having committed and of the reasons for being taken in custody.

(3) Taking in custody may be ordered for a maximum of 24 hours. The time strictly necessary to take the suspect or defendant to the premises of the judicial bodies, under the law, shall not be included in the term of the taking in custody.

#M2

(4) *If a suspect or defendant was brought before the criminal investigation body or the prosecutor in order to be heard, based on a legally issued bench warrant, the time period while the suspect or defendant was subject to that warrant shall not be included in the term set by par. (3).*

#B

(5) Taking in custody may be ordered only after hearing the suspect or defendant, in the presence of a retained or court appointed counsel.

(6) Prior to hearing, the criminal investigation body or the prosecutor are under an obligation to inform the suspect or defendant that they have the right to be assisted by a retained or court appointed counsel and the right not to make any statement, except for providing information referring to their identity, by drawing their attention that anything they declare can be used against them.

(7) A suspect or defendant taken in custody has the right to inform their retained personal counsel or to request criminal investigation bodies or the prosecutor to inform such counsel. The way in which the counsel is informed shall be recorded in a report. A person taken in custody may be denied their right to inform their counsel personally only for well-grounded reasons, which shall be recorded in a report.

(8) A retained counsel is under an obligation to come to the premises of the judicial body within a maximum of two hours after having been informed. In case the retained counsel fails to arrive, the criminal investigation body or the prosecutor shall appoint a counsel *ex officio*.

(9) A suspect's or defendant's counsel has the right to communicate directly with the former, in conditions ensuring confidentiality.

(10) Taking in custody is ordered by the criminal investigation body or by the prosecutor through an order, which shall include the reasons having caused the taking of such measure, the day and time when custody starts, as well as the day and time when custody ends.

(11) A suspect or defendant taken in custody shall be handed a copy of the prosecutorial order specified by par. (10).

(12) During the taking in custody of a suspect or defendant, the criminal investigation body or the prosecutor having ordered the measure have the right to proceed to taking pictures of them and to fingerprinting them.

(13) If taking in custody was ordered by the criminal investigation body, they are under an obligation to inform the prosecutor, forthwith and by any means, on having taken such preventive measure.

(14) Against an order of the prosecutor or of the criminal investigation body ordering the taking in custody, a suspect or defendant may file a complaint with the prosecutor supervising the criminal investigation, prior to the expiry of its

term. The prosecutor shall decide immediately, through an order. In the event that they find that the legal provisions regulating the requirements for ordering a taking in custody measure were violated, the prosecutor shall order its revocation and the immediate release of the person taken in custody.

(15) Against a prosecutorial order deciding the taking of a suspect or defendant in custody, a complaint may be filed, prior to the expiry of its term, with the chief prosecutor of the prosecutors' office or, as applicable, with the hierarchically superior prosecutor. The chief prosecutor or the hierarchically superior prosecutor shall decide immediately, through an order. In the event that they finds that the legal provisions regulating the requirements for ordering a taking in custody measure were infringed, the chief prosecutor or the hierarchically superior prosecutor shall order its revocation and the immediate release of the defendant.

(16) The prosecutor shall apply to the Judge for Rights and Liberties of the court of competent jurisdiction for an order to put the defendant on pre-trial arrest, after they were taken in custody, at least 6 hours prior to the expiry of the term of their custody.

#M2

(17) A person taken in custody shall be informed, under signature, in writing, of the rights under [Art. 83](#) and by [Art. 210](#) par. (1) and (2), their right to access emergency medical assistance, the maximum term for which such custody may be ordered, as well as their right to file complaint against the ordered measure. If the person taken in custody is unable or refuses to sign, a report shall be prepared.

#B

ART. 210

Announcement of taking in custody

(1) Immediately after being taken in custody, a person has the right to inform personally or to request judicial bodies having ordered the measure to announce a member of their family, or another person appointed by them, of their being taken in custody and of the location of their custody.

#M2

(2) If a person taken in custody is not a Romanian citizen, they also have the right to inform or to request the informing of the diplomatic mission or consular office of the state they are a citizen of, or, as applicable, a humanitarian international organization, if they do not want to receive assistance from the authorities of their country of origin, or the representative office of the competent international organization, if they are a refugee or, for any other reason, are under the protection of such organization. The General Immigrations Inspectorate shall be informed in all situations of the ordering of preventive measures against this category of persons.

#B

(3) The stipulations of par. (1) and (2) shall apply accordingly also in case of a subsequent change of a location for custody.

#M2

(4) *** *Repealed*

#B

(5) A person taken in custody may be denied their right to make such information personally only for well-grounded reasons, which shall be recorded in a report.

#M2

(6) *Exceptionally, for well-grounded reasons, such information may be delayed for maximum 4 hours.*

#B

SECTION 3

Judicial control

ART. 211

General conditions

(1) During the criminal investigation, a prosecutor may order the taking of a judicial control measure against a defendant, if such preventive measure is necessary for the attainment of the purpose set by [Art. 202](#) par. (1).

(2) The Preliminary Chamber Judge, in preliminary chamber procedure, or the court, during the trial, may order a judicial control measure against a defendant, if the requirements under par. (1) are met.

#M2

ART. 212

Judicial control measure ordered by the prosecutor

(1) *A prosecutor can order the summons of a defendant who is not in custody or the bringing in of a defendant held in custody.*

(2) *The attending defendant shall be informed forthwith, in a language they understand, of the offense of which they are under suspicion of, and of the reasons for taking a judicial control measure.*

(3) *A judicial control measure may be ordered only after hearing the defendant, in the presence of a retained or court appointed counsel. [Art. 209](#) par. (6) - (9) shall apply accordingly.*

(4) *A prosecutor can order a judicial control measure through a reasoned order, which shall be communicated to the defendant.*

#M2

ART. 213

Avenue of appeal against a judicial control measure ordered by the prosecutor

- (1) A prosecutorial order through which a judicial control measure was taken can be challenged by a defendant through complaint with the Judge for Rights and Liberties of the court that would have the competence of jurisdiction to rule on the case in first instance within 48 hours of its communication.*
- (2) The Judge for Rights and Liberties seized as per par. (1) shall set a term for its resolution in chambers and shall order summoning of the defendant.*
- (3) Failure by the defendant to appear shall not prevent the Judge for Rights and Liberties from ruling on the measure taken by the prosecutor.*
- (4) The Judge for Rights and Liberties shall hear the defendant when the latter is present.*
- (5) Providing of legal assistance to the defendant and the prosecutor participation are mandatory.*
- (6) The Judge for Rights and Liberties may revoke such measure, if the legal provisions regulating the requirements for taking it were violated.*
- (7) The case file shall be returned to the prosecutor within 48 hours after the court resolution is returned.*

#B

ART. 214

Judicial control measure ordered by the Preliminary Chamber Judge or by the court

- (1) The Preliminary Chamber Judge or the court with which the case is pending may order, through a court resolution, the taking of a judicial control measure against a defendant, based on a reasoned application from the prosecutor or *ex officio*.**
- (2) The Preliminary Chamber Judge or the court notified as per par. (1) shall order summoning of the defendant. Hearing of the defendant is mandatory if they come to court on the set term.**
- (3) Presence of the defendant's counsel and participation of the prosecutor are mandatory.**

ART. 215

Content of judicial control

- (1) While under judicial control, a defendant shall comply with the following obligations:**
 - a) to appear before the criminal investigation body, the Preliminary Chamber Judge or the court any time they are called;**
 - b) to inform forthwith the judicial bodies having ordered the measure or with which their case is pending on any change of domicile;**
 - c) to appear before the law enforcement body appointed to supervise them by the judicial bodies having ordered the measure, according to the supervision schedule prepared by the law enforcement body or whenever they are called.**

(2) Judicial bodies having ordered the measure may require that the defendant, during the judicial control, comply with one or more of the following obligations:

- a) not to exceed a specific territorial boundary, set by the judicial bodies, without their prior approval;
- b) not to travel to places set specifically by the judicial bodies or to travel only to places set by these;
- c) to permanently wear an electronic surveillance system;

#M2

d) not to return to their family's dwelling, not to get close to the victim or the members of their family, to other participants in the committed offense, witnesses or experts or to other persons specified by the judicial bodies and not to communicate with these in any way, be it directly or indirectly;

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- e) not to practice a profession, craft or activity during the practice or performance of which they committed the act;
- f) to periodically provide information their living means;
- g) to subject themselves to medical examination, care or treatment, in particular for the purpose of detoxification;
- h) not to take part in sports or cultural events or to other public gatherings;
- i) not to drive specific vehicles established by the judicial bodies;
- j) not to hold, use or carry weapons;
- k) not to issue cheques.

(3) A document ordering a judicial control measure specifies explicitly the obligations that have to be observed by a defendant during the term of such measure, and they are warned that, in case of breaching in ill-faith the obligations resting upon them, a judicial control measure can be replaced by a house arrest measure or a pre-trial arrest measure.

(4) The observance by the defendant of the obligations resting upon them during a judicial control is supervised by the institution, body or authority appointed by the judicial bodies having ordered the measure, under the law.

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(5) If, as part of the obligations set under par. (2) lett. a), a prohibition to leave the country or a specific locality was imposed on a defendant, a copy of the prosecutorial order or, as applicable, of the court resolution shall be communicated, on the day of issuance of such prosecutorial order or of rendering of such court resolution, to the defendant, to the police unit within whose territorial jurisdiction they lives, and to that within whose territorial jurisdiction they have a prohibition to be, to the public community service of personal records, to the Romanian Border Police and to the General Immigrations Inspectorate, in case of persons who are not Romanian citizens, in order for them to ensure observance by the defendant of the obligation resting

upon them. Authorized bodies shall order their being put on the border watchlist.

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(6) The institution, body or authority set under par. (4) periodically checks the observance of obligations by the defendant, and if it finds violations shall immediately notify the prosecutor, during the criminal investigation, the Preliminary Chamber Judge, in preliminary chamber procedure, or the court, during the trial.

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(7) If, during the term of a judicial control measure, a defendant breaches in ill-faith their obligations or there is a reasonable suspicion that they intentionally committed a new offense in respect of which initiation of a criminal action against them was ordered, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court, upon request by the prosecutor or ex officio, may order the replacement of this measure by a house arrest measure or a pre-trial arrest measure, under the terms set by the law.

(8) During the criminal investigation, the prosecutor having taken the measure may order, ex officio or upon justified request by the defendant, through an order, the imposition of new obligations for the defendant or the replacement or termination of those ordered initially, if well-grounded reasons justifying this occur, after hearing the defendant.

(9) The stipulations of par. (8) shall apply accordingly in preliminary chamber procedure or during the trial, when the Preliminary Chamber Judge or the court decide, through a court resolution, upon justified request by the prosecutor or the defendant or ex officio, after hearing the defendant.

*(10) *** Repealed*

*(11) *** Repealed*

*(12) *** Repealed*

*(13) *** Repealed*

*(14) *** Repealed*

*(15) *** Repealed*

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SECTION 4

Judicial control on bail

ART. 216

General conditions

(1) During the criminal investigation, a prosecutor may order judicial control on bail against a defendant, if the requirements set by [Art. 223](#) par. (1) and (2) are met, if the taking of such measure is sufficient for the attainment of the purpose set by [Art. 202](#) par. (1), and if the defendant deposits a bail the value of which is established by the judicial bodies.

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(2) The Preliminary Chamber Judge, in preliminary chamber procedure, or the court, during the trial, may order judicial control on bail against a defendant if the requirements under par. (1) are met.

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(3) The stipulations of [Arts. 212](#) - 215 shall apply accordingly.

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ART. 217

Content of a bail

(1) Bail shall be posted in the defendant's name, by depositing a set amount of money with the judicial bodies or by posting a property bond, in securities or real estate, within the limits of the set money amount, in favor of the same judicial bodies.

(2) The value of a bail is of at least RON 1,000 and is determined based on the seriousness of the accusation brought against the defendant, their material situation and their legal obligations.

(3) During such measure, a defendant must comply with the obligations listed under [Art. 215](#) par. (1), and may be required to comply with one or more of the obligations listed under [Art. 215](#) par. (2). [Art. 215](#) par. (3) - (9) shall apply accordingly.

(4) Bail guarantees the participation by the defendant in criminal proceedings and their compliance with the obligations set under par. (3).

(5) The court shall order, by a court decision, confiscation of bail if a judicial control on bail was replaced by a house arrest or pre-trial arrest measure for the reasons listed under par.(9).

(6) In other cases, the court shall order restitution of the bail, through a court decision.

(7) The stipulations of par. (5) and (6) shall apply to the extent that payment from the bail money has not been ordered to cover, in the following order, monetary indemnifications granted for the remedy of damages caused by the offense, of court fees or the fine.

(8) In case of a decision to drop charges the prosecutor shall also order restitution of the bail.

(9) In the event that, during a measure of judicial control on bail, a defendant violates in ill-faith the obligations resting upon them, or there is a reasonable suspicion that they committed a new offense with direct intent in respect of which initiation of a criminal action against them was ordered, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court, upon justified application by the prosecutor or ex officio, may order replacement of this measure by a house arrest or a pre-trial arrest measure, under the law.

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SECTION 5
House arrest

ART. 218

General requirements for ordering house arrest

(1) House arrest is ordered by the Judge for Rights and Liberties, by the Preliminary Chamber Judge or by the court, if the requirements set by [Art. 223](#) are met and if such measure is necessary and sufficient for the attainment of one of the purposes set by [Art. 202](#) par. (1).

(2) The fulfillment of the terms set under par. (1) is assessed by considering the threat level posed by the offense, the purpose of such measure, the health condition, age, family status and other circumstances related to the person against whom such measure is taken.

(3) Such measure may not be ordered against a defendant in whose respect there is a reasonable suspicion that he committed an offense against a family member and in relation to which the defendant previously received a final conviction for an escape offense.

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(4) A person against whom a house arrest measure was ordered shall be informed, under signature, in writing, of their rights set by [Art. 83](#), the right set by [Art. 210](#) par. (1) and (2), the right to access emergency medical assistance, the right to challenge such measure, and the right to request revocation or replacement of this measure by another preventive measure. If the person is unable or refuses to sign, a report of this shall be prepared.

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ART. 219

Order for house arrest by the Judge for Rights and Liberties

(1) The Judge for Rights and Liberties of the court that would have the competence of jurisdiction to rule in the case in first instance or of the court of the same level within the territorial jurisdiction of which the location where the committed offense was ascertained or the premises of the prosecutors' office with which the prosecutor conducting or supervising the criminal investigation belongs is located may order a defendant placed under house arrest, based on a reasoned proposal from the prosecutor.

(2) The prosecutor shall submit the proposal set by par. (1), together with the case file, to the Judge for Rights and Liberties.

(3) The Judge for Rights and Liberties, notified as per par. (1), shall set a term for resolution in chambers, within 24 hours of the proposal registration, and shall order summoning of the defendant.

(4) Failure by the defendant to appear shall not prevent the Judge for Rights and Liberties from ruling on the proposal advanced by the prosecutor.

- (5) The Judge for Rights and Liberties shall hear the defendant, when the latter is present.
- (6) The providing of legal assistance to the defendant and the prosecutor's attendance are mandatory.
- (7) The Judge for Rights and Liberties sustains or denies an application by the prosecutor through a reasoned court resolution.
- (8) The case file is returned to criminal investigation bodies within 24 hours of the expiry of the term for filing a challenge.
- (9) The Judge for Rights and Liberties rejecting a proposal for the pre-trial arrest of a defendant may order, in the same court resolution, the taking of one of the preventive measures listed under [Art. 202](#) par. (4) items b) and c), if the requirements set by law are met.

ART. 220

Order for house arrest by the Preliminary Chamber Judge or the court

(1) The Preliminary Chamber Judge or the court with which the case is pending may order, through a court resolution, a defendant put under house arrest, upon justified application by the prosecutor or *ex officio*.

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(2) The Preliminary Chamber Judge or the court, notified as per par. (1), shall order summoning of the defendant. Hearing of the defendant is mandatory if they appear on the set hearing term.

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(3) The providing of legal assistance to the defendant and the prosecutor attendance are mandatory.

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(4) [Art. 219](#) par. (4), (7) and (9) shall apply accordingly.

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ART. 221

Content of a house arrest measure

(1) A house arrest measure consist of an obligation imposed on a defendant, for a determined time period, not to leave the building where they live, without permission from the judicial bodies having ordered such measure or with which the case is pending, and to observe certain restrictions imposed by those.

(2) During house arrest, a defendant has the following obligations:

a) to appear before criminal investigation bodies, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court whenever they are called;

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b) not to communicate with the victim or with members of their family, with other participants in the commission of the offense, with witnesses or experts, as well as with other persons established by the judicial bodies.

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(3) The Judge for Rights and Liberties, the Preliminary Chamber Judge or the court may order that, during house arrest, a defendant permanently wear an electronic surveillance system.

(4) The court resolution ordering such measure specifies explicitly the obligations that have to be observed by a defendant, and their attention is drawn to the fact that, in case of violation in ill-faith of the measure or of the obligations resting upon them, such house arrest measure may be replaced by a pre-trial arrest measure.

(5) During such measure, a defendant may leave the building specified at par. (1) for the purpose of appearing before judicial bodies, at their call.

(6) Based on a written and justified request from the defendant, the Judge for Rights and Liberties or the Preliminary Chamber Judge or the Court, through a court resolution, may allow them to leave the building in order for them to go to their working place, to education or professional training courses or to other similar activities or for the purpose of procuring their essential living means, as well as in other well-grounded situations, for a limited time period, if this is necessary for the exercise of certain legitimate rights or interests of the defendant.

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(7) In emergency cases, for well-grounded reasons, a defendant may leave the building without the permission of the Judge for Rights and Liberties, the Preliminary Chamber Judge or of the court, during a strictly necessary time period, by informing immediately on this the institution, body or authority appointed in charge of their supervision and the judicial bodies having taken the house arrest measure or with which the case is pending.

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(8) A copy of the court resolution by the Judge for Rights and Liberties, the Preliminary Chamber Judge or of the Court ordering a house arrest measure shall be communicated forthwith to the defendant and to the institution, body or authority appointed in charge of their supervision, to the law enforcement body within the territorial jurisdiction of which they lives, to the public vital statistics service, and to border authorities.

(9) The institution, body or authority appointed in charge of a defendant supervision by the judicial bodies having ordered house arrest regularly checks observance of the measure and of their obligations by the defendant, and if it finds breaches of these, shall immediately notify the prosecutor, during the criminal investigation, the Preliminary Chamber Judge, in preliminary chamber procedure, or the court, during the trial.

(10) For the supervision of compliance with a house arrest measure or with the obligations imposed on a defendant during its term, law enforcement bodies may enter the building where the measure is executed, without the permission of the defendant or of the persons living together with them.

(11) In the event that a defendant breaches in ill-faith a house arrest measure or the obligations resting upon them, or there is a reasonable suspicion that they committed a new offense with direct intent in respect of which a criminal action was initiated against them, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the Court, upon justified request by the prosecutor or *ex officio*, may order the replacement of house arrest by pre-trial arrest, under the terms set by the law.

ART. 222

Duration of house arrest

(1) During the criminal investigation, house arrest may be ordered for a duration of maximum 30 days.

(2) During the criminal investigation, house arrest may be extended only in case of need, if the reasons having determined the taking of such measure continue to exist or if new reasons have occurred; however, each such extension may not exceed 30 days.

(3) In the situation set by par. (2), the extension of a house arrest term can be ordered by the Judge for Rights and Liberties of the court that would have the competence of jurisdiction to decide upon the case in first instance or of the court of the same level within the territorial jurisdiction of which the location where the committed offense or the premises of the prosecutors' office with which the prosecutor conducting or supervising the criminal investigation works are located.

(4) The prosecutor can apply that the Judge for Rights and Liberties extend the measure, through a justified proposal, accompanied by the case file, at least 5 days prior to the expiry of its term.

(5) The Judge for Rights and Liberties, notified as per par. (4), shall set a term for ruling on the prosecutor's proposal, in chambers, prior to the expiry of the house arrest term, and shall order summoning of the defendant.

(6) The prosecutor's attendance is mandatory.

(7) The Judge for Rights and Liberties sustains or denies a prosecutor's proposal through a reasoned court resolution.

(8) The case file is returned to the criminal investigation body, within 24 hours of expiry of the term for filing challenges.

(9) During the criminal investigation, the maximum duration of house arrest is 180 days.

(10) The term for deprivation of freedom established through a house arrest measure is not considered in calculating the maximum duration of the defendant pre-trial arrest measure during the criminal investigation.

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(11) Art. 219 par. (4) - (6) shall apply accordingly.

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SECTION 6

Pre-trial arrest

ART. 223

Requirements and cases where pre-trial arrest is applicable

(1) Pre-trial arrest may be ordered by the Judge for Rights and Liberties, during the criminal investigation, by the Preliminary Chamber Judge, in preliminary chamber procedure, or by the Court with which the case is pending, during the trial, only if evidence generate a reasonable suspicion that the defendant committed an offense and if one of the following situations exists:

- a) the defendant has run away or went into hiding in order to avoid the criminal investigation or trial, or has made preparations of any nature whatsoever for such acts;
- b) a defendant tries to influence another participant in the commission of the offense, or a witnesses or an expert to destroy, alter or hide or to steal physical evidence or to determine a different person to adopt such behavior;
- c) a defendant exerts pressures on the victim or tries to reach a fraudulent agreement with them;
- d) there is reasonable suspicion that, after the initiation of the criminal action against them, the defendant committed a new offense with intent or is preparing to commit new offense.

(2) Pre-trial arrest of the defendant can also be ordered if the evidence generate reasonable suspicion that they committed a offense with direct intent against life, an offense having caused bodily harm or death of a person, an offense against national security as under the Criminal Code and other special laws, an offense of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism, money laundering, counterfeiting of currency or other securities, blackmail, rape, deprivation of freedom, tax evasion, assault of an official, judicial assault, corruption, an offense committed through electronic communication means or another offense for which the law requires a penalty of no less than 5 years of imprisonment and, based on an assessment of the seriousness of facts, of the manner and circumstances under which it was committed, or the entourage and the environment from where the defendant comes, of their criminal history and other circumstances regarding their person, it is decided that their deprivation of freedom is necessary in order to eliminate a threat to public order.

ART. 224

Application for pre-trial arrest of a defendant during the criminal investigation

(1) A prosecutor, if they believe that the requirements set by law are met, shall prepare a justified application for the taking of a pre-trial arrest measure against a defendant, by indicating the legal basis for it.

(2) The application specified by par. (1), together with the case file, shall be submitted to the Judge for Rights and Liberties of the court that would have the competence of jurisdiction to rule on the case in first instance or of the court of the same level within the territorial jurisdiction of which the venue where the defendant is held in custody, the venue where the committed offense was ascertained or the premises of the prosecutors' office to which the prosecutor having prepared the proposal works are located.

ART. 225

Disposition of pre-trial arrest applications during the criminal investigation

(1) The Judge for Rights and Liberties notified as per [Art. 224](#) par. (2) shall set a term for ruling on a pre-trial arrest application, by setting a date and time when they shall rule.

(2) In case of a defendant held in custody, the term for the resolution of a pre-trial arrest application has to be set prior to the expiry of the custody term. The date and time shall be communicated to the prosecutor, who is under an obligation to ensure the presence of the defendant before the Judge for Rights and Liberties. Also, the date and time are communicated to the defendant's counsel, who, upon request, shall be provided with the case file for consultation.

(3) A defendant who is not in custody shall be summoned for the set term. Such term is brought to the knowledge of the prosecutor and of the defendant's counsel and the latter shall be provided, upon request, with a possibility to study the case file.

(4) A pre-trial arrest proposal shall be ruled only in the presence of the defendant, except for situations where they are unjustifiably absent, are missing, are avoiding coming to court or cannot be brought before the judge due to their health condition or to *force majeure* events or a state of necessity.

(5) In all cases, the providing of legal assistance to the defendant by a retained or court appointed counsel is mandatory.

(6) The prosecutor's attendance is mandatory.

(7) The Judge for Rights and Liberties hears the attending defendant on the act of which they are accused and on the grounds on which the pre-trial arrest proposal filed by the prosecutor is based.

(8) Prior to proceeding to the hearing of the defendant, the Judge for Rights and Liberties shall inform them of the offense of which they are accused and of their right not to make any statements, by drawing their attention to the fact that anything they declare can be used against them.

ART. 226

Sustaining a pre-trial arrest application during the criminal investigation

(1) The Judge for Rights and Liberties, if they decide that the requirements set by law are met, shall sustain the prosecutor's application and shall order the pre-trial arrest of a defendant through a reasoned court resolution.

(2) A defendant's pre-trial arrest may be ordered for a maximum of 30 days. The duration of custody shall not be deducted from the term of the pre-trial arrest.

(3) After such measure is ordered, the defendant shall be informed forthwith, in a language they understand, of the reasons why pre-trial arrest was ordered.

ART. 227

Denial of a pre-trial arrest application during the criminal investigation

(1) The Judge for Rights and Liberties, if they decide that the requirements set by law for the pre-trial arrest of a defendant are not met, shall deny the prosecutor's application, through a reasoned court resolution, and order the release of the defendant held in custody.

(2) If the requirements set by law are met, the Judge for Rights and Liberties may order one of the preventive measures listed under [Art. 202](#) par. (4) items b) - d).

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(3) [Art. 215](#) par. (9) shall apply accordingly.

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ART. 228

Announcement of pre-trial arrest and of the location where a defendant is held under pre-trial arrest

(1) After such measure is ordered, the defendant shall be informed forthwith, in a language they understand, of the reasons why pre-trial arrest was ordered.

(2) A person against whom a pre-trial arrest measure was ordered shall be informed, under signature, in writing, of their rights listed under [Art. 83](#), the right set by [Art. 210](#) par. (1) and (2), as well as the right to access emergency medical assistance, the right to challenge the measure and the right to request revocation or replacement of arrest with another preventive measure; if the defendant is unable or refuses to sign, a report shall be prepared on this.

(3) Immediately after ordering a pre-trial arrest measure, the Judge for Rights and Liberties of the first instance court or of the hierarchically superior court having ordered such measure, shall inform of this a defendant's family member or another person appointed by them. [Art. 210](#) par. (2) shall apply accordingly. Such information shall be recorded in a report.

(4) Immediately after the defendant is placed in a detention facility, they have the right to inform personally or to ask the management of the relevant facility to inform the persons listed under par. (3) about the location where they are detained.

(5) The stipulations of par. (4) shall apply accordingly also in case of a subsequent change of the detention place, immediately after such change.

(6) The management of the detention facility is under an obligation to bring to the knowledge of a defendant under pre-trial arrest The stipulations of par. (2)

- (5), as well as to record in a report the manner in which they were informed of these.

(7) A defendant under pre-trial arrest may be denied the use of their right to inform personally only for well-grounded reasons, which are recorded in a report prepared as par. (6).

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ART. 229

Taking protection measures in case of pre-trial arrest during the criminal investigation

(1) When pre-trial arrest was ordered against a defendant having an underage person under their protection, a person subject to a prohibition, a person subject to guardianship or trusteeship or a person who, due to their age, illness or other cause needs help, the relevant authority shall be informed forthwith, in order for it to take legal measures for the protection of that person.

(2) The obligation to inform rests with the Judge for Rights and Liberties of the first instance court or of the hierarchically superior court who ordered such pre-trial arrest measure, and the manner in which such obligation was fulfilled shall be recorded in a report to this effect

ART. 230

Pre-trial arrest warrant

(1) Based on the court resolution ordering pre-trial arrest of a defendant, the Judge for Rights and Liberties of the first instance court or, as applicable, of the hierarchically superior court shall issue forthwith a pre-trial arrest warrant.

(2) If the same court resolution ordered the pre-trial arrest of several defendants, one warrant shall be issued for each of them.

(3) A pre-trial arrest warrant shall indicate:

a) the court with which the Judge for Rights and Liberties having ordered the pre-trial arrest measure works;

b) the warrant issuance date;

c) the surname and first name and the capacity of the Judge for Rights and Liberties having issued the warrant;

d) the defendant's identification data;

e) the term for which the pre-trial arrest of the defendant was ordered, by mentioning the date when it expires;

f) the charges against the defendant, by indicating the date and place of their commission, their legal classification, the offenses and the penalty set by law;

g) the actual grounds having caused pre-trial arrest;

h) the order to arrest the defendant;

i) the location where the defendant placed in pre-trial arrest will be detained;

j) the signature of the Judge for Rights and Liberties;

k) the signature of the present defendant. In the event that they refuses to sign, this shall be mentioned in the warrant.

(4) When an arrest warrant was issued after hearing the defendant, the judge having issued the warrant shall hand a copy of the warrant to the arrested person and to the law enforcement body.

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(4¹) An arrest warrant may be transmitted to law enforcement bodies also via fax, electronic mail or through any other means able to generate a written document in conditions that would allow the recipient authorities to establish its authenticity.

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(5) If an victim requests to be informed of the release in any way of the arrested person, the judge who issued the warrant shall mention this in a report, which shall be delivered by them to the law enforcement body.

(6) The law enforcement body shall hand over the original copy of the pre-trial arrest warrant and the report set by par. (5) to the management of the detention facility.

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ART. 231

Enforcement of a pre-trial arrest warrant issued in the absence of the defendant

(1) When a pre-trial arrest was ordered in the absence of the defendant, two original copies of the issued warrant shall be transmitted to the law enforcement body having jurisdiction at the domicile or residence of the defendant for enforcement purposes. In the event that the defendant does not have their domicile or residence in Romania, such copies shall be transmitted to the law enforcement body within the territorial jurisdiction of which the court is located.

(2) An arrest warrant may be transmitted to law enforcement bodies also via fax, electronic mail or through any other means able to generate a written document in conditions that would allow the recipient authorities to establish its authenticity.

(3) In the event that an arrest warrant contains material errors, but allows for the identification of the person and the establishing of the ordered measure based on the person's identification data existing in the records of the law enforcement bodies and the court decision, a law enforcement body shall enforce such measure, by requesting at the same time the correction of the identified material errors.

(4) Law enforcement bodies shall proceed to the arrest of the person indicated in the warrant, to whom a copy of the warrant shall be handed, in one of the ways established under par. (1) or (2), after which they shall take the person, within maximum 24 hours, before the Judge for Rights and Liberties having

ordered the pre-trial arrest or, as applicable, before the Preliminary Chamber Judge or the judicial panel with which the case is pending settlement.

(5) For the enforcement of a pre-trial arrest warrant, law enforcement bodies may enter the domicile or residence of any natural person, without their permission, as well as the premises of any legal entity, without permission from its legal representative, if there is probable cause generating a reasonable suspicion that the person indicated in the warrant is at that domicile or residence.

(6) In the event that the pre-trial arrest of a defendant was ordered in absentia due to health condition, to a force majeure event or a state of necessity, the defendant shall be brought, upon cessation of such reasons, before the Judge for Rights and Liberties having ordered the measure or, as applicable, before the Preliminary Chamber Judge or the judicial panel with which the case is pending disposition.

(7) The Judge for Rights and Liberties shall proceed to the hearing of defendant as per [Art. 225](#) par. (7) and (8), in the presence of their counsel and, based on an assessment of the defendant's statement in the context of the produced evidence and of the reasons considered in taking such measure, shall order, through a court resolution, after hearing the prosecutor's submissions, confirmation of the pre-trial arrest and of the warrant enforcement or, as applicable, under the terms set by the law, revocation of pre-trial arrest or its replacement by one of the preventive measures listed under [Art. 202](#) par. (4) items b) – d), and the release of the defendant, unless they are arrested in another case.

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ART. 232

Failure to find a person indicated in a pre-trial arrest warrant

When a person indicated in a pre-trial arrest warrant was not found, the law enforcement body in charge of enforcing the warrant shall prepare a report confirming this and shall inform the Judge for Rights and Liberties having ordered such pre-trial arrest, as well as the competent bodies, in order for them to put out a wanted order and to place the person the border watchlist.

ART. 233

Duration of a defendant's pre-trial arrest during the criminal investigation

(1) During the criminal investigation, the term of a defendant's pre-trial arrest may not exceed 30 days, except for situations where this is extended under the law.

(2) The term set under par. (1) starts running as of the date of enforcement of the measure against a defendant placed in pre-trial arrest.

(3) When a case is transferred from the criminal investigation body to another for the continuation of the criminal investigation, a pre-trial arrest ordered or

extended previously remains valid. The term of a pre-trial arrest shall be calculated as per The stipulations of par. (1) and (2).

ART. 234

Extension of pre-trial arrest during the criminal investigation

(1) The pre-trial arrest of a defendant may be extended during the criminal investigation if the grounds having caused the initial arrest further require the detention of the defendant or there are new grounds justifying the extension of such measure.

(2) An extension of pre-trial arrest can only be ordered upon a reasoned application submitted by the prosecutor conducting or supervising the criminal investigation.

(3) In the case referred to in par. (1), the extension of pre-trial arrest may be ordered by the Judge for Rights and Liberties of the court that would have competence of jurisdiction to settle the case in first instance or of the court having a corresponding level under whose territorial jurisdiction falls the detention premises, the place where the offense has been committed or the prosecutors' office where the prosecutor having prepared the application belongs.

(4) If pre-trial arrest was initially ordered by a Judge for Rights and Liberties of a court lower than that which would have competence of jurisdiction to hear the case in first instance, the extension of this measure may be ordered only by a Judge for Rights and Liberties of the court having jurisdiction at the time of settling the proposal for extension or of the court having a corresponding level under whose territorial jurisdiction falls the detention premises, the place where the offense has been committed or the prosecutors' office to which the prosecutor having prepared the proposal belongs.

(5) When, in the same case, there are several arrested defendants for whom the arrest term expires on different dates, the prosecutor may apply to the Judge for Rights and Liberties with a proposal to extend pre-trial arrest for all defendants.

ART. 235

Procedure for extending pre-trial arrest during the criminal investigation

(1) A proposal to extend pre-trial arrest shall be submitted along with the case file with the Judge for Rights and Liberties, at least 5 days before the pre-trial arrest term expires.

(2) The Judge for Rights and Liberties sets the term for ruling on a pre-trial arrest extension proposal prior to the expiry of such measure. The day and time set shall be communicated to the prosecutor, who is required to ensure the presence of the defendant placed in pre-trial arrest before the Judge for Rights and Liberties. The defendant's counsel is notified and is provided the possibility, upon request, to study the case file.

(3) The defendant is heard by the Judge for Rights and Liberties in respect of all reasons on which the proposal to extend the pre-trial arrest term is based in the presence of a retained or court appointed counsel.

(4) If a defendant placed in pre-trial arrest is admitted to a hospital and due to health related reasons cannot be brought before the Judge for Rights and Liberties or when, due to *force majeure* events or a state of necessity, their transfer is not possible, the proposal will be considered in the absence of the defendant, but only in the presence of their counsel, who shall be allowed to argue in court.

(5) The prosecutor's attendance is mandatory.

(6) The Judge for Rights and Liberties shall rule upon an application for extension of the pre-trial arrest term before the expiry of such term.

ART. 236

Sustaining the application to extend the pre-trial arrest during the criminal investigation

(1) In case the Judge for Rights and Liberties deems that the requirements set forth by law are met, sustains the prosecutor's proposal and orders the extension of a defendant's pre-trial arrest term, through a reasoned court resolution.

(2) The extension of a defendant's pre-trial arrest term may be ordered for a maximum period of 30 days.

(3) The Judge for Rights and Liberties may also award, during the criminal investigation, further extensions; however each such extension shall not exceed 30 days. The stipulations of par. (1) shall apply accordingly.

(4) The total duration of the defendant's pre-trial arrest during the criminal investigation cannot exceed a reasonable term, and can be no longer than 180 days.

ART. 237

Denying the application to extend pre-trial arrest during the criminal investigation

(1) In case the Judge for Rights and Liberties deems that the requirements set by law for extending a defendant's pre-trial arrest are not met, they may deny, by a reasoned court resolution, the prosecutor's application and order the release of the defendant on its expiry date, unless they are arrested in another case.

(2) If the requirements provided by law are met, the Judge for Rights and Liberties may order replacement of the pre-trial arrest measure by one of the preventive measures stipulated by Art. [Art. 202](#) par. (4) items b) - d).

ART. 238

A defendant's pre-trial arrest during preliminary chamber procedures and throughout the trial

(1) A defendant's pre-trial arrest may be ordered during the preliminary chamber procedure and throughout the trial by the Preliminary Chamber Judge or by the court with which the case is pending, *ex officio* or based on a reasoned application by the prosecutor, for a term not exceeding 30 days, for the same grounds and under the same terms as the pre-trial arrest ordered by the Judge for Rights and Liberties during the criminal investigation. [Arts. 225, 226](#) and [228 - 232](#) shall apply accordingly.

#M2

2) During the trial, the measure provided for at par. (1) may be ordered by the Court in the composition provided by law. In this case, the pre-trial arrest warrant is issued by the judicial panel's presiding judge.

#B

(3) Such measure may be ordered again against a defendant who was placed under pre-trial arrest previously in the same case, during the criminal investigation, the preliminary chamber procedure or during the trial, if new grounds justifying their deprivation of freedom appeared.

ART. 239

Maximum duration of defendant's pre-trial arrest during the trial in first instance

(1) During the trial in first instance, the total duration of a defendant's pre-trial arrest may not exceed a reasonable period of time and cannot exceed half of the special maximum limit provided by law for the offense with which the court was seized. In all cases, the duration of pre-trial arrest in first instance may not exceed five years.

#M2

(2) The terms set out in par. (1) start running as of the date when the court was seized, in case the defendant is in custody awaiting trial, or as of the date when such measure is enforced, when pre-trial arrest during preliminary chamber procedure or during trial or in absentia was ordered against them.

#B

(3) Upon expiry of the terms provided for at par. (1), the court may order other preventive measures, according to the law.

ART. 240

Medical treatment under constant guard

#M2

(1) If, based on medical documents, it is ascertained that a defendant placed in pre-trial arrest suffers from a disease that cannot be treated in the medical network of the National Administration of Penitentiaries, the management of the detention facility orders that such defendant be treated in the medical network of the Ministry of Health under constant guard. The reasons that led to this measure shall be communicated immediately to the prosecutor, during the

criminal investigation, to the Preliminary Chamber Judge, during this procedure, or to the Court, during the trial.

#B

(2) The period while the defendant is admitted under constant guard is included in the pre-trial arrest term according to par. (1).

SECTION 7

Lawful cessation, revocation and replacement of preventive measures

ART. 241

Lawful cessation of preventive measures

(1) Preventive measures shall lawfully cease:

- a) upon expiry of the term provided by law or established by judicial bodies;
- b) in case the prosecutor decides to drop charges or the court issues a judgment for acquittal, termination of criminal proceedings, waiver of penalty, deferral of penalty or a suspended sentence under supervision, even if this is not final;
- c) on the date when the judgment to convict the defendant remains final;

#M2

d) in other cases specifically provided by law.

*e) *** Repealed*

*f) *** Repealed*

*g) *** Repealed*

(1[^]1) *A pre-trial arrest and house arrest lawfully ceases:*

- a) during the criminal investigation or during the trial in first instance, upon reaching the maximum term provided by law;*
- b) during appeal, if the measure reached the duration of the penalty established by the court sentence ordering conviction.*

#B

(2) The judicial body ordering such measure or, as appropriate, the prosecutor, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court with which the case is pending, ascertains, by prosecutorial order or court resolution, *ex officio*, upon request or notification by the detention facility's management, the lawful cessation of preventive measures, and order the immediate release of the person held in custody or pre-trial arrest, unless they are held in custody or arrested in another case.

(3) The Judge for Rights and Liberties, the Preliminary Chamber Judge or the court shall determine, by a reasoned court resolution, the lawful cessation of a preventive measure even in the absence of the defendant. Providing legal assistance to the defendant and the prosecutor's attendance are mandatory.

(4) A copy of the order or resolution whereby the judicial body found the lawful cessation of the preventive measures shall be immediately sent to the person

against whom a preventive measure is ordered, and to all institutions in charge of the enforcement of such measure.

ART. 242

Revocation of preventive measures and replacement of a preventive measure by another preventive measure

(1) A preventive measure is revoked *ex officio* or upon request, if the reasons that caused it ceased or new circumstances confirming the unlawfulness of such measure occurred, the release of the suspect or the defendant being ordered, if they are held in custody or is under pre-trial arrest, unless arrested in another case.

(2) A preventive measure is replaced, *ex officio* or upon request, by a less harsh preventive measure, if the requirements provided by law for its ordering are met and, after an assessment of the case's specific circumstances and the defendant's conduct in the process, it is deemed that the milder preventive measure is sufficient to achieve the objective laid down by [Art. 202](#) par. (1).

(3) A preventive measure is to be replaced, *ex officio* or upon request, by a harsher preventive measure, if the requirements provided by law for its ordering are met and, after an assessment of the case's specific circumstances and the defendant's procedural conduct, it is deemed that the harsher preventive measure is necessary for the purpose set by [Art. 202](#) par. (1).

(4) If a preventive measure was ordered during the criminal investigation by the prosecutor or by the Judge for Rights and Liberties, the criminal investigation body is under an obligation to immediately inform, in writing, the prosecutor about any circumstance that would result in the revocation or replacement of that preventive measure. If the prosecutor deems that the information received justifies the revocation or replacement of the preventive measure, they shall order the taking of such measure or, as applicable, notify the Judge for Rights and Liberties who ordered such measure, within 24 hours as of receiving such information. The prosecutor must also to notify *ex officio* the Judge for Rights and Liberties, when ascertaining the existence of any circumstances justifying the revocation or replacement of the preventive measure taken by the latter.

#M2

(5) An application for revocation or replacement of a preventive measure filed by the defendant shall be submitted, in writing, to the Judge for Rights and Liberties, to the Preliminary Chamber Judge or to the court, as appropriate.

#B

(6) During the criminal investigation, the prosecutor submits to the Judge for Rights and Liberties the case file or a copy thereof certified by prosecutor's registry office within 24 hours after their application was required to the judge.

#M2

(7) In order to rule on such application, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court shall set a date for the disposition hearing and shall order summoning of the defendant.

(8) When the defendant is present, the application is ruled only after the defendant is heard on all grounds on which the application is based, in the presence of a retained or court appointed counsel. Such application may ruled on also in the absence of the defendant, when they fail to come before the court, although duly summoned, or when, due to health reasons, force majeure events or a state of necessity they cannot be brought before the court, but only in the presence of the retained or court appointed counsel who is allowed to argue in court.

#B

(9) The prosecutor's attendance is mandatory.

(10) If an application concerns the replacement of a pre-trial arrest or house arrest measure with a judicial measure of control on bail, if such request is justified, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court, by a reasoned court resolution, rendered in chambers, sustains in principle the request and establishes the amount of bail, by granting to the defendant a term to post such bail.

(11) If the bail is posted within the set term, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the Court shall sustain by court resolution returned in chambers the replacement of such preventive measure by judicial control on bail, establish the obligations incumbent on the defendant during such measure and order the immediate release of the defendant, unless arrested in another case.

(12) If the bail is not posted within the set term, the Judge of Rights and Freedoms, the Preliminary Chamber Judge or the court, by a court resolution returned in chambers, shall deny the defendant's application as unfounded.

(13) The term referred to in par. (10) starts running as of the date when the court resolution whereby the bail's amount is set remains final.

SECTION 8

Special provisions on preventive measures enforced against juveniles

ART. 243

Special conditions of enforcing preventive measures against juveniles

(1) In respect of underage suspects and defendants, preventive measures may be ordered under the provisions of Sections 1-7 of this chapter, with the exceptions and supplements set by this Article.

(2) Taking in custody and pre-trial arrest may be ordered exceptionally against an underage defendant, only if the effects of their deprivation of freedom on their personality and development are not disproportionate to the objective pursued by such measure.

(3) In determining the duration of a pre-trial arrest measure, the defendant's age at the date of ordering, extending or maintaining such measure shall be considered.

#M2

(4) When ordering the taking in custody or the pre-trial arrest of a juvenile, the minor's legal representative or, where appropriate, the person in whose care or supervision the minor is, has to be notified as per Arts. 210 and 228.

#B

ART. 244

Special conditions for enforcing the taking in custody and pre-trial arrest measures against juveniles

The special detention regime of juveniles shall be established by Law on the Service of Penalties and Measures Ordered by Judicial Bodies during the Criminal Trial, based on age particularities, so the preventive measures taken against them should not harm their physical, mental or moral development.

CHAPTER II

Temporary enforcement of medical safety measures

SECTION 1

Temporary compelling to undergo medical treatment

ART. 245

Enforcement terms and content of such measure

(1) The Judge for Rights and Liberties, during the criminal investigation, the Preliminary Chamber Judge, during preliminary chamber procedure, or the Court, during the trial, may order temporary compelling of a suspect or defendant to undergo medical treatment, if they are in the situation provided by [Art. 109](#) par. (1) of the Criminal Code.

(2) The measure referred to in par. (1) consists of compelling a suspect or defendant to regularly undergo the medical treatment prescribed by a specialist physician, until recovery or until improvement of their condition, thus eliminating the threat.

(3) The Judge for Rights and Liberties and the Preliminary Chamber Judge shall rule on the measure referred to in par. (1) in chambers, by a reasoned court resolution. The court shall decide upon the measure by a reasoned court resolution.

ART. 246

Procedure to enforce and cancel such measure

(1) During the criminal investigation or preliminary chamber procedure, if the prosecutor deems that the requirements provided by law are met, they submit to

the Judge for Rights and Liberties or the Preliminary Chamber Judge of the court on which would rest the competence of jurisdiction to settle the case in first instance a reasoned application to temporarily compel a defendant to undergo medical treatment.

(2) The application referred to in par. (1) shall be accompanied by a forensic expert report confirming the need to undergo compulsory medical treatment.

(3) The judge notified as per par. (1) establishes the proposal's settlement term within 5 days as of the date of registration and orders summoning of the suspect or defendant.

(4) When a suspect or defendant is present, the proposal is to be ruled only after hearing them in the presence of a retained or court appointed counsel. The proposal shall also be ruled on in the absence of the suspect or defendant when they fails to appear, although duly summoned, but only in the presence of retained or court appointed counsel, who is allowed to argue in court.

(5) The prosecutor's attendance is mandatory.

(6) Upon disposition of a proposal to take a measure of temporary compelling to undergo medical treatment, the suspect or defendant is entitled to be also assisted by a physician designated by them, who may submit their conclusions to the Judge for Rights and Liberties. The suspect or defendant has the right to be also assisted by a specialist physician designated by them when the therapeutic plan is drafted.

(7) The judge shall rule on a proposal by a court resolution, which can be challenged within 5 days of delivery. The challenge does not suspend the enforcement of the safety measure.

(8) If the judge sustains a proposal, they may order the temporary compelling of the suspect or defendant to undergo medical treatment and the conducting of a forensic medical examination, in case this has not been submitted as under par. (2).

(9) If after enforcement of such measure, the suspect or defendant recovers or their health condition improves, thus eliminating any threat for public safety, the Judge for Rights and Liberties or the Preliminary Chamber Judge who has enforced such measure, upon notification by the prosecutor or a specialist physician or upon request by the suspect or defendant or by a member of their family, may order cancellation of such measure. The stipulations of par. (2) - (7) shall apply accordingly.

(10) If, after enforcing such measure, the court is notified by indictment, cancellation of such measure may be ordered, according to par. (9), by the Preliminary Chamber Judge or, as applicable, by the Court before which the case is pending.

(11) During the first instance trial and in appeal, upon proposal by the prosecutor or *ex officio*, the court before which the case is pending, which requests conclusive medical documents or performance of a forensic medical

examination, may require the defendant to temporarily undergo medical treatment. The stipulations of par. (4) - (9) shall apply accordingly.

(12) If a suspect or defendant violates in ill-faith a temporary compelling to undergo medical treatment, the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court ordering such measure or before which the case is pending shall order, upon notification by prosecutor or by specialty physician or *ex officio*, the suspect's or defendant's temporary medical admission, as provided by [Art. 247](#).

SECTION 2

Temporary medical admission

ART. 247

Enforcement terms and content of such measure

(1) The Judge for Rights and Liberties, during the criminal investigation, the Preliminary Chamber Judge, during preliminary chamber procedure, or the Court, during the trial, may order temporary medical admission of a suspect or defendant who is mentally ill or a chronic user of psychoactive substances, if such measure is needed to eliminate a concrete and present threat to public safety.

(2) The measure referred to at par. (1) consists of an involuntary medical admission of a suspect or defendant to a specialized medical institution until recovery or until improvement that eliminates the threat causing the enforcement of such measure.

(3) The provisions of [Art. 245](#) par. (3) shall apply accordingly.

ART. 248

Procedure to enforce and cancel such measure

(1) During the criminal investigation or preliminary chamber procedure, if the prosecutor deems that the requirements provided by law are met, they submit a reasoned application to temporarily admit a suspect or defendant to the Judge for Rights and Liberties or the Preliminary Chamber Judge of the court on which would rest the competence of jurisdiction to settle the case in first instance.

(2) The application referred to in par. (1) shall be accompanied by conclusive medical documents or by a forensic psychiatric expert report.

(3) The judge notified as per par. (1) shall immediately set a hearing date for dealing with the application and shall order issuance of a bench warrant for the suspect or the defendant.

(4) Such proposal is to be ruled only after hearing the suspect or defendant, if their health condition permits it, in the presence of a retained or court appointed counsel. When a suspect or defendant is already admitted in a medical unit and their transfer is not possible, the Judge for Rights and Liberties proceeds to their

hearing, in the counsel's presence, at the location where the suspect or defendant is admitted.

(5) When the proposal stipulated in par. (1) is not accompanied by a forensic psychiatric expert report, the notified court shall order the conducting thereof, by taking, if necessary, the measure of admission in a medical institution.

(6) The prosecutor's attendance is mandatory.

(7) Upon settlement of the proposal of temporary compelling to undergo medical treatment or the concrete drafting of the therapeutic plan, the suspect or defendant is entitled to be also assisted by a physician designated by them, whose conclusions are submitted to the Judge for Rights and Liberties.

(8) The judge shall forthwith rule on such proposal by a court resolution, which may be challenged within 5 days of delivery. The challenge does not suspend enforcement of the safety measure.

(9) If the judge sustains the application, they can order the temporary admission of the suspect or defendant and take steps to have a psychiatric forensic medical examination performed in case this has not been conducted pursuant to par. (2).

(10) If the judge orders temporary medical admission, the steps under [Art. 229](#) shall also be taken.

(11) If after enforcement of such measure, the suspect or defendant recovers or their health condition improves, thus eliminating any threat for public safety, the Judge for Rights and Liberties or the Preliminary Chamber Judge who enforced such measure, by a court resolution, upon notification by the prosecutor or the attending physician or upon request by the suspect or defendant or by a member of their family, may order the conducting of a psychiatric forensic medical examination so as to cancel the enforced measure.

(12) If, after ordering such measure, the court was notified by indictment, cancellation of such measure may be ordered, according to par. (11), by the Preliminary Chamber Judge or, as applicable, by the Court before which the case is pending.

(13) During the first instance trial and in appeal, upon proposal by the prosecutor or *ex officio*, the court before which the case is pending may order the defendant's temporary medical admission, based on a psychiatric forensic medical examination. The stipulations of par. (4) - (11) shall apply accordingly.

CHAPTER III

Asset freezing, return of assets and return to the previous condition

#M2

ART. 249

General requirements for ordering asset freezing

(1) The prosecutor, during the criminal investigation, the Preliminary Chamber Judge or the Court, ex officio or upon request by the prosecutor, during preliminary chamber procedure or throughout the trial, may order asset

freezing, by a prosecutorial order or, as the case may be, by a reasoned court resolution, in order to avoid concealment, destruction, disposal or dissipation of the assets that may be subject to special or extended confiscation or that may serve to secure the penalty by fine enforcement or to pay court fees or to compensate damages caused by the committed offense.

(2) Asset freezing consists of freezing movable and immovable assets, by establishing distraint upon such.

(3) Asset freezing guaranteeing the enforcement of a penalty by fine may be ordered only against a suspect's or defendant's assets.

(4) In case of special or extended confiscation, asset freezing may be ordered only against assets belonging to the suspect or defendant or to other persons owning or holding the assets that are to be forfeited.

(5) Asset freezing intended to the repair damages caused by the offense and to guarantee the payment of court expenses may be ordered against the assets of the suspect or the defendant and of the person with civil liability, up to the concurrence of their probable value.

(6) During the criminal investigation, the preliminary chamber procedure and the trial, the asset freezing listed under par. (5) may be ordered also at the request of the civil party. Asset freezing taken ex officio by the judicial bodies set out in par. (1) may also be used by the civil party.

(7) The asset freezing ordered under the terms stipulated by par. (1) is mandatory if the victim lacks mental competence or has a limited mental competence.

(8) Neither the assets belonging to a public authority or institution or to other public-law legal person nor the property exempted by law can be seized.

#B

ART. 250

Challenging of asset freezing

(1) A suspect or defendant or any other interested person may challenge the asset freezing ordered by the prosecutor or the way in which such is enforced within 3 days of communication of the prosecutorial order establishing such measure or as of its enforcement date, before the Judge for Rights and Liberties of the court which would have competence of jurisdiction to settle the case in first instance.

(2) Such challenge shall not suspend enforcement.

(3) The prosecutor shall submit the case file to the Judge for Rights and Liberties within 24 hours of the latter requiring it.

(4) A challenge shall be ruled on in chambers, by summoning the person who filed the challenge and the interested parties, by a reasoned court resolution, which is final. The prosecutor's attendance is mandatory.

(5) The case file is returned to the prosecutor within 48 hours after settlement of challenge.

(6) Against the manner in which such asset freezing order is enforced by the Preliminary Chamber Judge or by the Court, the prosecutor, the suspect or the defendant or any other interested person may file a challenge with that judge or court, within 3 days of the enforcement of such measure.

(7) Such challenge does not suspend enforcement and is ruled on in public session, through a reasoned court resolution, by summoning the parties, within 5 days of its registration. The prosecutor's attendance is mandatory.

(8) Once the judgment is final, according to civil law only the manner in which such asset freezing order is enforced may be challenged.

(9) Preparation of minutes is mandatory.

ART. 251

Bodies enforcing asset freezing

A prosecutorial order ordering asset freezing is enforced by criminal investigation bodies.

ART. 252

Distrain procedure

(1) The body proceeding to the enforcement of distraint is under an obligation to identify and evaluate the seized assets, being able to resort, if necessary, to evaluators or experts.

(2) Perishable goods, objects made of precious metals or stones, foreign payment instruments, domestic securities, art and museum works, valuable collections as well as sums in cash subject to distraint shall be seized.

(3) Perishable goods are to be delivered to the relevant authorities, according to their field of activity, which are required to receive and sell them immediately.

(4) Precious stones or metals or items made of such and foreign payment instruments shall be deposited with the nearest banking institution.

(5) Domestic securities, art and museum works and valuable collections shall be delivered for storage to specialist institutions.

(6) The objects referred to under par. (4) and (5) shall be delivered within 48 hours of their collection. If such items are strictly necessary to the criminal investigation, to preliminary chamber procedure or to the trial, their delivery shall be made subsequently, but no later than 48 hours of the return of a final court decision in the case in question.

(7) Seized assets shall be stored until distraint is lifted.

(8) The amounts resulting from the sale made according to par. (3), as well as the sums of money collected pursuant to par. (2) shall be deposited, as applicable, in the name of the suspect or defendant or of the party with civil liability, at the disposal of the judicial body having ordered the distraint upon property, to which the receipt confirming the amount depositing shall be handed within 3 days of the seizure of cash or from the sale of goods.

(9) The other movable assets under distraint is placed under seal or seized, with the possibility to appoint a custodian.

#M2

ART. 252¹

Special cases of sale of seized movable assets

(1) During the criminal trial, before return of a final judgment, the prosecutor or the court ordering the distraint may immediately decide to have the seized movable assets sold, at the property owner's request or when the latter's agreement is secured.

(2) During the criminal trial, before return of a final judgment, when agreement from the goods' owner cannot be secured, movables assets upon which distraint was established can be sold, exceptionally, in the following situations:

a) when, within one year from the distraint ordering date, the value of the seized goods has decreased significantly, i.e. by at least 40% compared to the time of enforcing the asset freezing. [Art. 252](#) par. (1) shall apply accordingly in this case, too;

b) where there is the risk of expiry of the guarantee or when the distraint was applied against live stock or birds;

c) when the distraint was enforced against flammable or petroleum products;

d) when the distraint was enforced against goods the storage or maintenance of which involves expenses disproportionate to the value of the property.

(3) During the trial, before return of a final judgment, when the following conditions are cumulatively met: the owner could not be identified and the sale cannot be performed according to par. (2), motor vehicles subject to distraint may be sold in the following cases:

a) when they were used, in any manner, in the commission of the offense;

b) if a time period of one year or more has passed since the date of ordering asset freezing against such goods.

(4) The sums of money resulting from the capitalization of movable assets performed pursuant to par. (1) and (2) shall be deposited in the name of the suspect, the defendant or the person with civil liability, at the disposal of the judicial body having ordered the distraint. [Art. 252](#) par. (8) on filing the deposit receipt shall apply accordingly.

(5) The amounts of money resulting from the sale of movable assets according to par. (3) shall be deposited in the name of the perpetrator, the suspect, the defendant or the person with civil liability or, where appropriate, in a special account opened for this purpose, according to applicable law, at the disposal of the judicial body having ordered the distraint. [Art. 252](#) par. (8) on filing the deposit receipt shall apply accordingly.

#M2

ART. 252²

Sale of movable assets seized during the criminal investigation

(1) *During the criminal investigation, when the owner has not given their consent, if the prosecutor who required the distraint over property deems that the sale of the seized assets is necessary, they shall apply to the Judge for Rights and Liberties by a reasoned proposal for an order to have the seized assets sold.*

(2) *The Judge for Rights and Liberties notified as per par. (1) sets a term of at least 10 days to summon the parties and the property custodian, in case that one was appointed. The prosecutor's attendance is mandatory.*

(3) *On the set term, the parties and the custodian are informed, in chambers, that the sale of movable assets is intended and that they are entitled to submit objections or claims related to the property to be sold. After considering such objections and claims submitted by the parties or the custodian, the Judge for Rights and Liberties shall rule, by a reasoned court resolution, on the sale of the movable assets referred to in Art. 252¹ par. (2). The absence of the duly summoned parties shall not impede the conducting of proceedings.*

(4) *The judgment of the Judge for Rights and Liberties set out in par. (2), can be challenged by the parties, the custodian, the prosecutor, and any other interested party before the Judge for Rights and Liberties of the hierarchically superior court, within 10 days.*

(5) *The term referred to in par. (4) starts running from the notification of the prosecutor, the parties or the custodian or from the date when the court resolution is brought to their knowledge, in case of other interested parties.*

(6) *The parties or the custodian may only challenge the court resolution whereby the Judge for Rights and Liberties ordered the sale of seized movable assets. The prosecutor may only challenge the ruling whereby the Judge for Rights and Liberties denied their application for sale of the seized movable assets.*

(7) *The challenge referred to in par. (4) suspends the measure's enforcement. The case shall be ruled on in emergency procedure and the judgment on such challenge is final.*

#M2

ART. 252³

Sale of movable assets seized during trial

(1) *During the trial, the court, ex officio or upon request by the prosecutor, by either party or the custodian, may order the sale of seized movable assets. To this end, the court sets a term of no less than 10 days for summoning the parties as well as the property custodian, if one was appointed, in chambers. The prosecutor's attendance is mandatory.*

(2) *At the set term, the parties shall discuss in chambers about the sale of the seized movable assets and shall be informed that they are entitled to submit*

objections or claims in this respect. The absence of duly summoned parties does not impede the conducting of the proceedings.

(3) As regards the sale of the seized movable assets, and the applications referred to in par. (2), the court shall rule by reasoned court resolution. The court resolution is final.

#M2

ART. 252⁴

Challenging the manner of selling seized movable assets

(1) The manner of enforcing the court resolution provided by [Art. 252²](#) par. (3) or the court judgment on the sale of seized movable assets set forth by [Art. 252²](#) par. (7) or [Art. 252³](#) par. (3), can be challenged, during trial, by the suspect or defendant, the person with civil liability, the custodian, any other interested party, as well as the prosecutor, before the court that has jurisdiction to try the case in first instance.

(2) The challenge referred to under par. (1) shall be filed within 15 days of the enforcement of the challenged act.

(3) The court shall rule on such challenge in an emergency procedure, in public session, with summoning of the parties, through a final court resolution.

(4) If, after the final settlement of the criminal trial, no challenges were filed against the manner of enforcing the court resolution or the court decision regarding the sale of seized movable assets set forth under par. (1), a challenge may be filed under the civil law.

#M2

ART. 253

Reports of seizure and foreclosure registration or recording

(1) The body enforcing distraint shall write reports on all acts performed under [Art. 252](#), describing in detail the goods they seized and indicating their value. The minutes shall also specify the property exempted from foreclosure by law, according to [Art. 249](#) par. (8), belonging to the person subject to distraint. It also records the objections of the suspect or defendant or of the party with civil liability, as well as of other interested parties.

(2) The reports referred to in par. (1) shall mention the fact that the parties were notified that:

a) they may require sale of goods or property seized pursuant to [Art. 252¹](#) par. (1);

b) during criminal proceedings, before a final judgment is returned, movable assets subject to seizure may be sold by the judicial body, even without the owner's consent, if the requirements specified by [Art. 252¹](#) par. (2) are met.

(3) A copy of the reports referred to in par. (1) shall be handed to the person whose assets are subject to distraint, and in their absence to those living with

them, to the manager, the doorman or to the person who usually replaces them or to a neighbor. In case some or all of the goods were delivered to a custodian, a copy of the reports shall be handed to them. A copy shall also be forwarded to the judicial body having ordered the asset freezing, within 24 hours of the reports having been written.

(4) In case of seized real estate, the prosecutor, the Preliminary Chamber Judge or the Court having ordered the distraint shall require the relevant body to make a mortgage registration of the property seized, and enclose a copy of the order or court resolution whereby the distraint was ordered and a copy of the distraint reports.

(5) The stipulations of par. (4) shall apply accordingly with regard to registration of foreclosures on movable assets.

#B

ART. 254

Garnishment

(1) Money amounts owed in any way to the suspect or defendant or to the party with civil liability by a third party or by the damaged party are garnished with such persons, within the limits set by law, as from receipt of the order or court resolution whereby the garnishment is established.

(2) The money amounts referred to in par. (1) shall be deposited by debtors, as applicable, at the disposal of the judicial body having ordered the garnishment or of the enforcement body, within 5 days of their due date, the receipts to be surrendered to the prosecutor, the Preliminary Chamber Judge or to the court within 24 hours of their depositing.

ART. 255

Return of assets

(1) If the prosecutor or the Judge for Rights and Liberties, during the criminal investigation, the Preliminary Chamber Judge, during preliminary chamber procedure or the Court, ascertain, upon request or *ex officio*, that the assets seized from a suspect or defendant or from any other person who received such assets for safekeeping are owned by the victim or by any other person or have been abusively taken from their holders or owners, they shall order the return of such assets. [Art. 250](#) shall apply accordingly.

(2) Seized assets are returned only if this does not impede the establishing of the *de facto* situation and the fair settlement of the case, and by compelling the person to whom they are returned to keep them until a final judgment is returned in the criminal trial.

ART. 256

Return to the previous condition

During trial the Court can take steps to provide a return to the condition that prevailed before the commission of the criminal offense, wherever the change in that original condition was the result of the commission of the criminal offense and the return is feasible.

TITLE VI

Common due process and process acts

CHAPTER I

Summons, communication of process acts and the bench warrant

ART. 257

Summons procedure

(1) Summoning a person before the criminal investigation body or a court of law shall be performed by written summons. Summoning can also be performed via telephonic or telegraphic note, with a report of the fact being written.

#M2

(2) Communication of summons and all process acts shall be performed ex officio via procedural agents of the judicial bodies or via any other of their employees, via the local police, via the postal service or a parcel service.

#B

(3) The persons stipulated at par. (2) shall complete the summons procedure and communicate proof of completion before the summons deadline established by the judicial body.

(4) In the case stipulated at [Art. 80](#), victims and civil parties can be summoned via the legal representative or a publication of nationwide circulation.

#M2

(5) The summons can also be sent via e-mail or any other system of electronic messaging, if the summoned person agrees.

(6) An underage person younger than 16 shall be summoned, via their parents or legal guardian, except for the case this is not possible.

#B

(7) The judicial body can also communicate orally the date of the next hearing to the person present before them, and inform them of the consequences of failure to report back. During the criminal investigation, the fact that the party was informed of the hearing date shall be logged in a report, which shall be signed by the person thus summoned.

#M2

(8) Summons letters and process acts shall be sent in a sealed envelope, which shall bear the mention "For the Judiciary. Priority service."

#B

ART. 258

Contents of the summons

- (1) A summons shall be individual and contain the following:
- a) name of the judicial body or court of law that issues the summons, their address, date of issuance and case number;
 - b) surname and name of the summoned person, in what capacity they are summoned and what is the object of the case;
 - c) address of the summoned person;
 - d) hour, day, month and year, location they must report at, and an invitation that the summoned person report on the date and at the location that are indicated;
 - e) a mention that the summoned party has the right to have a counsel present alongside them on the required date;
 - f) if the situation requires it, the mention that under [Art. 90](#) or [Art. 93](#) par. (4) having a defender is mandatory and, in case the party does not retain a counsel, who can accompany them to the established hearing, a public defender shall be appointed for them;
 - g) mention that the summoned party is entitled, so as to exercise their right to defense, read the case file as deposited with the Court or prosecutor's office archives;
 - h) consequences of failure to report before the judicial body.
- (2) The summons sent to the suspect or defendant must include the charges against them, with name and description of the offense, and a warning that in case of failure to report before the judicial body they can be brought in by bench warrant.
- (3) The summons shall be signed by the person issuing it.

ART. 259

Location of summons

- (1) The suspect, defendant, parties in the trial as well as other individuals shall be summoned at the address where they live; if that is unknown, then at the address of their employment, via the human resources service of that employer.
- (2) The suspect or defendant is under an obligation to announce a change in the address where they live, within 3 days, to the judicial body. The suspect or defendant shall be informed of that obligation during their hearing, as well as of the consequences of failure to comply with that obligation.
- (3) The suspect or defendant who, in a statement given during the criminal process, has indicated an address for summons other than that where they live shall be summoned at the location they indicate.
- (4) The suspect or defendant can be summoned at the office of their retained counsel, if they failed to report after the first summons was legally served.

#M2

- (5) *If neither the address where the suspect or defendant lives, nor the address of their place of employment are known, a notice shall be posted at the head office of the judicial body that must contain:*

- a) year, month, day and hour when made;*
- b) surname and name of the person who posted the notice, and their position;*
- c) surname, name and domicile or, as the case may be, residence or head office of the summoned party;*
- d) number of the case in relation to which the summons is made, and name of the judicial body on whose docket the case is;*
- e) mention that the notice refers to the procedural act of the summons;*
- f) mention of the time frame, established by the judicial body that issued the summons, within which the target of the summons must report to the judicial body so as to have the summons communicated to them;*
- g) mention that in case the target of the summons fails to report to the judicial body within the required time frame at lett. f) so as to receive communication of the summons, the summons shall be deemed as communicated at the completion of that time frame;*
- h) signature of the person who posted the notice.*

#B

(6) Persons with a medical condition or, as the case may be, persons admitted to hospitals, medical or social assistance facilities shall be summoned via those facilities' administration.

(7) Persons deprived of their freedom shall be summoned at their place of detention, via its administration.

#M2

(7^1) The military shall be summoned at the base they are stationed at, via its commander.

#B

(8) Persons who are members on the crew of a maritime or river boat, on march, shall be summoned at the harbor master where their ship is registered.

(9) If the suspect or defendant lives abroad, for their first hearing the summons shall comply with the stipulations of international criminal law applicable to the relation with the requested state. In the absence of such stipulation or in case the applicable international law allows it, the summons shall be sent by registered mail. In that case the recipient's signature on delivery of the registered letter or the refusal to take delivery of said letter shall be deemed proof of completion of the summons procedure. For their first hearing, the suspect or defendant shall be informed in the summons that they have the right to indicate a mailing address on the territory of Romania, an e-mail address or an electronic messaging address where they wish to receive all communication concerning the trial. In case they fail to comply, the communications shall be sent to them via registered letter again, and the receipt for that letter from the Romanian postal service, listing the documents being mailed, shall serve as proof of completion of the procedure.

(10) The staff of diplomatic missions, consular offices and Romanian citizens assigned to work with international organizations, family members living with

them, for as long as they are abroad, as well as Romanian citizens located abroad on work assignments, including family members who accompany them, shall be summoned via the entities that sent them abroad.

(11) In setting the reporting time frame for the suspect or defendant who is located abroad consideration shall be given to applicable international law in the relation with the state on whose territory the suspect or defendant is located, and in the absence of such rules consideration shall be given to the need that the summons be received 30 days before the date of reporting before the judicial body at the latest.

(12) Public entities, authorities and other legal entities shall be sent the summons at their head office and, in case of failure to identify a head office, the stipulations of par. (5) shall apply accordingly.

#M2

(13) A summons sent via e-mail or a system of electronic messaging shall be sent to the electronic address or coordinates indicated to the judicial body for that purpose by the summoned person or by their representative.

#B

ART. 260

Serving the summons

(1) The summons shall be served in person to the summoned person, wherever they are found, and they shall sign for having received it.

#M2

(2) If the summoned person refuses to receive the summons, the person in charge of serving the summons shall post a notice on the recipient's door, and shall write a report about the circumstances. The notice shall comprise:

- a) year, month, day and hour when the notice was posted;*
- b) surname and name of the person who posted the notice and their position;*
- c) surname, name and domicile or, as the case may be, residence or head office of the summoned;*
- d) number of the case the notice is about, and the name of the judicial body that has the case on docket, as well as their head office address;*
- e) mention that the notice is about the procedure act of the summons;*
- f) mention of the time frame, established by the judicial body that issued the summons, within which the summoned person has a right to report to the judicial body and have the summons communicated to them;*
- g) mention that, in case the summoned person fails to report to the judicial body within the time frame stipulated at lett. f), the summons shall be considered as communicated at the end of that time frame;*
- h) signature of the person who posted the notice.*

(2¹) If the summoned person, when receiving the summons, refuses to sign for having received it or is unable to, the person in charge of serving the summons shall put that down in their report.

#B

(3) In case the registered letter with a summons to a suspect or defendant living abroad cannot be handed to them, and also in case the law of the state of the recipient does not allow summons send by mail, the summons shall be posted at the head office of the prosecutor's office or court, as the case may be.

(4) The summons can also be sent via the jurisdictional bodies of the foreign state, if:

a) the address of the summoned person is unknown or inaccurate;

b) it was not possible to send the summons by land mail;

c) sending the summons by land mail was ineffective or inappropriate.

(5) When the summons is sent as under [Art. 259](#) par. (6) - (8), the entities described therein are under an obligation to hand the summons to the summoned person without delay and obtain evidence of it, by certifying the person's signature or showing the reason why it was not possible to obtain their signature. The evidence shall be handed to the procedural agent and the latter shall submit it to the criminal investigation body or court of law that issued the summons.

(6) A summons addressed to a public entity or authority or another legal entity shall be filed at the registration office or to the employee in charge of receiving correspondence. The stipulations of par. (2) shall apply accordingly.

#M2

(7) When the summons is sent as under [Art. 257](#) par. (5), the person sending the summons shall write a report about it.

#B

ART. 261

Handing the summons to other persons

(1) If the summoned person is not at home, the procedural agent shall hand the summons to the spouse, a relative or any other person that lives with them or that habitually handles their correspondence. The summons cannot be handed to a juvenile under the age of 14 or a person lacking mental competence.

(2) If the summoned person lives in a building of several apartments or in a hotel, in the absence of persons described at par. (1) the summons shall be handed to the building's administrator, doorkeeper or person who habitually replaces them.

(3) The receiver of the summons shall sign a proof of reception, and the procedural agent, attesting their identity and signature, shall write a report. If proof of reception is denied or cannot be provided, the agent shall post the summons on that dwelling's door and write a report about it.

#M2

(4) In the absence of persons described at par. (1) and (2), the agent shall make inquiries as to when the summoned person can be found so as to hand them the summons. When the summoned person cannot be found, the agent shall post a notice on the recipient's door, which shall comprise:

- a) year, month, day and hour when the notice was handed or, as the case may be, posted;
- b) surname and name of the person who posted the notice, and their position;
- c) surname, name and domicile or, as the case may be, residence or head office of the summoned party;
- d) number of the case in relation to which the summons is made, and name of the judicial body on whose docket the case is, indicating the address of their head office;
- e) mention that the notice refers to the procedural act of the summons;
- f) mention of the time frame, established by the judicial body that issued the summons, within which the target of the summons must report to the judicial body so as to have the summons communicated to them;
- g) mention that in case the target of the summons fails to report to the judicial body within the required time frame at lett. f) so as to receive communication of the summons, the summons shall be deemed as communicated at the completion of that time frame;
- h) signature of the person who posted the notice.

#B

(5) If the summoned person lives in a building of several apartments or in a hotel, if the summons does not mention the number of the apartment or room the person lives in, the agent shall investigate in order to find it. If their investigations are fruitless the agent shall post the summons on the main door to the building, write a report about it and describe the circumstances that made it impossible to hand the summons.

#M2

(6) *** Repealed

#M2

ART. 261¹

Impossibility to communicate the summons

When communicating the summons cannot be performed, because the building does not exist, is uninhabited, or the recipient no longer lives in that building, or when the communication cannot be performed for other similar reasons, the agent shall write a report about it, describe the situation they found and submit it to the judicial body that issued the summons.

#B

ART. 262

Proof of reception and the report on handing the summons

(1) Proof of reception of the summons must include the case number, name of the criminal investigation body or court of law that issued the summons, the surname, first name and capacity of the summoned person, as well as the date they are summoned for. It must also include the date the summons was served,

the surname, first name, capacity and signature of the person serving the summons, certification of the identity and signature of the person served, and the latter's capacity.

#M2

(2) Every time a report is written concerning the serving, posting or transmitting a summons electronically, such report shall appropriately include the mentions stipulated at par. (1). In the situation where the summons is performed using e-mail or any other electronic messaging system, appended to the report shall be, if possible, evidence of the sending.

#M2

ART. 263

Incidents in serving summons

(1) During trial, irregularities in the summons procedure shall only be considered if the person who is missing at the date of summons raises such irregularity at the next hearing where they are present or legally summoned, with stipulations concerning the penalty of nullification applying accordingly.

(2) Except for the situation where the defendant's presence is mandatory, an irregularity in the summons procedure of a party can be raised by the prosecutor, by the other parties or ex officio only at the date where it occurred.

#B

ART. 264

Communication of other procedural acts

(1) Communicating other procedural acts shall be performed as under the stipulations in this Chapter.

(2) In the case of persons deprived of freedom, communication of other procedural acts shall be performed by fax or any means of electronic communication available at the detention facility.

ART. 265

The bench warrant

(1) A person can be brought before a criminal investigation body or a court of law by bench warrant if, having previously been summoned, they failed to comply and were unable to provide justification, and hearing them or their presence are necessary, or if it was not possible to perform proper communication of the summons and the circumstances indicate unequivocally that the person is evading acceptance of the summons.

(2) A suspect or a defendant can be brought in by bench warrant even before having been summoned, if such step is required in the interest of settling the case.

(3) During the criminal investigation the bench warrant is issued by the criminal investigation body, while during the trial it is issued by the Court.

(4) In case enforcement of the bench warrant requires entering a domicile or place of business without securing previous consent, during the criminal investigation the bench warrant can be issued, based on affidavit by the prosecutor, by the Judge for Rights and Liberties of the court that has jurisdiction to try the case in first instance or of the court of the same rank in whose jurisdiction the head office of that prosecutor's office is located.

(5) The prosecutor's affidavit as submitted during the criminal investigation shall comprise:

- a) reasoning for the conditions stipulated in par. (1) and (2);
- b) indication of the offense that is the object of the criminal investigation and the name of the suspect or defendant;
- c) indication of the address where the person is located for whom the bench warrant is requested;

(6) The affidavit requesting the issuance of a bench warrant during the criminal investigation shall be judged in chambers, without summoning the parties.

(7) In case the affidavit is found to have merit, the Judge for Rights and Liberties shall return a final, reasoned ruling, to grant the prosecution's request and agree that the requested person be brought in by immediately issuing the bench warrant.

(8) The bench warrant issued by the Judge for Rights and Liberties shall comprise:

- a) name of the Court;
- b) date, hour and location of issuance;
- c) surname, name and capacity of the person who issued the bench warrant;
- d) the purpose for issuing the bench warrant;
- e) name of the person to be brought in by bench warrant, and address where they live. In the case of a suspect or defendant the bench warrant shall mention the offense that makes the object of the criminal investigation;
- f) the grounds and reasons why a bench warrant is necessary;
- g) mention that the bench warrant can only be used once;
- h) signature of the judge and stamp of the Court.

(9) In case the Judge for Rights and Liberties feels the conditions at par. (1), (2) and (4) are not met, they shall deny the request as lacking merit, under a final ruling.

(10) A bench warrant issued by the criminal investigation body, during the criminal investigation, or by the Court during trial, shall comprise accordingly the mentions stipulated at par. (8).

(11) The judicial body shall hear without delay the person brought in by bench warrant or, as the case may be, shall immediately perform the act that made that person's presence necessary.

(12) Persons brought in by bench warrant shall remain at the disposal of the judicial body only for the duration required by their hearing or by the procedural act that made their presence necessary, but no longer than 8 hours, except for the

case where an order has been issued for their being placed in custody or under pre-trial arrest.

ART. 266

Enforcement of bench warrant

#M2

(1) A bench warrant shall be enforced by the criminal investigation bodies of the judicial police and by the public order bodies. The person placed in charge of enforcing the warrant shall transmit that warrant to the person in whose name it was issued and require them to accompany them. In case the person indicated in the warrant refuses to comply or tries to escape, they shall be brought in by force.

#B

(2) In order to enforce the bench warrant issued by the Judge for Rights and Liberties or by a court of law the bodies described at par. (1) can enter the domicile or place of business of any person, where there are indications the wanted person is located, in case such person refuses to cooperate, obstructs the enforcement of the warrant or for any other reason that is thoroughly justified and proportional to the goal envisaged.

(3) If the person indicated in the bench warrant cannot be brought in because of a medical condition, the person in charge of enforcing the warrant shall put that in a report to be submitted without delay to the criminal investigation body or the court of law, as the case may be.

(4) If the person in charge of enforcing the warrant cannot find the person in the warrant at the stipulated address, they shall make inquiries and, if unsuccessful, shall write a report concerning the inquiries they made. The report shall be submitted without delay to the criminal investigation body or the court of law, as the case may be.

(5) Enforcing bench warrants against the military shall be performed by the commanding officer of that military base or by the military police.

(6) Activities performed during the enforcement of a bench warrant shall be described in a report, which must comprise:

- a) surname, name and capacity of the person writing it;
- b) location where it is written;
- c) description of activities performed.

#M2

ART. 267

Access to electronic databases

#B

(1) In order to complete the summons procedure, communicating the procedural acts or bringing in under warrant before the jurisdictional body, the prosecutor

or the court of law have a right of direct access to electronic databases held by the bodies of the state administration.

(2) The bodies of the state administration that hold electronic databases are under an obligation to cooperate with the prosecutor or the court of law so as to provide them with direct access to the information in their electronic databases, as under the law.

CHAPTER II

Time frames

ART. 268

Consequences of failure to comply with time frame

(1) When the law stipulates a certain time frame for the exercise of a due process right, failure to comply with that time frame shall entail loss of that right and nullification of the act that was performed beyond that time frame.

(2) When a procedural step can only be taken for certain duration of time, expiry of that duration shall lawfully entail a cessation of that step's effect.

(3) Stipulations concerning nullifications shall apply to cases of failure to comply with the other procedural time frames.

ART. 269

Calculation of procedural time frames

(1) In calculating procedural time frames the count shall start from the hour, day, month or year stipulated in the act that caused time to start being counted, unless the law stipulates otherwise.

(2) In calculating procedural time frames in terms of hours or days the count shall not include the hour or day when the time frame starts, nor the hour or day when it is complete.

(3) Time frames counted in terms of months or years shall expire, as the case may be, at the end of the respective day of the last month or at the end of the respective day month of the last year. If such day falls in a month that does not have a corresponding day, the time frame shall expire on the last day of that month.

(4) When the last day of a time frame falls in a non-working day, the time frame shall expire at the end of the first working day after it.

ART. 270

Acts regarded as having been completed within required time frame

(1) An act filed inside the time frame required by law, at the administration of a place of detention or at the military base or at the post office via registered letter shall be regarded as having been completed within time frame.

Registration or certification by the administration of a place of detention placed on the act that was filed, the receipt from the post office, as well as registration

or certification by the military base on the act that was filed, shall serve as proof of the date of filing.

(2) If an act that should have been performed within a certain time frame was communicated or transmitted, out of the sender's ignorance or visible mistake, before expiry of the time frame but with the wrong judicial body, that act shall be regarded as having been filed within time frame even if it reaches the proper judicial body only after expiry of the required time frame.

(3) Except for avenues of appeal, an act performed by the prosecutor shall be regarded as within time frame if the date it is registered in the prosecutor's office outbox ledger is inside the required time frame.

ART. 271

Calculation of time frames in case of steps that remove or restrict rights

In calculating the time frames concerning preventive steps or steps that restrict any rights, the count shall include the hour or day of the beginning and the hour or day of completion.

CHAPTER III

Judicial expenses

ART. 272

Covering judicial expenses

(1) Expenses required by performance of procedural acts, hearing evidence, preserving material evidence, counsel fees, as well as any other expenses occasioned by the operation of the criminal process shall be covered from amounts provided by the State or paid by the parties.

(2) The judicial expenses stipulated at par. (1) that are covered from amounts provided by the State shall be listed distinctly, as the case may be, in the income and expenditures budget of the Ministry of Justice, Public Ministry, and other concerned Ministries.

ART. 273

Fees for witnesses, experts and interpreters

(1) Witnesses, experts and interpreters called upon by the criminal investigation body or by the Court are entitled to reimbursement of their travel, upkeep and accommodation costs as well as other incidental expenses occasioned by their presence.

(2) Witnesses, experts and interpreters who are employees of an organization are entitled to continue receiving their pay from their place of employment for the duration of their absence from work as caused by being called upon by the criminal investigation body or the Court.

(3) Witnesses who are not employed but do derive income from work are entitled to receive a compensation.

(4) Experts and interpreters are entitled to a fee for fulfilling their tasks, in the cases and conditions stipulated by law.

(5) The amounts extended under par. (1), (3) and (4) shall be paid, based on the requirements made of them by the body that called upon the witnesses, experts and interpreters, from the judicial expenses fund that was especially allocated.

ART. 274

Reimbursing expenses covered by the State in advance, in case of dropping charges, conviction, postponement of penalty enforcement or waiving penalty enforcement

(1) In case of dropping charges, conviction, postponement of penalty enforcement or waiving penalty enforcement the defendant shall be compelled to cover the judicial expenses paid by the State, except for public defender fees and the fees for interpreters appointed by the judicial bodies, which will remain the charge of the State.

(2) In case of multiple defendants, the prosecutor or the Court, as the case may be, shall establish the share of judicial expenses each defendant shall owe. In calculating that share consideration shall be given to the extent to which each defendant caused judicial expenditures.

(3) The party that has civil liability, insofar as they and the defendant are jointly responsible to make redress, shall be compelled jointly with the defendant to pay judicial expenses put up by the State.

ART. 275

Reimbursing expenses covered by the State in advance, in the other situations

(1) Judicial expenses covered by the State in advance shall be covered as follows:

1. in case of an acquittal, by:

a) the victim, insofar as they are found at procedural fault;

b) the civil party whose civil claim has been denied entirely, insofar as they are found at procedural fault;

c) a defendant who has been compelled to pay compensation.

2. in case the criminal trial is discontinued, by:

a) the defendant, if there exists a clause of non-penalty;

b) the victim, in case they withdraw their prior complaint or in case their prior complaint was filed late.

c) the party stipulated in the mediation agreement, in case a criminal mediation was used to settle;

#M2

d) the defendant and the victim, in case of reconciliation.

#B

3. in case the defendant requests that the criminal trial continues, by:

a) the victim, when they have withdrawn their prior complaint or the case was dismissed as under [Art. 16](#) par. (1) lett. a) - c) or the defendant was acquitted;
b) the defendant, when the case is dismissed for reasons other than those in [Art. 16](#) par. (1) lett. a) - c) or the criminal trial is discontinued.

4. in case the criminal file is sent back to the prosecutor's office under the preliminary chamber procedure, judicial expenses shall be covered by the State.
(2) In case an appeal is filed, or an appeal for review, or a challenge or any other motion, judicial expenses shall be covered by the person whose appeal was denied or who withdrew their motion for appeal, the appeal for review, challenge or motion.

(3) In all other cases, judicial expenses covered by the State in advance shall remain the State's charge.

(4) In case several parties or victims are compelled to cover judicial expenses, the Court shall calculate the part of the judicial expenses each of them owes.

(5) The stipulations of par. (1) pct. 1 and 2 and par. (2) - (4) shall apply accordingly in the situation where a case is dismissed during the criminal investigation and in the situation where a challenge against acts and steps taken by the criminal investigation bodies is denied.

(6) Expenses for the fees owed to interpreters appointed by the judicial bodies shall lawfully remain the State's charge.

ART. 276

The parties covering judicial expenses

#M2

(1) In case of a conviction, dropping charges, postponement of penalty enforcement or waiving penalty enforcement, the defendant shall be compelled to cover the judicial expenses for the victim and for the civil party whose civil action was sustained.

#B

(2) When the civil action is only sustained in part, the Court can compel the defendant to cover the entirety or part of the judicial expenses.

#M2

(3) In case a civil claim is dropped, as well as in the case of a settlement, mediation or acceptance of civil claims, the Court shall have judicial expenses covered as agreed by the parties between them

#B

(4) In the situations stipulated at par. (1) and (2), when there are multiple defendants or there is also a party that has civil liability, the stipulations of [Art. 274](#) par. (2) and (3) shall apply accordingly.

(5) In case of an acquittal, the victim or the civil party shall be compelled to cover the judicial expenses of the defendant and, as the case may be, the party that had civil liability, insofar as such expenses were caused by the victim or the civil party.

(6) In the other cases the Court shall establish liability for judicial expenses according to civil law.

CHAPTER IV

Amending procedural acts, correcting material errors and removing obvious omissions

ART. 277

Amending procedural acts

(1) Any supplement, correction or deletion in the contents of a procedural act shall only be valid if such amendments are confirmed in writing, in the text or at the end of the text, by those who performed them

(2) Unconfirmed amendments that do not change the meaning of sentences shall remain valid.

(3) Areas not covered with text in the contents of a written statement shall be crossed over, so as to preclude any later additions.

ART. 278

Correcting material errors

(1) Obvious material errors in the text of a procedural act shall be corrected by the criminal investigation body itself, by the Judge for Rights and Liberties or from the Preliminary Chamber, or by the Court that wrote the act, on request by the interested party or ex officio.

(2) The parties can be summoned to provide clarifications so as to correct an error.

(3) The correction performed shall be attested by the judicial body in a report or a court order, and mention of it shall also be made at the end of the corrected act.

ART. 279

Removing obvious omissions

The stipulations of [Art. 278](#) shall also apply in the situation where the judicial body, as a result of an obvious omission, has failed to rule concerning the amounts claimed by witnesses, experts, interpreters, counsels, as under [Art. 272](#) and [273](#), as well as concerning restitution of assets or removal of freezing orders.

CHAPTER V

Nullification

ART. 280

Effects of nullification

- (1) Violating the legal rules that regulate the operation of the criminal procedure entails nullification of the respective act, in the conditions specifically described by this Code.
- (2) Acts completed subsequently to the act that was nullified shall also be null, when there is a direct link between them and the first nullified act.
- (3) Whenever an act is nullified the judicial body shall order, when necessary and if possible, the act to be made again, in compliance with legal rules.

ART. 281

Absolute nullity

- (1) Always causing nullification is the violation of rules concerning:
 - a) the composition of judicial panel;
 - b) the substantive jurisdiction and personal jurisdiction of courts of law, when the trial took place in a court that is lower than the jurisdictional court;
 - c) the public character of the court session;
 - d) the participation of the prosecutor, when such participation is mandatory under the law;
 - e) the presence of the suspect or defendant, when such participation is mandatory under the law;
 - f) legal assistance by a counsel for the suspect or defendant, as well as of the other parties, when assistance is mandatory.
- (2) Absolute nullity shall be found to exist either *ex officio* or on request.
- (3) Violation of legal rules stipulated in par. (1) lett. a) - d) can be raised at any stage of the procedure.
- (4) Violation of legal rules stipulated in par. (1) lett. e) and f) should be raised:
 - a) before completion of the preliminary chambers procedure, if the violation occurred during the criminal investigation or during the preliminary chamber procedure;
 - b) at any stage of the procedure, if the violation occurred during the trial;
 - c) at any stage of the procedure, irrespective of the moment when the violation occurred, when the Court needs to rule in a guilty plea agreement.

ART. 282

Relative nullity

- (1) Violation of any legal rules except for those stipulated at [Art. 281](#) shall cause nullification of an act when the failure to comply with the legal rule caused harm to the rights of the parties or the main procedural subjects, which can only be removed by nullifying the act.
- (2) Relative nullity can be raised by the prosecutor, suspect, defendant, the other parties or the victim, when they have their own procedural interest in having compliance with the legal rule that was violated.

(3) Relative nullity shall be raised during or right after the act was completed or at the latest within the time frames stipulated at par. (4).

(4) The violation described at par. (1) can be raised:

a) before the end of the preliminary chamber procedure, if the violation occurred during the criminal investigation or the preliminary chamber procedure itself;

b) before the first hearing that has full procedure completed, if the violation occurred during the criminal investigation, when the court is to hear a guilty plea agreement;

c) before the next hearing that has full procedure completed, if the violation occurred during the criminal trial.

(5) Relative nullity shall be disregarded when:

a) the interested party has not raised it inside the time frame required by law;

b) the interested party has specifically waived raising that nullity.

CHAPTER VI

Judicial fine

ART. 283

Deviation from the criminal procedure

(1) The following deviations committed during the criminal procedure shall be punishable by a judicial fine of no less than 100 RON and no more than 1.000 RON:

a) unjustifiable failure to complete or erroneous completion or late completion of procedures to send summons, to communicate procedural acts, to transmit case files, and any other documents if this caused delays in the operation of the criminal procedure;

b) failure to complete or erroneous completion of the task to hand summons or the other procedural document, as well as failure to enforce bench warrants.

(2) Unjustifiable absence of a witness, the victim, the civil party or the party that has civil liability, who were called upon to give evidence, or such persons' leaving the premises where they are to give evidence, without official leave or a solid reason, shall be punishable by a judicial fine of no less than 250 RON and no more than 5.000 RON.

(3) Unjustifiable absence of the defense counsel, either retained or appointed by the Court, without providing a replacement as under the law, or the defense counsel's unjustified refusal to provide a defense, in the circumstances where full exercise of all procedural rights has been granted, shall be punishable by a judicial fine of no less than 500 RON and no more than 5.000 lei. The Bar Association shall be notified of the fine that was ordered against one of its members.

(4) The following deviations committed during the criminal procedure shall be punishable by a judicial fine of no less than 500 RON and no more than 5.000 RON:

- a) preventing in any manner the exercise of their responsibilities by judicial bodies, specialty ancillary staff from Courts and prosecutor's offices, by experts lawfully appointed by the judicial body, by procedural agents, and by other employees of the Courts and prosecutor's offices, in relation to the criminal trial;
- b) unjustifiable absence of a lawfully summoned expert or interpreter;
- c) an expert or an interpreter stalling in the completion of their given tasks;
- d) any person's failure to comply with their obligation to submit, on demand by the criminal investigation body or the court of law, the objects or documents requested of them, as well as failure to comply with the same obligation by the legal representative of a legal entity or by the person tasked with ensuring compliance with this obligation;
- e) failure to comply with the obligation to preserve, as under [Art. 160](#) par. (3);
- f) failure by the legal representative of a legal entity, where an expert examination is to take place, of the necessary steps to enable performance of said examination or to allow its performance in a timely manner, as well as any person's preventing the performance of the expert examination as required by law;

#M2

g) failure to comply, by the parties, their counsels, witnesses, experts, interpreters or any other persons with the steps ordered by the chairperson of the judicial panel as under [Art. 352](#) par. (9) or [Art. 359](#);

#B

- h) failure by the parties' counsels to comply with the steps ordered by the chairperson of the judicial panel as under [Art. 359](#), except for the situations where they are engaged in making motions, raising exceptions or final arguments on the merits, as well as when the parties, witnesses and experts are being heard;
- i) irreverent manifestations by the parties, witnesses, experts, interpreters or any other persons addressed to the judge or prosecutor;

#M2

*j) *** Repealed*

#B

- k) failure by the suspect or the defendant to comply with their obligation to notify the judicial bodies in writing, no later than 3 days, of any change in their place of residence during the criminal procedure;
- l) failure by the witness to comply with their obligation to notify the judicial bodies, no later than 5 days, of any change in their place of residence during the criminal procedure, as under [Art. 120](#) par. (2) lett. c);
- m) unjustifiable failure by the criminal investigation body to comply with the prosecutor's written orders, within the deadline set by the prosecutor;
- n) abuse of law, consisting of the parties, their legal representatives or legal advisors, exercising their process and procedural rights in ill-faith;

#M2

o) failure to comply with the obligation stipulated at [Art. 142](#) par. (2) or the obligation stipulated at [Art. 152](#) par. (5), by the providers of electronic telecommunications or financial services;

#B

p) failure to comply with the obligation stipulated at [Art. 147](#) par. (5) by the post offices or transportation entities or any other individuals or legal entities that provide transportation or information transfer services;

q) failure to comply with the obligation stipulated at [Art. 153](#) par. (4) by the service provider or individual in whose possession or under whose control the data exists that is stipulated in [Art. 153](#) par. (1).

(5) Judicial fines shall constitute State budget income, and be included distinctly in the budget of the Public Ministry, or the Ministry of the Interior, or the Ministry of Justice, as the case may be, under the law.

(6) Ordering a judicial fine to be paid does not remove criminal liability, in case the same action also constitutes a criminal offense.

#M2

ART. 284

Procedure to order a judicial fine to be paid

(1) The fine shall be ordered by the criminal investigation body by an order, and by the Judge for Rights and Liberties, the Preliminary Chamber Judge, and by the Court, by adjudication.

(2) A person who has been fined can move for the fine to be nullified or reduced. The motion for nullification or reduction can be filed no later than 10 days since communication of the order or adjudication.

(3) If the person who was fined can provide justification for why they failed to comply with their obligation, the Judge for Rights and Liberties, the Preliminary Chamber Judge, or by the Court can rule to nullify or reduce the fine.

(4) The motion for nullification or reduction of the fine resulting from an order by the criminal investigation body shall be settled by the Judge for Rights and Liberties, by adjudication.

*(5) The motion for nullification or reduction of the fine resulting from an adjudication shall be settled by another Judge for Rights and Liberties, or another *de un alt* Preliminary Chamber Judge, or another judicial panel, by adjudication.*

#B

SPECIAL PART

TITLE I

The criminal investigation

CHAPTER I

General stipulations

ART. 285

Object of the criminal investigation

(1) The object of the criminal investigation is to collect the necessary evidence to prove the existence of criminal offenses, to identify the individuals who committed a criminal offense and to establish their criminal liability, in order to decide whether they should be prosecuted.

(2) The procedure during the criminal investigation is not public.

ART. 286

Acts by criminal investigation bodies

(1) A prosecutor shall have authority to order procedural acts or steps and shall finalize a case by a prosecutorial order, unless the law stipulates otherwise.

(2) The prosecutorial order shall comprise:

- a) name of prosecutor's office and date of issuance;
- b) surname, name and capacity of the person writing it;
- c) the action that makes the object of criminal investigation, the charges for it and, as the case may be, data concerning the person of the suspect or defendant;
- d) the object of the procedural act or step, or, as the case may be, type of solution as well as the justification for it on the merits and under the law;
- e) data concerning freezing assets, security steps with a medical character and preventive steps taken during the investigation;
- f) other mentions required by law;
- g) signature of the person who wrote the order.

#M2

(3) *** Repealed

(4) *Criminal investigation bodies shall have authority to order procedural acts and steps and formulate motions by affidavit. The stipulations of par.(2) shall apply accordingly.*

#B

ART. 287

Storage of criminal investigation acts

(1) When the law stipulates that a criminal investigation act or step shall be subject to approval, authorization or confirmation, one copy of the act shall stay with the prosecutor.

(2) In the situations where the prosecutor refers a matter to the Judge for Rights and Liberties, the Preliminary Chamber Judge or other authorities stipulated by law, with a request to rule on proposals or motions formulated during the criminal investigation, the prosecutor shall submit numbered copies that are certified by the prosecutor's office Registrar from the documents in the case

from the documents that are linked to the formulated motion or proposal. The criminal investigation body shall keep the original of the documents so as to continue their criminal investigation.

CHAPTER II

Referrals to criminal investigation bodies

SECTION 1

General rules

ART. 288

Avenues for referral

(1) A referral can be filed with the criminal investigation body in the form of a complaint or report, following acts performed by other law enforcement bodies; or the criminal investigation body can take action ex officio.

#M2

(2) When the law requires that criminal investigation only starts based on the prior complaint by the victim, on a referral formulated by the person entitled to under the law, or on authorization from the body entitled to under the law, the criminal investigation cannot start in the absence of such acts.

#B

(3) In the case of criminal offenses committed by the military, the commanding officer's referral is only necessary for the offenses listed in [Art. 413](#) - 417 in the Criminal Code.

ART. 289

Complaint

(1) A complaint is an information submitted by an individual or a legal entity concerning an injury they suffered as a result of a criminal offense.

#M2

(2) The complaint shall comprise: surname, name, personal identification code, capacity and domicile of the plaintiff, or in case of legal entities the name, head office, unique registration code, tax identification code, registration number from the Trade Registry Office or the Registry of Legal Entities and bank account, name of legal or conventional representative, description of the actions forming the object of the complaint, and indication of the offender and evidence, if known.

#B

(3) A complaint can be filed in person or by proxy. The latter shall hold a special power-of-attorney, which shall remain attached to the complaint.

(4) If made in writing, a complaint shall be signed by the victim or the proxy.

(5) A complaint filed in electronic format shall be deemed to meet the requirements of form only if certified by electronic signature, as under the law.

(6) A complaint that is lodged orally shall be written down in a report by the body that is receiving it.

(7) A complaint can also be filed by one of the spouses on behalf of the other spouse, or by a child of age on behalf of their parents. The victim can declare whether they stand by the complaint.

(8) For a person devoid of mental competence the complaint shall be filed by their legal representative. A person with limited mental competence can file a complaint having secured agreement from the persons stipulated by civil law. In case the offender is the person that legally represents or is entitled to approve the actions of the victim, the criminal investigation bodies shall take action *ex officio*.

(9) A complaint that is filed with the wrong criminal investigation body or court of law shall be redirected, via administrative channels, to the jurisdictional judicial body.

(10) In case the complaint is filed by a person who lives on Romanian territory, is a Romanian citizen, a foreign citizen or a stateless person, and thereby they inform of the commission of a criminal offense on the territory of another European Union Member State, the judicial body shall accept the complaint and transmit it to the jurisdictional body in the country on whose territory the offense was committed. The rules on international judicial cooperation in criminal matters shall apply accordingly

ART. 290

Report

(1) A report is an information submitted by an individual or a legal entity concerning a criminal offense.

(2) A report can only be filed in person, and [Art. 289](#) par. (2), (4) - (6) and (8) - (10) shall apply accordingly.

#M2

ART. 291

Referrals filed by persons in managerial positions and other persons

*(1) Any person who holds a managerial position with an authority of the public administration or with other public authorities, public institutions or other public legal entities, as well as any person who holds an oversight authority, who, in the exercise of their responsibilities, have acquired knowledge of the commission of a criminal offense that warrants *ex officio* criminal investigation, is under an obligation to immediately file a referral with the criminal investigation body and take steps to preserve the crime scene, material evidence and any other evidentiary element.*

(2) Any person who performs a public-interest service for which they have been mandated by public authorities or who is subject to oversight or supervision by said authorities concerning the performance of the public-interest service, and

who in the exercise of their responsibilities acquired knowledge of the commission of a criminal offense that warrants ex officio criminal investigation, is under an obligation to immediately inform the criminal investigation body.

#B

ART. 292

Ex officio action

A criminal investigation body shall take action ex officio on learning of a criminal offense from any source other than those stipulated at [Art. 289](#) – 291, and shall write a report to that effect.

ART. 293

Finding commission of an offense in the act

(1) A criminal offense is “in the act” when found at the moment it is being committed or immediately after commission.

(2) Also considered “in the act” is an offense whose perpetrator, immediately after commission, is chased by the public order and national security bodies, by the victim, by eye-witnesses or public outcry, or displays signs that justify probable cause to suspect they have committed the offense, or is caught close to the crime scene carrying weapons, instruments or any other objects of a nature to implicate them in the offense.

#M2

(3) *In the case of an offense “in the act” the public order and national security bodies shall write a report and describe all the elements they found and activities undertaken, and shall submit said report to the criminal investigation body without delay.*

(4) *Complaints and requests filed in writing, material evidence, as well as objects and documents seized on finding commission of the offense shall be turned over to the criminal investigation body.*

#B

ART. 294

Examination of the referral

#M2

(1) *On receiving a referral the criminal investigation body shall proceed to establishing whether it has jurisdiction, and in the case stipulated at [Art. 58](#) par.*

(3) *it shall submit the case to the prosecutor, together with a proposal to forward the referral to the jurisdictional body.*

(2) *In the situation where the complaint or report does not meet the legal requirements of form, or the description of the offense is incomplete or unclear, the referral shall be returned to the plaintiff by administrative procedure, with indications of the missing elements.*

(3) When the referral meets the legal requirements for admissibility but its contents reveals one of the cases that precludes criminal action as under [Art. 16](#) par. (1), the criminal investigation body shall submit the documentation to the prosecutor, accompanied by a proposal to close the case.

#B

(4) In case the prosecutor considers such proposal as grounded they shall order the case closed.

#M2

ART. 294¹

Performing preliminary investigations

(1) Every time an authorization is required prior to the criminal investigation or other conditions must be met before the start of the criminal investigation, the criminal investigation body shall undertake preliminary investigations.

(2) In the cases stipulated at par. (1), the prosecutor's office, concurrently with the referral sent to the jurisdictional body, shall submit an affidavit written by the case prosecutor, which shall describe the results of preliminary investigations into the commission of actions criminalized by law by an individual concerning whom the preliminary authorization is required, or the meeting of another preliminary condition.

#B

SECTION 2

Preliminary complaint

ART. 295

Preliminary complaint

(1) A criminal investigation shall only start on the basis of receiving a prior complaint by the victim, in the case of offenses for which the law mandates it.

(2) The preliminary complaint shall be filed with the criminal investigation body or the prosecutor, as established by law.

(3) [Art. 289](#) par. (1) - (6) and (8) shall apply accordingly.

ART. 296

Time frame for filing preliminary complaint

(1) A preliminary complaint shall be filed within 3 months of the day the victim learned of the commission of the offense.

#M2

(2) When the victim is a juvenile or mentally incompetent the 3-month time frame starts on the date when their legal representative learned of the commission of the offense.

(3) In case the offender is the legal representative of the persons described at par. (2), the 3-month time frame starts on the date of appointment of a new legal representative.

#B

(4) A preliminary complaint filed with the wrong judicial body shall be regarded as valid if it was filed inside the required time frame.

(5) A preliminary complaint filed with the wrong criminal investigation body or court of law shall be forwarded by administrative channels to the jurisdictional judicial body.

ART. 297

Obligations of the criminal investigation body in the preliminary complaint procedure

(1) On receiving a preliminary complaint, the criminal investigation body shall make sure it meets all requirements of form and whether it was filed inside the legal time frame. In case it finds the complaint was filed late, the criminal investigation body shall submit its documentation to the prosecutor, accompanied by a proposal to close the case.

(2) If, in a case where criminal investigations have already been performed, it is found that a preliminary complaint is required, the criminal investigation body shall call upon the victim and ask whether they wish to file a complaint. In the affirmative case the criminal investigation body shall continue its investigations. In the contrary case it shall submit its documentation to the prosecutor, accompanied by a proposal to close the case.

ART. 298

Procedure in case of offense in the act

(1) In the case of an offense “in the act” the criminal investigation body is under an obligation to officially find the commission of an offense even in the absence of a preliminary complaint.

#M2

(2) After finding the commission of an offense “in the act” the criminal investigation body shall call upon the victim to ask whether they wish to file a preliminary complaint and if the answer is in the affirmative it shall begin the criminal investigation. If the answer is negative the criminal investigation body shall submit its documentation to the prosecutor, accompanied by a proposal to close the case.

#B

CHAPTER III

Oversight and supervision of the criminal investigation bodies by the prosecutor

ART. 299

Object of the supervision

(1) The prosecutor shall supervise the activity of criminal investigation bodies so that every criminal offense can be discovered and any person having committed a criminal offense can be prosecuted.

(2) The prosecutor shall supervise the activity of criminal investigation bodies also in order to make sure no suspect or defendant is taken into custody otherwise than in the situations and conditions required by law.

ART. 300

Avenues to exercise supervision

(1) In exercising their responsibilities to oversee and supervise the activity of criminal investigation bodies the prosecutor shall see to it that criminal investigations are performed in compliance with the requirements of the law.

(2) After referral, the criminal investigation bodies are under an obligation to inform the prosecutor of the activities they are undertaking or intend to undertake.

(3) In exercising their responsibilities to oversee the criminal investigation the prosecutor shall take the necessary steps or order the criminal investigation bodies to take those steps. The prosecutor can attend any criminal investigation act or perform it personally.

(4) In exercising their responsibilities to supervise the criminal investigation the prosecutor can ask to see any case file held by the criminal investigation body, and the latter is under an obligation to submit it without delay, complete with all the documents, materials and data concerning the offense that makes the object of the investigation. The prosecutor can keep any case for themselves so as to perform the criminal investigation.

ART. 301

Forwarding a case to the jurisdictional body

(1) When the prosecutor finds that the criminal investigation is not being performed by the criminal investigation body required by law, they shall see to it that it does get performed by the proper body, as under [Art. 63](#).

(2) In the case described at par. (1), the procedural acts or steps already lawfully completed shall remain valid.

(3) When the prosecutor finds that one of the cases at [Art. 43](#) applies, they shall order the cases to be joined and send the result to the jurisdictional body.

ART. 302

Reassigning a case from one criminal investigation body to another

(1) The prosecutor can order, as necessary, that a criminal investigation in a case be performed by a different criminal investigation body than the one that received the referral.

(2) Having a criminal investigation reassigned to a hierarchically superior criminal investigation body shall be ordered by the prosecutor from the prosecutor's office that exercises supervision of the criminal investigation in that case, based on a reasoned proposal from the criminal investigation body that takes over the case.

ART. 303

Orders issued by the prosecutor

(1) The prosecutor can issue orders concerning any criminal investigation act to be performed by the criminal investigation bodies of the judicial police or special criminal investigation bodies, as the case may be.

(2) Orders issued by a prosecutor concerning the performance of criminal investigation acts shall be mandatory and priorities for the criminal investigation body and for other bodies mandated by law with responsibility in finding commission of offenses. The hierarchically superior bodies of the judicial police or of the special criminal investigation bodies cannot issue guidance or orders concerning the criminal investigation.

(3) In case of non-compliance or faulty compliance by the criminal investigation body with the prosecutor's orders, the latter can report the fact to the leader of that criminal investigation body, who shall be under an obligation, within 3 days of the report, to inform the prosecutor of the steps they took, or the prosecutor can order the penalty of the judicial fine for violations stipulated at [Art. 283](#) par. (1) lett. a) or, as the case may be, par. (4) lett. m), or can ask for the agreement granted under [Art. 55](#) par. (4) and (5) to be rescinded.

ART. 304

Invalidation of process or procedural acts

(1) When the prosecutor finds that an act or step undertaken by the criminal investigation body failed to comply with legal stipulations or was groundless they shall invalidate it, providing the grounds for invalidation, ex officio or after complaint by the interested party.

(2) The stipulations of par. (1) shall also apply in case of the oversight exercised by the hierarchically superior prosecutor over the work of the hierarchically inferior prosecutor.

CHAPTER IV

Performing the criminal investigation

SECTION 1

Performing the criminal investigation

ART. 305

Starting a criminal investigation

(1) When the referral meets the conditions required by law and it is found that none of the cases preventing criminal action as under [Art. 16](#) par. (1) applies, the criminal investigation body shall order the criminal investigation to start.

(2) The start of the criminal investigation is the result of an order that includes, as the case may be, the mentions stipulated in [Art. 286](#) par. (2) lett. a) - c) and g).

#M2

(3) When the existing data and evidence in the case constitute probable cause to believe that a certain individual has committed the offense that warranted the start of the criminal investigation the prosecutor shall order that the criminal investigation continue in relation to that individual, and the latter shall acquire the capacity of suspect.

(4) In case of the individuals whose being a target of a criminal investigation is conditioned on obtaining a prior authorization or completion of another preliminary condition, the start of the criminal investigation can only be ordered after obtaining that authorization or meeting the condition.

#B

ART. 306

Obligations of the criminal investigation bodies

#M2

(1) To achieve the goal of the criminal investigation, the criminal investigation bodies must, after receiving the referral, seek out and collect data or information concerning the existence of the offenses and the identity of the individuals who committed the offenses, take steps to limit their consequences, collect and present evidence in compliance with the requirements in [Art. 100](#) and [101](#).

#B

(2) The criminal investigation bodies are under an obligation to perform the investigative steps that are stringently necessary, even if those do not pertain to a case where they have authority to perform a criminal investigation.

(3) After the start of the criminal investigation, the criminal investigation bodies shall collect and present evidence both in favor and against the suspect or defendant.

(4) The criminal investigation body shall rule, by reasoned order, as under [Art. 100](#) par. (3) and (4), on the requests for evidence, within the limits of its authority.

#M2

(5) When the criminal investigation body deems it necessary to collect evidence or use special surveillance methods that can only be authorized or ordered, at the stage of criminal investigation, by a prosecutor or, as the case may be, by the Judge for Rights and Liberties, they shall submit reasoned affidavits that must comprise all the data and information that is mandatory under this

procedure. The affidavit shall be submitted to the prosecutor together with the case file.

(6) Banking and professional secrecy, except for the defense counsel's professional secrecy, cannot serve as a basis to deny a prosecutor's requests once the criminal investigation has started.

(7) The criminal investigation body is under an obligation to collect evidence needed to identify the assets and valuables subject to special and extended forfeiture, as under the [Criminal Code](#).

#B

ART. 307

Informing one of their capacity as suspect

A person who has acquired the capacity of suspect shall be informed, before their first hearing, of that capacity, of the actions they are a suspect for, of the charges for such actions, of their procedural rights under [Art. 83](#), and a report shall be written to that effect.

#M2

[ART. 308](#)

Procedure of the early hearing

(1) When the risk exists that a witness might not be available for hearing during trial, the prosecutor can ask the Judge for Rights and Liberties to hear that witness before the trial.

(2) The Judge for Rights and Liberties, if they feel such request is warranted, shall immediately set a date and place for the hearing and summon the parties and main procedural subjects.

(3) The prosecutor's participation is mandatory.

#B

[ART. 309](#)

Start of the criminal action

#M4

(1) The criminal action is set in motion by the prosecutor, by order, during the criminal investigation, when they find that evidence exists to attest that an individual has committed an offense and none of the cases under [Art. 16](#) par. (1) applies.

#B

(2) The setting in motion of the criminal action shall be communicated to the defendant by the criminal investigation body that summons them for interviewing. [Art. 108](#) shall apply accordingly, and a report shall be written to that effect.

(3) On request, the defendant shall be issued with a copy of the order that started the criminal action.

(4) When they deem it necessary, the prosecutor can interview the defendant personally and inform the defendant of the facts described at par. (2).

(5) The criminal investigation body shall continue investigations even in the absence of the defendant, when the latter is absent without justification, is avoiding responding to summons or is missing.

ART. 310

Rules for taking certain steps towards the offender

(1) In case of an offense “in the act” any individual has a right to apprehend the offender.

(2) If the offender was apprehended as under par. (1), the person who apprehended them must immediately surrender them to the criminal investigation bodies, together with the material evidence, items and documents they seized, and the criminal investigation bodies shall write a report to that effect.

ART. 311

Widening the scope of criminal investigation or changing the charges

#M2

(1) In the situation where, after the criminal investigation started, the criminal investigation body finds new facts, new data concerning the involvement of other individuals or circumstances that can lead to changing the charges for the offense, that body shall order the widening of the criminal investigation scope or the changing of the charges.

(2) The criminal investigation body that ordered the widening of the scope of the criminal investigation or the changing of the charges is under an obligation to inform the prosecutor about that step and, as the case may be, propose that the criminal action start.

#B

(3) The judicial body that ordered the widening of the scope of the criminal investigation or the change of charges is under an obligation to inform the suspect about the new facts that warranted the widening of the scope.

(4) In case widening of the scope of the criminal investigation was ordered in relation to several individuals, the criminal investigation body is under an obligation to comply with [Art. 307](#) in relation to those individuals.

(5) The prosecutor that was announced by the criminal investigation body about the widening of the scope of the criminal investigation or who took ex officio action in the situations described at par. (1) can order a widening of the scope of the criminal investigation to cover the new facts.

SECTION 2

Suspending the criminal investigation

ART. 312

Situations for suspension

- (1) In case a forensic medical report establishes that the suspect or defendant is suffering from a serious medical condition that precludes them from taking part in the criminal procedure, the criminal investigation body shall submit to the prosecutor its proposals and the case file so they can order the criminal investigation suspended.
- (2) Suspending the criminal investigation shall also be ordered in the situation where there exists a temporary legal impediment to the start of criminal action against a person.
- (3) Suspending the criminal investigation shall also be ordered for the duration of the mediation procedure, as under the law.

ART. 313

Tasks of the criminal investigation body during suspension

- (1) After suspending the criminal investigation the prosecutor shall return the case file to the criminal investigation body, or can decide to take it over.
- (2) The order to suspend the criminal investigation shall be communicated to the parties and primary procedural subjects.
- (3) For the duration when the criminal investigation is suspended, the criminal investigation bodies shall continue to perform all the steps whose completion is not precluded by the situation of the suspect or defendant, in compliance with the right to defense of the parties of procedural subjects. On resumption of the criminal investigation, steps taken during the suspension can be repeated, if possible, on request by the suspect or defendant.
- (4) The criminal investigation body is under an obligation to check periodically, but no later than 3 months since the date of suspension, whether the cause persists that required suspension of the criminal investigation

SECTION 3

Closing a criminal investigation and dropping charges

ART. 314

Decisions to close a case and to drop charges

- (1) After examining the referral, when they find the evidence has been collected according to [Art. 285](#), the prosecutor, on proposal by the criminal investigation body or ex officio, shall return an order to proceed in that case, as follows:
 - a) close the case, when they do not wish to exercise criminal action or, as the case may be, discontinue criminal action that has started, because of applicability of one of the cases stipulated at [Art. 16](#) par. (1);
 - b) drop charges, when there is no public interest in prosecuting the defendant.
- (2) The prosecutor shall write a single order even if the steps in the case regard several offenses or suspects or defendants and even if their situations are dealt with in different manners as under par. (1).

ART. 315

Closing a case

#M2

(1) A case shall be ordered closed when:

- a) the criminal investigation cannot start, because the referral's crucial requirements of content and form are not met;*
- b) one of the cases under [Art. 16](#) par. (1) applies.*

(2) The order to close a case comprises the information described at [Art. 286](#) par. (2), as well as obligations to:

- a) lift or maintain asset freezes; such obligation shall lawfully cease to apply if the victim does not file civil action within 30 days since the order to close the case was issued;*
- b) return seized assets or the bail money;*
- c) ask the Preliminary Chamber Judge to order special forfeiture as a security measure;*
- d) ask the Preliminary Chamber Judge to nullify a document totally or in part;*
- e) ask the jurisdictional court of law as under the special law on mental health to rule for non-voluntary commitment;*
- f) judicial expenses.*

#B

(3) If one of the legal security measures was ordered during the criminal investigation, mention shall be made of it in the order to close a case.

(4) The order shall also specify the lawful cessation of the preventive measure that was required in the case.

#M2

(5) Listing the reasons on the facts and the merits is only mandatory if the prosecutor does not agree with the arguments in the proposal submitted by the criminal investigation body or if, during the criminal investigation, the suspect has been informed of their capacity as a suspect, under [Art. 307](#).

#B

ART. 316

Notification of closing a case

#M2

(1) A copy of the order to close a case shall be transmitted to the person who filed the referral, the suspect, the defendant or, as the case may be, other stakeholders. If the order does not specify its reasons in terms of the facts and the merits, a copy shall be attached of the affidavit submitted by the criminal investigation body.

#B

(2) In case the defendant is under pre-trial arrest, the prosecutor shall send a written notification to the place of detention announcing the lawful cessation of the pre-trial arrest so the defendant can be released immediately.

ART. 317

Sending a case file back to the criminal investigation body

When a prosecutor has received a proposal to close the case from the criminal investigation body and finds that the legal requirements are not met for an order to close the case, or when they close the case in part and disjoin the case as under [Art. 46](#), they shall return the case file to the criminal investigation body.

#M2

ART. 318

Dropping charges

(1) In the situation of offenses for which the law requires the penalty of a fine or a penalty of imprisonment of no more than 7 years, the prosecutor can drop charges when, considering the contents of the offense, the modus operandi and the instruments used, the goal of the offense and the concrete circumstances of its commission, the consequences that occurred or could have occurred, they find that a public interest is not served in prosecuting.

(2) When the offender is identified, weighing the public interest aspect also involves the person of the suspect or defendant, their conduct previous to the offense and the efforts they made in removing or minimizing the consequences of the offense.

(3) After consulting with the suspect or defendant, the prosecutor can order that they comply with one or several of the following obligations:

a) remove the consequences of the criminal offense or make redress, or agree with the civil party on an avenue of redress;

b) make a public apology to the victim;

c) perform community service for a time span of no less than 30 and no more than 60 days, except for the case where their health precludes them to provide such community service;

d) enlist in a counseling program.

(4) In case the prosecutor orders the suspect or defendant to comply with the obligations at par. (3), they shall include in their order the deadline by which those obligations shall be met, which can not be longer than 6 months in general or 9 months for obligations undertaken by mediation agreement signed with the civil party and which starts as of the date the order is communicated.

(5) The order to drop charges shall include, as the case may be: the mentions stipulated at [Art. 286](#) par. (2), and stipulations on steps taken as under par. (3) in this Article and [Art. 315](#) par. (2) - (4); the deadline by which the obligations must be complied with that are stipulated at par. (3) in this Article; the penalty for failure to file the evidence with the prosecutor; judicial expenses.

(6) In case of non-compliance in ill-faith of the obligations within the deadline stipulated at par. (4), the prosecutor shall rescind their order. The burden of proof for compliance with the obligations or submitting the reasons for failure to comply with the obligations shall fall on the suspect or defendant. A new waiver of prosecution in this same case is no longer possible.

(7) The order whereby charges are dropped shall be sent in copy to the person who filed the referral, the suspect, the defendant or, as the case may be, other interested parties.

#B

ART. 319

Resumption of pressing charges on request by the suspect or defendant

(1) When a case is closed as a result of finding applicability of amnesty, statute of limitations, withdrawal of preliminary complaint, or a non-punishment clause, as well as in the situation where the prosecutor drops charges, the suspect or defendant can, inside 20 days of receiving their copy of the order that closes the case, request that the criminal investigation be resumed.

(2) If, after that request was filed inside the legal deadline, a situation is found that warrants dropping charges other than those in par. (1), the prosecutor shall order the case closed on the basis of that situation.

(3) If no situation is found as under par. (2), the first order to drop charges shall be sustained.

ART. 320

Proposing that a prosecutor issue an order to dispose of a case

The criminal investigation body that finds applicability of one of the situations that cause a case to be closed or charges to be dropped shall refer the case to the prosecutor including the appropriate proposal for disposition.

SECTION 4

Concluding the criminal investigation

ART. 321

Submitting the case concerning the defendant

(1) As soon as the criminal investigation is complete, the criminal investigation body shall submit the case to the prosecutor, accompanied by a report.

#M2

(2) The report shall include the mentions stipulated at [Art. 286](#) par. (4), as well as additional information concerning physical evidence and steps taken as regards physical evidence during the criminal investigation, and the location of such evidence.

#B

(3) When the investigation concerns several offenses or several defendants the report shall include the mentions stipulated at par. (2) concerning all the offenses and all the defendants and, if the case may be, it shall show for which offenses and which offenders the proposal is to close the case or drop the charges.

ART. 322

Examination of criminal investigation actions

(1) Within no longer than 15 days of receiving the case file referred to them by the criminal investigation body as under [Art. 320](#) and [Art. 321](#) par. (1), the prosecutor shall proceed to examining the criminal investigation actions and rule concerning them.

(2) Examination in cases that involve individuals already in pre-trial custody shall be performed urgently and with priority.

ART. 323

Returning a case or transfer of a case to a different criminal investigation body

(1) In the situation where the prosecutor finds the criminal investigation was incomplete or was performed without full compliance with legal requirements, they shall return the case to the criminal investigation body with instructions to supplement or re-do the investigation, or shall send the case to a different criminal investigation body as under [Art. 302](#).

(2) When supplementing or re-doing a criminal investigation is only necessary as concerns some of the offenses or some of the offenders and separating the cases is not possible, the prosecutor shall return or transfer the entire case of the criminal investigation body.

(3) The order to return or transfer the case shall include, aside from the mentions stipulated at [Art. 286](#) par. (2), instructions on the criminal investigation actions to be performed or re-done, the offenses or circumstances that need to be established and the manner of evidence to be collected.

SECTION 5

Stipulations on performance of the criminal investigation by the prosecutor

ART. 324

Performance of the criminal investigation by the prosecutor

(1) The prosecutor shall perform the criminal investigation in the cases stipulated to this effect by the law.

(2) The prosecutor can take over any case where they have been exercising supervision, irrespective of the stage of the investigation, and perform said investigation themselves.

(3) In the situations where the prosecutor performs the criminal investigation they can delegate, by prosecutorial order, the criminal investigation bodies to perform certain investigation actions.

(4) Starting a criminal investigation, taking or proposing steps that restrict rights and liberties, approving evidence or ordering other actions to be taken in the procedure cannot make the object of the delegation stipulated at par. (3).

ART. 325

Taking cases over from other prosecutor's offices

(1) The prosecutors from the hierarchically superior prosecutor's office can take cases over from hierarchically inferior prosecutor's offices for performance or supervision of the criminal investigation, by reasoned order issued by the chief prosecutor of the hierarchically superior prosecutor's office.

(2) The stipulations of (1) shall apply accordingly also when the law stipulates a different hierarchical subordination.

#M2

ART. 326

Sending a case to a different prosecutor's office

When reasonable suspicion exists that the criminal investigation work is affected by circumstances of a case or the capacity of the main procedural parties or subjects or there is a threat of public disorder, the Prosecutor General of Romania, on request from the parties, a procedural subject or ex officio, can transfer the case to a different prosecutor's office of equal rank; [Art. 73](#) and [74](#) shall apply accordingly

#B

CHAPTER V

Disposition of cases and prosecution

ART. 327

Disposition of cases

When the prosecutor finds the legal requirements have been met that guarantee discovery of the truth, that the criminal investigation is complete and the necessary evidence is in place and has been properly processed, the prosecutor:

- a) shall return an indictment whereby the case shall be prosecuted, if the criminal investigation shows the offense exists, was committed by the defendant and that the defendant has criminal liability;
- b) shall return an order to close the case or drop charges, as under the law.

ART. 328

Contents of the indictment

#M2

(1) The indictment is restricted to the offense and person that were the object of the criminal investigation and comprises, accordingly, the mentions stipulated at [Art. 286](#) par. (2), the information concerning the offense the defendant allegedly committed and the charges against the defendant, the evidence and manners of proof, judicial expenses, the mentions stipulated at [Art. 330](#) and [331](#), the order to prosecute, and other mentions needed towards a resolution of the case. The indictment shall be examined in terms of lawfulness and solidity by the chief prosecutor of that prosecutor's office or, as the case may be, by the chief prosecutor of the prosecutor's office attached to the Court of Appeals, while when the indictment is returned by the latter the examination shall be performed by the hierarchically superior prosecutor. When the indictment is returned by a prosecutor from the Prosecutor General's Office it shall be examined by the chief prosecutor of that division, and when returned by that chief of division it shall be examined by the Prosecutor General. In cases where defendants are in pre-trial custody the examination shall be performed urgently and before the expiry of the pre-trial arrest duration.

#B

(2) The indictment shall list the name and surname of the persons who need to be summoned before the court, indicating their capacity in the trial and location where they are required to report.

(3) The prosecutor shall return one indictment even if the criminal investigation targets several offenses or several suspects and defendants and even if their respective situation is to be dealt with differently, as under [Art. 327](#).

ART. 329

The act referring a case to court

(1) The indictment shall constitute the act that refers a case to a court of law.

(2) The indictment shall be accompanied by the case file and as many certified copies of the indictment as needed for transmission to the defendants, all of which shall be submitted to the court that has jurisdiction to try the case on the merits.

(3) In the situation where the defendant does not speak the Romanian language, steps shall be taken to provide a certified translation of the indictment that shall be attached to the documentation stipulated at par. (2). When no certified translators are available, the translation of the indictment shall be performed by a person who can communicate with the defendant.

(4) A defendant who is a Romanian citizen and member of a national minority is entitled to require a translation of the indictment in their maternal language.

ART. 330

Stipulations concerning preventive measures and seizure

When a prosecutor returns an indictment against a defendant, the indictment can also include a proposal to take, maintain, rescind or replace a preventive measure or a seizure order.

ART. 331

Stipulations concerning safety measures

If a prosecutor considers it necessary to take a safety measure of a medical character with regard to the defendant, the prosecutor shall include a proposal to that effect in their indictment.

CHAPTER VI

Resumption of criminal investigation

ART. 332

Situations for resumption of the criminal investigation

(1) The criminal investigation is to be resumed in case:

- a) the cause for suspension has ceased to apply;
- b) the case is sent back by the Preliminary Chamber Judge;
- c) the criminal investigation is reopened.

(2) Resumption of the criminal investigation cannot take place if a cause has become applicable that prevents the start of criminal action or moving forward with criminal procedure.

ART. 333

Resumption of criminal investigation after suspension

Resumption of the criminal investigation after suspension takes place when the prosecutor or the criminal investigation body, as the case may be, find that the cause that determined suspension has ceased to apply. The criminal investigation body that finds that the cause that determined suspension has ceased to apply shall submit the case to the prosecutor for an order to resume investigations.

ART. 334

Resumption of criminal investigation when the case is sent back

(1) The criminal investigation shall resume when the case is sent by the Preliminary Chamber Judge back to the prosecutor's office as under [Art. 346](#) par. (3) lett. b).

#M2

(2) *When the decision relies on the stipulations of [Art. 346](#) par. (3) lett. a), resumption shall be ordered by the chief prosecutor of that prosecutor's office or by the hierarchically superior prosecutor stipulated by law, only when they find that in order to address the irregularity it is necessary to perform criminal*

investigation steps. The order to resume the criminal investigation shall also mention the criminal investigation steps to be performed.

#B

(3) When cases are sent back as under par. (1) and (2) the prosecutor shall perform the criminal investigation or, as the case may be, send the case to the investigative body with an order to perform specific criminal investigation steps.

ART. 335

Resumption in the situation of resuming charges

(1) If the prosecutor who is hierarchically superior to the one having closed a case finds afterwards that the circumstances that warranted closing the case did not exist, they shall nullify the order to close the case and have the criminal investigation resumed. [Art. 317](#) shall apply accordingly.

#M2

(2) When new facts or circumstances have emerged that show that the circumstance that warranted closing a case has disappeared, the prosecutor shall rescind the order and issue a new order to resume the criminal investigation.

(3) When the prosecutor finds that the suspect or defendant has failed, in ill-faith, to comply with their obligations as established under [Art. 318](#) par. (3), they shall rescind their order and issue a new order to resume the criminal investigation.

(4) Resumption of the criminal investigation shall be subject to confirmation by the Preliminary Chamber Judge, within no more than 3 days, under penalty of nullification. The Preliminary Chamber Judge shall rule in a reasoned judgment, in chambers, without participation by the prosecutor and the suspect or, as the case may be, the defendant, on the lawfulness and solidity of the order to resume the criminal investigation. The Preliminary Chamber Judge's resolution shall be final.

(5) When a case has been closed or charges have been dropped, resumption of the criminal investigation can also take place when the Preliminary Chamber Judge sustains the challenge against the prosecutor's order and has sent the case back to the prosecutor for a supplement to the criminal investigation. The Preliminary Chamber Judge's orders are mandatory for the criminal investigation body.

#B

CHAPTER VII

Challenging criminal investigation measures and acts

ART. 336

The right to file complaint

- (1) Any individual is entitled to file complaint against criminal investigation measures and acts, if the latter have harmed their legitimate interests.
- (2) The complaint shall be submitted to the prosecutor in charge of supervising the work of the criminal investigation body, either directly or at the criminal investigation body.
- (3) Filing complaint does not suspend completion of the measure or act that is the object of the complaint.

ART. 337

Obligation to forward the complaint

When the complaint has been filed with the criminal investigation body, the latter is under an obligation to submit it to the prosecutor within 48 hours of receiving it, together with their explanations when such are needed.

ART. 338

Time frame for resolution

The prosecutor is under an obligation to resolve the complaint within no more than 20 days since receiving it and inform the plaintiff without delay via one copy of the resolution order.

ART. 339

Complaint against the prosecutor's acts

- (1) A complaint against measures or acts performed by the prosecutor or as a result of their orders shall be resolved by the chief prosecutor of that prosecutor's office or, as the case may be, by the chief prosecutor of the prosecutor's office attached to the Court of Appeals or by the chief prosecutor of that prosecutor's office division.
- (2) when the measures and acts were performed or ordered by the chief prosecutor of that prosecutor's office, by the chief prosecutor of the prosecutor's office attached to the Court of Appeals, or by the chief prosecutor of that prosecutor's office division, the complaint shall be resolved by the hierarchically superior prosecutor.
- (3) The stipulations of par. (1) and (2) shall apply accordingly when the hierarchy of positions in a prosecutorial structure is established under a special law.

#M2

(4) Complaints against resolutions to close a case or drop charges shall be filed within 20 days of receiving communication of the copy of the act that contains the resolution.

#B

(5) Orders that settle complaints against resolutions, acts or measures cannot be challenged by complaint before the hierarchically superior prosecutor and are to be communicated to the plaintiff and other interested parties.

(6) The stipulations of [Art. 336](#) - 338 shall apply accordingly unless the law specifies otherwise.

ART. 340

Complaint orders to not start a criminal investigation or to drop charges

(1) The person whose complaint against an order to close a case or to waive criminal investigation, returned by prosecutorial order or indictment, was denied as under [Art. 339](#) can, within 20 days of receiving communication about it, file complaint with the Preliminary Chamber Judge at the court that would have legal jurisdiction to try the case as a court of first instance.

(2) If the complaint has not received a resolution within the time frame specified at [Art. 338](#), the right to file complaint can be exercised at any time after completion of the 20-day period within which the complaint should have been dealt with, but no later than 20 days of the date the resolution was communicated to them.

#M2

ART. 341

Judgment on the complaint by the Preliminary Chamber Judge

(1) After the complaint is registered with the jurisdictional court of law, it shall be sent on the same day to the Preliminary Chamber Judge. A complaint filed with the wrong body shall be forwarded via administrative channels to the appropriate judicial body.

(2) The Preliminary Chamber Judge shall set a time frame within which they shall deal with the complaint, and communicate said time frame together with a copy of the complaint to the prosecutor and parties, who can file motions in writing concerning the admissibility or solidity of the complaint. The plaintiff shall be informed of the deadline for a judgment in their case. The person who held the capacity of defendant in the case can also formulate motions and challenges against the lawfulness of evidence gathering or of the performance of the criminal investigation.

(3) Within no longer than 3 days of receiving the communication stipulated at par. (2) the prosecutor shall send the case file to the Preliminary Chamber Judge.

(4) When the complaint has been filed with the prosecutor, the latter shall refer it, together with the case file, to the appropriate court of law.

(5) The Preliminary Chamber Judge shall return a reasoned judgment on the complaint, in chambers, without participation of the plaintiff, prosecutor and parties.

(6) In the cases where the decision was to not start the criminal investigation the Preliminary Chamber Judge can rule one of the following ways:

a) deny the complaint, as tardy or inadmissible or, as the case may be, unfounded;

b) sustain the complaint, annul the challenged resolution and send the case back to the prosecutor, with explanations, for them to start or supplement the criminal investigation or, as the case may be, to start criminal action and supplement the criminal investigation;

c) sustain the complaint and change the legal grounds of the challenged resolution to close a case, if this does not create a situation that is more difficult for the individual who filed the complaint.

(7) In the cases where the decision was to not start the criminal investigation the Preliminary Chamber Judge can rule to:

1. deny the complaint as tardy or inadmissible;

2. examine the lawfulness of evidence gathering and performance of the criminal investigation, exclude evidence that was gathered unlawfully or, as the case may be, penalize under [Art. 280](#) - 282 the criminal investigation acts that were performed in violation of the law and:

a) deny the complaint as unfounded;

b) sustain the complaint, annul the challenged resolution and send the case back to the prosecutor, with explanations, for them to supplement the criminal investigation;

c) sustain the complaint, annul the challenged resolution and rule to begin trial of the offenses and individuals against whom the criminal action started during the criminal investigation finding that the lawfully gathered evidence was sufficient, thus putting the case up for random assignment;

d) sustain the complaint and change the legal grounds of the challenged resolution to close a case, if this does not create a situation that is more difficult for the individual who filed the complaint.

(8) The judgment ruling one of the ways stipulated at par. (6) and par. (7) item 1, item 2 lett. a), b) and d) is final.

(9) In the situation stipulated at par. (7) item 2 lett. c), within 3 days of communication of the judgment the prosecutor and the defendant can file a reasoned challenge of the manner of addressing the exceptions concerning lawfulness of evidence-gathering and of performing the criminal investigation. A challenge unaccompanied by legal reasoning shall be inadmissible.

(10) The challenge shall be filed with the judge who returned judgment on the complaint and shall be forwarded for a resolution to the Preliminary Chamber Judge of the hierarchically superior court of law or, when the court that returned judgment on the complaint was the High Court of Review and Justice, to the panel that has jurisdiction under the law, which shall rule by reasoned judgment without participation from the prosecutor and defendant, to:

a) deny the challenge as tardy, inadmissible or, as the case may be, unfounded and sustain the order to begin trial;

b) sustain the challenge and retry the complaint as under par. (7) item 2, if the exceptions concerning lawfulness of evidence-gathering or performance of the criminal investigation received the wrong resolution.

(11) The evidence that was excluded from the case cannot be considered during the trial of the case on the merits.

#B

TITLE II

The Preliminary Chamber

#M2

ART. 342

Object of the Preliminary Chamber procedure

The object of the Preliminary Chamber procedure is examination, after return of the indictment, of the court's jurisdiction and lawfulness of its having received the case, as well as examination of the lawfulness of evidence-gathering and performance of the criminal investigation acts.

#M2

ART. 343

Duration of the Preliminary Chamber procedure

The duration of the Preliminary Chamber procedure is a maximum of 60 days after the case is registered with the court.

#M2

ART. 344

Preliminary measures

(1) After the indictment is filed with the court, the case is assigned randomly to a Preliminary Chamber Judge.

(2) A certified copy of the indictment and, as the case may be, a certified translation thereof shall be communicated to the defendant at their place of detention or, as the case may be, the address where they live or the address where they requested to receive the procedural acts; the defendant shall also be informed of the object of the Preliminary Chamber procedure, their right to retain a defense counsel and the time frame within which, as of the date of communication, they can file motions and exceptions in writing concerning the lawfulness of evidence-gathering and performance of criminal investigation acts by the investigative bodies. The deadline shall be set by the Preliminary Chamber Judge, depending on the complexity and particulars of the case, but can be no shorter than 20 days.

(3) In the situations stipulated at [Art. 90](#), the Preliminary Chamber Judge shall take steps to appoint a public defender and set, depending on the complexity and particulars of the case, the time frame within which the defender can file motions and exceptions in writing concerning the lawfulness of evidence-gathering and performance of criminal investigation acts by the investigative bodies, which can be no shorter than 20 days.

(4) On expiry of the deadlines described at par. (2) and (3), the Preliminary Chamber Judge shall communicate the motions and exceptions filed by the defendant or the exceptions raised ex officio to the prosecutor's office, which can reply in writing within 10 days of receiving the communication.

#M2

ART. 345

The Preliminary Chamber procedure

(1) If motions or exceptions have been filed or ex officio exceptions have been raised the Preliminary Chamber Judge shall rule on those by reasoned judgment returned in chambers without participation by the prosecutor and defendant, on expiry of the deadline described at [Art. 344](#) par. (4).

(2) When the Preliminary Chamber Judge finds irregularities in the indictment, in case they penalize under [Art. 280](#) - 282 criminal investigation steps performed in violation of the law or if they exclude one or several of the pieces of evidence submitted, their judgment shall be immediately communicated to the prosecutor's office that returned the indictment.

(3) Within 5 days of receiving the communication the prosecutor shall correct the irregularities in the indictment and communicate to the Preliminary Chamber Judge whether they maintain their indictment or request to be sent the case back.

#M2

ART. 346

Resolutions

(1) The Preliminary Chamber Judge shall rule by reasoned judgment returned in chambers without participation by the prosecutor and defendant. Their judgment shall be immediately communicated to the prosecutor and defendant.

(2) If no motions or exceptions have been filed or no ex officio exceptions have been raised, on expiry of the deadlines described at [Art. 344](#) par. (2) or (3) the Preliminary Chamber Judge shall find the lawfulness of their court receiving the indictment, of evidence-gathering and performance of the criminal investigation and shall order the trial to begin.

(3) The Preliminary Chamber Judge shall send the case back to the prosecutor's office if:

a) the indictment contains irregularities, and the irregularities have not been corrected by the prosecutor within the deadline described at [Art. 345](#) par. (3), if the irregularity entails an impossibility to establish the object or the scope of the prosecution;

b) they have excluded all the evidence gathered during the criminal investigation;

c) the prosecutor requests that the case be sent back to them, as under [Art. 345](#) par. (3), or fails to reply within the deadline described in the same Article.

(4) *In all other situations where they found irregularities in the indictment, excluded one or more pieces of evidence or penalized under [Art. 280](#) - 282 criminal investigation steps performed in violation of the law or, the Preliminary Chamber Judge shall order the trial to begin.*

(5) *Excluded evidence cannot be considered during the trial of a case on the merits.*

(6) *If they feel that the court of law that received the indictment does not have jurisdiction to try the case, the Preliminary Chamber Judge shall proceed as under [Art. 50](#) and [51](#), which apply accordingly.*

(7) *The Preliminary Chamber Judge that ordered the trial to begin shall also sit in that case.*

#M2

ART. 347

Challenge

(1) *Within 3 days of communication of the judgment stipulated at [Art. 346](#) par. (1), the prosecutor and defendant can challenge the manner of dealing with the motions and exceptions, as well as the resolutions described at [Art. 346](#) par. (3) - (5).*

(2) *The challenge shall be examined by a Preliminary Chamber Judge from the hierarchically superior court to the original court. When the original court is the High Court of Review and Justice the challenge shall be tried by the jurisdictional panel as under the law.*

(3) *[Art. 343](#) - 346 shall apply accordingly.*

#B

ART. 348

Preventive measures in the Preliminary Chamber procedure

(1) **The Preliminary Chamber Judge shall rule, on request or ex officio, on taking, maintaining, replacing, revoking or lawful cessation of preventive measures.**

(2) **In cases where the defendant is subject to a preventive measure, the Preliminary Chamber Judge shall examine the lawfulness and solidity of the preventive measure, as required by [Art. 207#B](#)**

TITLE II

The Preliminary Chamber

#M2

ART. 342

Object of the Preliminary Chamber procedure

The object of the Preliminary Chamber procedure is examination, after return of the indictment, of the court's jurisdiction and lawfulness of its having received

the case, as well as examination of the lawfulness of evidence-gathering and performance of the criminal investigation acts.

#M2

ART. 343

Duration of the Preliminary Chamber procedure

The duration of the Preliminary Chamber procedure is a maximum of 60 days after the case is registered with the court.

#M2

ART. 344

Preliminary measures

(1) After the indictment is filed with the court, the case is assigned randomly to a Preliminary Chamber Judge.

(2) A certified copy of the indictment and, as the case may be, a certified translation thereof shall be communicated to the defendant at their place of detention or, as the case may be, the address where they live or the address where they requested to receive the procedural acts; the defendant shall also be informed of the object of the Preliminary Chamber procedure, their right to retain a defense counsel and the time frame within which, as of the date of communication, they can file motions and exceptions in writing concerning the lawfulness of evidence-gathering and performance of criminal investigation acts by the investigative bodies. The deadline shall be set by the Preliminary Chamber Judge, depending on the complexity and particulars of the case, but can be no shorter than 20 days.

(3) In the situations stipulated at [Art. 90](#), the Preliminary Chamber Judge shall take steps to appoint a public defender and set, depending on the complexity and particulars of the case, the time frame within which the defender can file motions and exceptions in writing concerning the lawfulness of evidence-gathering and performance of criminal investigation acts by the investigative bodies, which can be no shorter than 20 days.

(4) On expiry of the deadlines described at par. (2) and (3), the Preliminary Chamber Judge shall communicate the motions and exceptions filed by the defendant or the exceptions raised ex officio to the prosecutor's office, which can reply in writing within 10 days of receiving the communication.

#M2

ART. 345

The Preliminary Chamber procedure

(1) If motions or exceptions have been filed or ex officio exceptions have been raised the Preliminary Chamber Judge shall rule on those by reasoned judgment returned in chambers without participation by the prosecutor and defendant, on expiry of the deadline described at [Art. 344](#) par. (4).

(2) When the Preliminary Chamber Judge finds irregularities in the indictment, in case they penalize under [Art. 280](#) - 282 criminal investigation steps performed in violation of the law or if they exclude one or several of the pieces of evidence submitted, their judgment shall be immediately communicated to the prosecutor's office that returned the indictment.

(3) Within 5 days of receiving the communication the prosecutor shall correct the irregularities in the indictment and communicate to the Preliminary Chamber Judge whether they maintain their indictment or request to be sent the case back.

#M2

ART. 346

Resolutions

(1) The Preliminary Chamber Judge shall rule by reasoned judgment returned in chambers without participation by the prosecutor and defendant. Their judgment shall be immediately communicated to the prosecutor and defendant.

(2) If no motions or exceptions have been filed or no ex officio exceptions have been raised, on expiry of the deadlines described at [Art. 344](#) par. (2) or (3) the Preliminary Chamber Judge shall find the lawfulness of their court receiving the indictment, of evidence-gathering and performance of the criminal investigation and shall order the trial to begin.

(3) The Preliminary Chamber Judge shall send the case back to the prosecutor's office if:

a) the indictment contains irregularities, and the irregularities have not been corrected by the prosecutor within the deadline described at [Art. 345](#) par. (3), if the irregularity entails an impossibility to establish the object or the scope of the prosecution;

b) they have excluded all the evidence gathered during the criminal investigation;

c) the prosecutor requests that the case be sent back to them, as under [Art. 345](#) par. (3), or fails to reply within the deadline described in the same Article.

(4) In all other situations where they found irregularities in the indictment, excluded one or more pieces of evidence or penalized under [Art. 280](#) - 282 criminal investigation steps performed in violation of the law or, the Preliminary Chamber Judge shall order the trial to begin.

(5) Excluded evidence cannot be considered during the trial of a case on the merits.

(6) If they feel that the court of law that received the indictment does not have jurisdiction to try the case, the Preliminary Chamber Judge shall proceed as under [Art. 50](#) and [51](#), which apply accordingly.

(7) The Preliminary Chamber Judge that ordered the trial to begin shall also sit in that case.

#M2

ART. 347

Challenge

(1) *Within 3 days of communication of the judgment stipulated at [Art. 346](#) par. (1), the prosecutor and defendant can challenge the manner of dealing with the motions and exceptions, as well as the resolutions described at [Art. 346](#) par. (3) - (5).*

(2) *The challenge shall be examined by a Preliminary Chamber Judge from the hierarchically superior court to the original court. When the original court is the High Court of Review and Justice the challenge shall be tried by the jurisdictional panel as under the law.*

(3) *[Art. 343](#) - 346 shall apply accordingly.*

#B

ART. 348

Preventive measures in the Preliminary Chamber procedure

(1) The Preliminary Chamber Judge shall rule, on request or ex officio, on taking, maintaining, replacing, revoking or lawful cessation of preventive measures.

(2) In cases where the defendant is subject to a preventive measure, the Preliminary Chamber Judge shall examine the lawfulness and solidity of the preventive measure, as required by [Art. 207#B](#)

TITLE II

The Preliminary Chamber

#M2

ART. 342

Object of the Preliminary Chamber procedure

The object of the Preliminary Chamber procedure is examination, after return of the indictment, of the court's jurisdiction and lawfulness of its having received the case, as well as examination of the lawfulness of evidence-gathering and performance of the criminal investigation acts.

#M2

ART. 343

Duration of the Preliminary Chamber procedure

The duration of the Preliminary Chamber procedure is a maximum of 60 days after the case is registered with the court.

#M2

ART. 344

Preliminary measures

(1) After the indictment is filed with the court, the case is assigned randomly to a Preliminary Chamber Judge.

(2) A certified copy of the indictment and, as the case may be, a certified translation thereof shall be communicated to the defendant at their place of detention or, as the case may be, the address where they live or the address where they requested to receive the procedural acts; the defendant shall also be informed of the object of the Preliminary Chamber procedure, their right to retain a defense counsel and the time frame within which, as of the date of communication, they can file motions and exceptions in writing concerning the lawfulness of evidence-gathering and performance of criminal investigation acts by the investigative bodies. The deadline shall be set by the Preliminary Chamber Judge, depending on the complexity and particulars of the case, but can be no shorter than 20 days.

(3) In the situations stipulated at [Art. 90](#), the Preliminary Chamber Judge shall take steps to appoint a public defender and set, depending on the complexity and particulars of the case, the time frame within which the defender can file motions and exceptions in writing concerning the lawfulness of evidence-gathering and performance of criminal investigation acts by the investigative bodies, which can be no shorter than 20 days.

(4) On expiry of the deadlines described at par. (2) and (3), the Preliminary Chamber Judge shall communicate the motions and exceptions filed by the defendant or the exceptions raised ex officio to the prosecutor's office, which can reply in writing within 10 days of receiving the communication.

#M2

ART. 345

The Preliminary Chamber procedure

(1) If motions or exceptions have been filed or ex officio exceptions have been raised the Preliminary Chamber Judge shall rule on those by reasoned judgment returned in chambers without participation by the prosecutor and defendant, on expiry of the deadline described at [Art. 344](#) par. (4).

(2) When the Preliminary Chamber Judge finds irregularities in the indictment, in case they penalize under [Art. 280](#) - 282 criminal investigation steps performed in violation of the law or if they exclude one or several of the pieces of evidence submitted, their judgment shall be immediately communicated to the prosecutor's office that returned the indictment.

(3) Within 5 days of receiving the communication the prosecutor shall correct the irregularities in the indictment and communicate to the Preliminary Chamber Judge whether they maintain their indictment or request to be sent the case back.

#M2

ART. 346

Resolutions

- (1) The Preliminary Chamber Judge shall rule by reasoned judgment returned in chambers without participation by the prosecutor and defendant. Their judgment shall be immediately communicated to the prosecutor and defendant.*
- (2) If no motions or exceptions have been filed or no ex officio exceptions have been raised, on expiry of the deadlines described at [Art. 344](#) par. (2) or (3) the Preliminary Chamber Judge shall find the lawfulness of their court receiving the indictment, of evidence-gathering and performance of the criminal investigation and shall order the trial to begin.*
- (3) The Preliminary Chamber Judge shall send the case back to the prosecutor's office if:*
 - a) the indictment contains irregularities, and the irregularities have not been corrected by the prosecutor within the deadline described at [Art. 345](#) par. (3), if the irregularity entails an impossibility to establish the object or the scope of the prosecution;*
 - b) they have excluded all the evidence gathered during the criminal investigation;*
 - c) the prosecutor requests that the case be sent back to them, as under [Art. 345](#) par. (3), or fails to reply within the deadline described in the same Article.*
- (4) In all other situations where they found irregularities in the indictment, excluded one or more pieces of evidence or penalized under [Art. 280](#) - 282 criminal investigation steps performed in violation of the law or, the Preliminary Chamber Judge shall order the trial to begin.*
- (5) Excluded evidence cannot be considered during the trial of a case on the merits.*
- (6) If they feel that the court of law that received the indictment does not have jurisdiction to try the case, the Preliminary Chamber Judge shall proceed as under [Art. 50](#) and [51](#), which apply accordingly.*
- (7) The Preliminary Chamber Judge that ordered the trial to begin shall also sit in that case.*

#M2

ART. 347

Challenge

- (1) Within 3 days of communication of the judgment stipulated at [Art. 346](#) par. (1), the prosecutor and defendant can challenge the manner of dealing with the motions and exceptions, as well as the resolutions described at [Art. 346](#) par. (3) - (5).*
- (2) The challenge shall be examined by a Preliminary Chamber Judge from the hierarchically superior court to the original court. When the original court is the High Court of Review and Justice the challenge shall be tried by the jurisdictional panel as under the law.*
- (3) [Art. 343](#) - 346 shall apply accordingly.*

#B

ART. 348

Preventive measures in the Preliminary Chamber procedure

(1) The Preliminary Chamber Judge shall rule, on request or ex officio, on taking, maintaining, replacing, revoking or lawful cessation of preventive measures.

(2) In cases where the defendant is subject to a preventive measure, the Preliminary Chamber Judge shall examine the lawfulness and solidity of the preventive measure, as required by [Art. 207](#).

TITLE III

Trial

CHAPTER I

General provisions

#M2

[ART. 349](#)

The role of the court

(1) The court shall adjudicate the case on trial, safeguarding the rights of the parties to trial and ensuring the submission of evidence to completely clarify the circumstances of the case in order to find out the truth, fully observing the law.

(2) The court may adjudicate the case only based on the evidence submitted during the criminal investigation, if the defendant so requests and fully admits all the acts allegedly committed by him and if the court deems that the evidence is sufficient to find out the truth and to rightfully adjudicate the case, except if the criminal proceedings focus on a crime punishable by life imprisonment.

#B

ART. 350

Location where the trial shall take place

(1) The trial shall take place at the headquarters of the court.

(2) On justified grounds, the court may order for the trial to take place at another location.

[ART. 351](#)

Oral, direct and adversarial proceedings

(1) The case shall be tried by the court established according to the law and shall be debated in the court oral, direct and adversarial session.

#M2

(2) The court must debate the motions of the prosecution, of the parties or of the any other subject to the proceedings, as well as the motions they raise or ex officio and take a decision thereupon in a reasoned court resolution.

#B

(3) The court shall also include in the reasoned court resolution all the measures taken during the court proceedings.

ART. 352

Public character of hearings

(1) The court hearing shall be public, except for the cases provided by law. The hearing taking place in chambers shall not be public.

(2) Persons under 18 may not take part in the court hearing, except for when they are parties or witnesses; the same holds for persons carrying weapons, except for the staff providing security and order.

(3) If a public hearing in court were to harm to various state interests, morality, a person's dignity or privacy, the interests of juveniles or to justice, the court, based on application by the prosecutor, the parties, or ex officio, may declare that the court hearing shall not be public for the entire duration of the court proceedings in this case, or only for a certain part of the court proceedings in this case.

(4) The court may also declare that the court hearing shall not be public based on application by a witness if the latter's hearing in open court session were to bring harm to his safety or dignity or privacy or to that of the members of his family, or based on application by the prosecutor, the victim or the parties, if a public court hearing were to jeopardize confidential information.

(5) The court shall declare that a court hearing shall not be public in an open court session, after hearing the parties present, the victim and the prosecutor. This court ruling is enforceable.

(6) While the court hearing shall not be public, only the parties, the victim, their representatives, the counsels and the other persons whose presence is authorized by the court are allowed to be in the court room.

#M2

(7) The parties, the victim, their representatives, the counsels and the experts appointed for the case have the right to be informed of the actions and the contents of the court case file.

(8) The president of the judicial panel must inform persons participating in the trial taking place in a closed court hearing that they are under an obligation to keep confidential the information gathered throughout the court proceedings.

#B

(9) Throughout the trial, the court may ban the publication and broadcasting, through printed and audiovisual media, of texts, sketches, photographs or images likely to reveal the identity of the victim, the civil party, the party with

civil liability or the witnesses according to the requirements provided under par. (3) or (4).

#M2

(10) The information of public interest of the case file shall be communicated according to the requirements provided by law.

(11) If the classified information is essential to settle the case, the court shall request, as a matter of emergency, as the case may be, the total declassification, the partial declassification or the change of the classified level or that the defendant's counsel has access to that classified information.

(12) If the issuing authority does not allow the defendant's counsel's access to the classified information, it cannot form the basis for a ruling to convict, to waive penalty enforcement or postponed enforcement of the respective penalty.

#M2

ART. 353

Court summons

(1) The trial may take place only if the victim and the parties have been duly summoned and the procedure fulfilled. The defendant, the civil party, the party with civil liability and, as the case may be, their legal representatives shall be summoned ex officio in court. The court may order for other subjects to the proceedings to be summoned in court when their presence is required to adjudicate a case. The presence of the victim or of the party in court, in person or through a representative or a counsel of their own choice or appointed, if the latter contacted the person they represent, shall cover any irregularity related to the summoning procedure.

(2) The party or any other principal subject to the proceedings, present in person, through representative or through retained counsel, at any court hearing, as well as the person who was served the summons in person, through their representative or retained counsel or by the clerk or the person in charge with the mail, were lawfully summoned to appear in court during a hearing shall not be summoned for the subsequent court hearings, even if they would miss any of such hearings, except for the situations when their presence is mandatory. The military personnel and the prisoners shall be summoned ex officio for each court hearing.

#B

(3) The victim shall be summoned to appear in court for the first hearing and shall be informed that they may apply to becoming a civil party no later than the beginning of the court proceedings.

(4) The failure of the victim and the summoned parties to appear in court shall not prevent the adjudication of the case. When the court feels it is necessary for one of the missing parties to appear in court, it may take steps for the party to appear in court, thus postponing the adjudication of the case.

#M2

(5) *** Repealed

#B

(6) Throughout the court proceedings, the victim and the parties may apply, orally or in writing, for the court proceedings to take place in their absence, in which case, they shall not be summoned any longer to appear in court for the following hearings.

#M2

(7) When the court proceedings are postponed, the parties and the other persons who participate at the trial shall be informed of the date of the following court hearing.

#B

(8) Based on the application of persons who are informed of the date of the court hearing, the court shall issue the summons for them to use as justification at work, in order to be present at the new court hearing.

(9) The participation of the prosecutor during the adjudication of the case shall be mandatory.

#M2

(10) The judicial panel entrusted with the adjudication of a criminal case may change, ex officio, or upon the motion of the parties or the victim, the date of the first court hearing or of the hearing the latter were informed thereupon, observing the principle of the continuity of the judicial panel, if, out of objective reasons, the court cannot carry out its judicial activity at the date set for the hearing or in view of solving the case expeditiously. The change of the date of the court hearing is ordered by the judge in chambers, whereas the parties are not summoned. The parties shall be summoned as soon as possible for the new date of the court hearing as set.

#B

ART. 354

Make-up of the court

(1) The court shall try the case in a judicial panel, whose making up shall be the one provided in the law.

(2) The judicial panel must stay the same throughout the entire process of adjudicating the case. When such is not possible, the panel may change no later than the beginning of the debates.

(3) Following the beginning of the debates, any change in the make-up of the panel shall result in resuming the debates.

ART. 355

Emergency court proceedings in cases with persons in pre-trial detention or under house arrest

(1) If the case counts with defendants in pre-trial detention or under house arrest, the court proceedings shall be urgent and as a matter of priority, whereas the court hearings shall be held, usually, every 7 days.

(2) Out of strongly justified reasons, the court may grant shorter or longer recesses between court hearings.

ART. 356

Ensuring defense

(1) The victim, the defendant, the other parties and their counsels have the right to be informed of the actions under the case file for the entire duration of the court proceedings.

(2) When the victim or one of the parties is detained, the president of the judicial panel shall take measures so that the former could exercise their right provided under par. (1) and make contact with their counsel.

(3) Throughout the court proceedings, the victim and the parties have only the period until a court hearing to hire a counsel and prepare their defense.

#M2

(4) If the victim or one of the parties does not have legal assistance anymore as provided by the retained counsel, the court may decide to set another date for the court hearing for the former to hire another counsel and prepare their defense.

#B

(5) In the cases provided under par. (1) - (4), granting the facilities required to prepare effective defense must observe the reasonable time frame of the criminal court proceedings.

ART. 357

Responsibilities of the judicial panel president

(1) The judicial panel president shall chair the court hearing, fulfill all the responsibilities provided by law and shall decide on the motions of the prosecutor, the victim and the parties, if the judicial panel shall not be entrusted with the adjudication thereof.

(2) During the trial, the president, after consulting with the other members of the judicial panel, may dismiss the questions put forward by the parties, the victim and the prosecutor, if these are not relevant and useful to adjudicate the case.

(3) The decisions of the judicial panel president shall be binding for all persons present in the court room.

ART. 358

Calling the case and those summoned to appear in court

(1) The judicial panel president shall call the case whose turn shall be to be tried, according to the order on the court hearing dockets, shall order for the parties to be called, as well as the other persons summoned to appear in court and shall

check which one of them is actually present. In the case of the participants who are missing, the president shall check whether they had been served the summons according to the requirements under [Article 260](#) and whether they had provided any justification for their absence.

(2) The parties and the victim may appear in court and participate in the court proceedings even if they had not been summoned to appear or they had not received the summons, whereas the president is under an obligation to determine their identity.

ART. 359

Ensuring the order and solemnity of the court hearing

(1) The president shall watch over the order and solemnity of the court hearing, having the possibility to take the required measures to that effect.

(2) The president may limit public access to the court hearing, taking into account the size of the court room.

(3) The parties and persons who assist or participate in the court hearing are under an obligation to keep order in court.

(4) When one party or any other person disturbs the court hearing or disobeys the measures taken, the president shall warn them to keep order in court, whereas if this is a repeated situation or the offenses are severe, the president shall order them to be removed from the court room.

(5) The party or the person who was removed from the court room shall be called in before the beginning of the debates. The president shall inform the former on the essential actions taken while they were absent and shall read to them the statements of persons heard in court. If the party or the person continues to disturb the court hearing, the president may order them again to be removed from the room, while the debates shall take place in their absence.

(6) If the party continues to disturb the court hearing also during the issuing of the court ruling, the judicial panel president may order for the former to be removed out of the room, in which case, the court ruling shall be notified to this party.

ART. 360

Identifying crimes committed by the audience

(1) If, in the course of the court hearing, a crime provided by the criminal law is committed, the judicial panel president shall find the act and shall identify the perpetrator. The court report thereupon shall be notified to the competent prosecutor.

#M2

(2) If the prosecutor is taking part in the trial, they may rule to open a criminal case, set in motion the criminal investigation and detain the suspect or the defendant.

#B

ART. 361

Preparing the court hearing

#M2

(1) *** *Repealed*

#B

(2) The judicial panel president shall be under an obligation to take all the required measures in due time, so that the adjudication of the case during the court hearing set should not be postponed.

(3) To that effect, the case files allocated randomly to the judicial panels shall be taken over by the judicial panel president, who shall take the required steps to prepare the trial, so that the case should be adjudicated expeditiously.

(4) When the legal assistance is mandatory, the judicial panel president shall take measures to appoint the public counsel.

(5) When in the same case, both the legal entity, as well as its legal representatives are defendants, the judicial panel president shall check whether the legal entity defendant has already appointed a representative and if not, the president shall appoint a representative from among the insolvency practitioners.

(6) The judicial panel president shall also check whether the provisions concerning the service of documents were fulfilled and, as the case may be, shall either supplement or remake them.

(7) The judicial panel president shall take care that the dockets of cases set for adjudication be drafted and posted at the court 24 hours before the date of the court hearing.

(8) When drafting the dockets, the date is taken into account when cases were filed to court, whereas the cases involving prisoners or persons in house arrests, as well as the cases about which the law stipulates court proceedings as a matter of emergency, shall take priority.

ART. 362

Preventive measures during the trial

(1) The court shall take a decision based on a motion or ex officio with respect to the implementation, replacement, revocation or interruption by law of the preventive measures.

(2) In cases when a preventive measure was taken with respect to the defendant, the court is under an obligation to check, during the trial, in a public session, the lawfulness and the grounds on which the preventive measure was based, taking action according to the provisions under [Article 208](#).

ART. 363

The prosecutor participating in the court proceedings

(1) The participation of the prosecutor during the trial shall be mandatory.

(2) During the court proceedings, the prosecutor shall exercise an active role, to find the truth and observe the legal provisions.

(3) During the court proceedings, the prosecutor shall file motions, shall raise objections and make final arguments. Reasons must be submitted for the motions and the arguments of the prosecutor.

#M2

(4) When considering that there is cause for preventing the implementation of the criminal investigation, the prosecutor shall argue, as the case may be, for acquittal or the interruption of the criminal proceedings in court.

#B

ART. 364

The defendant's participation in the court proceedings and their rights

(1) The case shall be adjudicated with the defendant present. It is mandatory to bring the detained defendant at the trial.

(2) The court proceedings may take place with the defendant absent, if the latter is missing, flees justice or changed their address without informing thereupon the judicial bodies and, following the controls carried out, their new address remains unknown.

(3) The court proceedings may also take place with the defendant absent if, even though lawfully served the summons, the defendant provides no justification for their absence during the adjudication of the case.

(4) Throughout the court proceedings, the defendant, including the case when deprived of liberty, may apply, in writing, to be tried in absentia, as represented by the retained or the publicly appointed counsel.

(5) When the court deems it mandatory for the defendant to be present, it may order the former's presence including with a bench warrant.

#M2

(6) The defendant may submit motions, raise objections and make final arguments.

#B

ART. 365

The participation of the other parties to the court proceedings and their rights

(1) The civil party and the party with civil liability may be represented by counsels.

(2) The civil party and the party with civil liability may submit motions, raise objections and make final arguments.

#M2

ART. 366

The participation of the victim and of the other subjects to the proceedings at the trial and their rights

(1) The victim may be represented by a counsel.

(2) The victim may submit motions, raise objections and make final arguments with regard to the criminal component of the case.

(3) Persons whose assets are subject to forfeiture may be represented by counsel and may submit motions, raise objections and make final arguments with regard to forfeiture.

#B

ART. 367

The stay of court proceedings

(1) When based on a medical expert report, the court finds that the defendant is severely ill, which prevents him from participating at the trial, the court, in a report, shall order the stay of proceedings until the health of the defendant will allow him to take part at the trial.

(2) When there are several defendants and the grounds for the stay relate only to one of them and when it is not possible to sever the case, then the entire case shall be stayed.

(3) The stay of court proceedings may also be ordered for the duration of the mediation process, according to the law.

(4) The resolution of the court of first instance relating to the stay of the proceedings may be challenged separately, in an appeal, at the hierarchically superior court no later than 24 hours since its issuing in court, in the case of the prosecutor, the parties and the victim who are present, and since its notification, in the case of the parties or the victim who absent. The appeal shall be filed with the court that made the appealed report and shall be forwarded, jointly with the case file, to the hierarchically superior court, no later than 48 hours since the registration.

(5) The appeal shall not be deemed as grounds for staying the enforcement and shall be tried no later than 3 days since the case file shall be received.

(6) The criminal proceedings shall resume ex officio, as soon as the defendant is able to take part at the trial or when the mediation process shall be concluded, according to the law.

(7) The court is under an obligation to check regularly, but no later than 3 months, if the grounds that caused the stay of court proceedings are still valid.

(8) If the defendant is under house arrest or in pre-trial detention, the provisions under [Article 208](#) shall apply accordingly.

(9) Raising a motion of unconstitutionality shall not result in the stay of proceedings.

ART. 368

The stay of court proceedings in the case of an active extradition

#M2

(1) If, according to the law, the extradition of a person is requested for criminal proceedings in court, the court entrusted with the adjudication of the case may order, in a reasoned court resolution, the stay of proceedings until the date when the requested state shall notify its decision concerning the extradition request. The court resolution may be challenged no later than 24 hours since its issuing in court, for those present and since the communication, for those who are absent, at the hierarchically superior court.

(2) If the extradition of a defendant tried in a case with several defendants is requested, the court may order that the case be disjoined, in the interest of good justice.

#B

(3) The challenge shall be filed with the court that made the appealed report and shall be forwarded, jointly with the case file, to the hierarchically superior court, no later than 48 hours since registration.

#M2

(4) The challenge shall not be deemed as grounds for staying the enforcement and shall be tried in a public court hearing, with the participation of the prosecutor and the summoning of the victim and parties. The challenge shall be tried no later than 5 days since the case file shall be received, without the participation of the prosecutor and the parties.

#B

ART. 369

Note-taking during the court hearing

(1) The court hearing shall be recorded using the audio technical means.

(2) During the court hearing, the clerk shall take notes concerning the court proceedings. The prosecutor and the parties may apply so that the notes could be read and approved by the president.

(3) After the court hearing, the participants to the proceedings receive a copy each of the clerk's notes, based on application.

(4) The notes of the clerk may be appealed no later than the following court hearing.

(5) If the participants in the court proceedings challenge the clerk's notes, these shall be checked and, eventually, supplemented or rectified based on the recordings from the court room.

ART. 370

The types of ruling

(1) The ruling wherein the case is settled by the court of first instance or wherein the court of first instance dismisses the case without solving it shall be called a sentence. The court shall issue a sentence in other situations as well, as provided by the law.

#M2

(2) The ruling wherein the court makes a decision regarding the appeal, the appeal for review and the appeal in the interest of the law shall be called decision. The court shall rule in a decision in other cases as well, as provided by the law.

#B

(3) All the other rulings reached by courts throughout the proceedings shall be called court resolutions.

(4) The development of the trial in the court room shall be recorded in a court resolution that shall comprise:

- a) the day, the month, the year and the name of the court;
- b) the mention whether the court session was public or not;
- c) the surnames and first names of the judges, prosecutor and clerk;
- d) the surnames and first names of the parties, the counsels and the other persons who take part in the proceedings and who were present in the trial, as well as the missing persons, emphasizing their legal standing in trial and the mention concerning the fulfillment of the procedure;

#M2

e) the offense for which the defendant was sent to trial and the legal texts that regulate it;

#B

- f) the evidence that had been the object of adversarial debates;
- g) the motions of any other nature, developed by the prosecutor, the victim, the parties and the other participants in the court proceedings;
- h) the prosecutor's, the victim's and the parties' conclusions;
- i) the measures taken during the session.

(5) The court resolution shall be developed by the clerk no later than 72 hours since the completion of the court hearing and shall be signed by the judicial panel president and the clerk.

(6) When the ruling is issued on the day when the court hearing took place, no court resolution thereof shall be developed.

CHAPTER II

Court proceedings in the court of first instance

SECTION 1

Court proceedings taking place

ART. 371

The subject of the trial

The trial shall confine itself to the acts and persons identified in the bill of indictment submitted to the court.

ART. 372

Checks regarding the defendant

(1) At the court hearing, after the call of the case and of the parties, the president shall check the defendant's identity.

(2) In the case of a defendant who is a legal entity, the president shall carry out checks concerning the name, the registered seat and the secondary locations, the individual registration code, the identity and the standing of persons appointed to represent it.

ART. 373

Preliminary measures concerning the witnesses, experts and interpreters

(1) Following the call of the witnesses, experts and interpreters, the president shall ask the witnesses who are present to leave the court room and not to leave the building without approval.

(2) The experts shall remain in the court room, except for the case when the court decides otherwise.

(3) The witnesses, experts and interpreters who are present may be heard, even if they had not been summoned or they had not been served the summons, but only after having had their identity established, as under [Article 122](#).

#M2

ART. 374

Informing on the charges, clarifications and applications

(1) During the first court hearing when the summoning procedure shall be fulfilled according to the law and the case shall be on trial, the president shall order the clerk to read the bill wherein the case was sent to trial, or, as the case may be, the bill wherein the court proceedings began or to make a brief presentation thereof.

(2) The president shall explain the defendant what charges are brought against them, inform the defendant about the right not to make any statement, drawing their attention that what they declare may be also used against them, as well as on the right to ask questions to the co-defendants, the victim, the other parties, the witnesses, the experts and to give explanations throughout the investigation in court, when he feels it is necessary to do so.

(3) The president shall inform the civil party, the party with civil liability and the victim on the evidence submitted at the stage of the prosecution that had been excluded and will not be taken into account for the adjudication of the case and shall inform the victim that they may become a civil party no later than the beginning of the court investigation.

(4) When the criminal proceedings are not focused on a crime punishable by life imprisonment, the president shall inform the defendant that he may apply for the trial to take place only based on the evidence submitted during the prosecution and on the documentary evidence submitted by the parties when the defendant

fully admits all the acts held against him, informing the defendant on the provisions under [Article 396](#) par. (10).

(5) The president shall ask the prosecutor, the parties and the victim if they propose the submission of evidence.

(6) When evidence is proposed, they must show the facts and the circumstances about to be proven, the means whereby such evidence may be submitted, the place where such means lie and as to the witnesses and experts, their identity and address.

(7) The evidence submitted throughout the prosecution and not challenged by the parties shall not be resubmitted during the court investigation. They shall feature in the parties' adversarial debate and taken into account by the court for the deliberation.

(8) The evidence provided under par. (7) may be submitted ex officio by the court when the court feels that it is necessary to do so to find the truth and rightfully adjudicate the case.

(9) The prosecutor, the victim and the parties may apply for the submission of new evidence also during the court investigation.

(10) The court may order ex officio the submission of evidence required to find the truth and rightfully adjudicate the case.

#M2

ART. 375

Plea bargaining procedure

(1) When the defendant applies for the trial to take place in the conditions provided under [Article 374](#) par. (4), the court shall hear him following which, after the arguments by the prosecutor and the other parties, shall take a decision this application.

(2) If it admits the application, the court shall ask the parties and the victim if they propose the submission of documentary evidence.

(3) If it dismisses the application, the court shall act according to [Article 374](#) par. (5) - (10).

#B

ART. 376

The order of the court investigation

(1) The court shall begin the court investigation when the case is on trial.

(2) The order in which the court investigation actions shall be taken is that provided in the foregoing section.

(3) After hearing the defendant, the victim, the civil party and the party with civil liability, the evidence agreed upon shall be submitted.

(4) The submission of evidence ex officio may take place at any time during the court investigation.

(5) The court may order a change in the order, whenever it shall be necessary.

#M2

ART. 377

Court investigation in guilty plea cases

(1) If it ordered that the trial should take place according to the requirements provided under [Article 375](#) par. (1), the court shall submit the agreed documentary evidence.

(2) The documentary evidence may be submitted during the hearing when the court shall take a decision the application provided under [Article 375](#) par. (1) or during a subsequent hearing, granted to that effect. The court may only set a single hearing for the submission of documentary evidence.

(3) The provisions under [Article 383](#) par. (3) shall apply accordingly.

(4) When it finds, ex officio, based on the motion of the prosecutor or of the parties that the legal charges for the act in the bill of indictment must be changed, the court is under an obligation to have the new charge debated and draw the attention of the defendant that he has the right to ask for his case to be tried later. [Article 386](#) par. (2) shall apply accordingly.

(5) When, to change the legal charge, as well as when following the change in the legal charge, it is necessary for other evidence to be submitted, the court, following the arguments of the prosecutor and the parties, the court shall order the court investigation to take place, whereas the provisions under [Article 374](#) par. (5) - (10) shall apply accordingly.

#B

ART. 378

Hearing the defendant

#M2

(1) The defendant is permitted to show all he knows about the crime for which he was sent to court, he then may be asked questions directly by the prosecutor, the victim, the civil party, the party with civil liability, the other defendants, as well as their counsels and the counsel of the defendant who is being heard in court. The president and the other members of the judicial panel may, as well, ask questions, if they feel it is necessary, for the just adjudication of the case.

#B

(2) The court may dismiss the questions which are not relevant and useful for the case. The questions dismissed shall be recorded in the court resolution.

#M2

(3) When the law stipulates the possibility for the defendant to get the obligation to do unpaid work for the community, the defendant will be asked if he agrees to that effect, if he is found guilty.

(4) When the defendant no longer remembers certain facts or circumstances, or when there are contradictions between the statements of the defendant in court

and the ones given previously, the president shall ask the defendant for explanations and may read, wholly or partially, the previous statements.

(5) When the defendant refuses to give statements, the court shall order that the statements he gave previously be read.

#B

(6) The defendant may be heard again, whenever it is necessary.

ART. 379

Hearing the co-defendants

(1) If there are several defendants, each and every one of them shall be heard with the other defendants present.

(2) When it is in the interest of finding the truth, the court may order hearing one of the defendants without having the others present.

(3) The statements taken separately shall be obligatorily read to the other defendants, when they have been heard.

(4) The defendant may be heard again with the other defendants present or with only some of them present.

ART. 380

Hearing the victim, the civil party and the party with civil liability

(1) The court shall hear the victim, the civil party, as well as the party with civil liability according to the provisions under [Article 111](#) and [112](#), when it has heard the defendant and, as the case may be, the co-defendants.

(2) Persons mentioned before are allowed to tell what they know about the offense which is the subject of the court proceedings, they then may be asked questions directly by the prosecutor, the defendant, the defendant's counsel, the civil party, the party with civil liability and their counsels. The president and the other members of the judicial panel may, as well, ask questions, if they feel it is necessary, for the just adjudication of the case.

(3) The court may dismiss the questions which are not relevant and useful for the case. The questions dismissed shall be recorded in the court report.

(4) The victim, the civil party and the party with civil liability may be heard again, whenever it is necessary.

ART. 381

Hearing the witness and the expert

(1) The witness shall be heard according to the provisions under [Article 119 - 124](#), that shall apply accordingly.

(2) When the witness was proposed by the prosecutor, he may be asked questions directly by the prosecutor, the defendant, the victim, the civil party, the party with civil liability. If the witness or expert was proposed by one of the parties, they may be asked questions by the latter, by the prosecutor, the victim and the other parties.

#M2

(3) The president and the other members of the judicial panel may, as well, ask questions, whenever they feel it is necessary, for the just adjudication of the case.

#B

(4) The court may dismiss the questions which are not relevant and useful for the case. The questions dismissed shall be recorded in the court report.

(5) The witness who has a document in connection with the statement he made may read it in court. The prosecutor and the parties have the right to examine the document, whereas the court may order that the original or the copy thereof be withheld with the case file.

#M2

(6) When the witness no longer remembers certain facts or circumstances, or when there are contradictions between the statements made in court and the ones given previously, when the witness was allowed to declare everything he is aware of, the president may read, wholly or partially, the previous statements.

#B

(7) When it is no longer possible to hear one of the witnesses and during the prosecution, the latter gave statements to the criminal investigation bodies or was heard by the Judge for Rights and Liberties according to the requirements under [Article 308](#), the court shall order that the statement he gave during the prosecution be read in court and shall take it into account for the adjudication of the case.

#M2

(8) When one or several witnesses are absent, the court may, providing reasons thereof, either continue the proceedings or adjourn the case. The witness whose absence is not justified may be brought in court with a bench warrant.

#B

(9) The heard witnesses shall remain in the court room, available to the court until the completion of the court investigation that shall take place during the respective session. When it finds it necessary, the court may order for some of them or for all of them to be removed from the court room, so as to be heard again or confronted.

#M2

(10) Following the arguments by the prosecutor, the victim and the parties, the court may agree for the witnesses to leave after being heard in court.

#B

(11) The provisions under par. (1) - (10) shall apply accordingly also to the hearing of the expert or the interpreter in court.

#M2

(12) [Article 130](#) - 134 and [Article 306](#) par. (6) shall apply accordingly.

#B

ART. 382

Recording statements

The statements and the answers of the defendants, witnesses or any other persons heard in the case shall be recorded as such, according to the requirements provided under [Article 110](#) par. (1) - (4), whereas the dismissed questions shall be recorded in the court report, according to [Article 378](#) - 380.

ART. 383

Evidence waiver and impossible evidence submission

- (1) The prosecutor, the victim and the parties may waive the evidence they proposed.
- (2) Following the waiver debate, the court may order for the item of evidence to be submitted no longer, when it deems that it is no longer necessary.
- (3) When during the court investigation the submission of an item of evidence previously admitted appears useless or is not possible anymore, the court, after hearing the prosecutor, the victim and the parties, may order for that item of evidence not be submitted anymore.
- (4) When the impossibility of submission refers to an item of evidence submitted during the prosecution and accepted by the court, it shall form the subject of debate involving the parties, the victim and the prosecutor and shall be taken into account during the trial.

ART. 384

Submission of physical evidence

When in the case on trial there is physical evidence, the court, based on motion or ex officio, shall order their bringing in court and submission therein, if possible.

ART. 385

Adjournment for new evidence

When as a result of the court investigation, the submission of new evidence is required to clarify the facts or the circumstances of the case, the court shall order either the proceedings in court to continue or their adjournment for the submission of evidence.

[ART. 386](#)

Changing the charges

[#M2](#)

(1) When during the court proceedings, it deems that the legal charges for the crime in the bill of indictment are about to be changed, the court is under an obligation to discuss the new legal charges and to draw the defendant's attention that he has the right to ask for the case to be adjourned for later during the same court session or to be postponed, to prepare his defense.

#B

(2) When the new legal charges are aimed at an offense for which it is necessary for the victim to file a prior complaint, the court shall call the victim to court and ask the latter if he is willing to file a prior complaint. When the victim files the prior complaint, the court shall continue its investigation, otherwise it shall order the end of the criminal proceedings in court.

ART. 387

Completing the court investigation

(1) Before declaring the court investigation completed, the president shall ask the prosecutor, the victim and the parties if they have any other explanations to give or to file new motions to supplement the court investigation.

(2) If no motions were filed or if the motions filed were dismissed or if the requested supplements were made, the president shall declare the court investigation completed.

ART. 388

Debates and order of the floor

(1) Following the completion of the court investigation there is debate, while the floor shall be given in the following order to: the prosecutor, victim, civil party, party with civil liability and the defendant.

(2) The president may also give the floor so as to provide a reply.

(3) The duration of the arguments by the prosecutor, the parties, the victim and their counsels may be limited. The president of the judicial panel may decide that these should have a similar duration.

(4) The president shall have the right to interrupt those who have the floor when they go beyond the limits of the case on trial in their arguments.

#M2

(5) *** *Repealed*

#B

(6) The debates may be interrupted out of substantive grounds. The interruption may not exceed 3 days.

ART. 389

The defendant's last word

(1) Before concluding the debates, the president shall give the floor to the defendant.

(2) While the defendant has the last word, no questions shall be asked. If the defendant reveals new facts or circumstances, which are essential for the adjudication of the case, the court shall order for the court investigation to be resumed.

ART. 390

Written conclusions

- (1) The court may ask the parties, following the completion of debates, to submit written conclusions in court.
- (2) The prosecutor, the victim and the parties may submit written conclusions, even if these were not asked for by the court.

SECTION 2

Court deliberation and judgment

ART. 391

Adjudication of the case

#M2

(1) The deliberation and issuing of the judgment shall take place on the day when the debates took place or later, but no later than 15 days since the closing of debates.

#B

- (2) In exceptional cases, when, in connection with the complexity of the case, the deliberation and issuing of the ruling cannot take place in the time frame provided under par. (1), the court may postpone the issuing of the ruling once for no later than 15 days at the latest.
- (3) The president of the judicial panel shall inform the parties present on the date when the ruling shall be returned in court.

ART. 392

Deliberation

- (1) Only the members of the judicial panel where the debate took place shall take part in the deliberation.
- (2) The deliberation of the judicial panel shall be secret.

ART. 393

The object of the deliberation

- (1) The judicial panel shall deliberate firstly over the facts and then the law.
- (2) The deliberation shall focus on the existence of the offense and the guilt of the defendant, the determination of the penalty, the establishment of the educational measure or the safety measure, as the case may be, as well as the deduction of the duration of the preventive measures regarding the deprivation of liberty and the confinement to hospital.
- (3) The judicial panel shall deliberate also on compensating for the damages caused by the offense, the preventive steps and asset freezing, the physical evidence, judicial expenses as well as on any other issue in connection with the just adjudication of the case.
- (4) All the members of the judicial panel shall voice their opinion each issue.
- (5) The president shall be the last to voice his opinion.

ART. 394

Reaching the decision

- (1) The decision must be the result of the agreement among the members of the judicial panel on the solutions to the issues under deliberation.
- (2) When unanimity cannot be reached, the decision shall be taken with a majority.
- (3) When as a result of the deliberation, there are more than two opinions, the judge who opts for the more severe solution must join the one which is closest to their own.
- (4) It shall be mandatory to provide the reasons for the dissenting opinion.
- (5) When the judicial panel cannot reach either majority or unanimity, the court proceedings shall be resumed with a dissention panel.

#M2

ART. 395

Resuming the court investigation or the debates

- (1) *When during the deliberation, it feels that a certain circumstance must be clarified and it is necessary to resume the court investigation or the debates, the court shall resume proceedings in the case. The provisions concerning the summons shall apply accordingly.*
- (2) *When the court proceedings took place according to the requirements under [Article 375](#) par. (1) and (2), whereas the court feels that, to settle the criminal proceedings, the submission of evidence other than the documentary evidence provided under [Article 377](#) par. (1) - (3) is mandatory, it shall resume proceedings in the case and shall order the court investigation to be implemented.*

#B

ART. 396

Settling the criminal proceedings

- (1) The court shall rule on the charges brought against the defendant, deciding, as the case may be, to convict, to waive enforcement of penalty, to postpone the service of sentence, to acquit or to end the criminal proceedings.
- (2) The court shall rule to convict when it feels that, beyond any reasonable doubt, the act exists, it is an offense and was committed by the defendant.

#M2

- (3) *Waiving enforcement of the penalty shall be decided when the court finds that, beyond any reasonable doubt, the fact exists, it is an offense and was committed by the defendant, according to the requirements under [Article 80](#) - 82 of the Criminal Code.*
- (4) *Postponing service of the penalty shall be decided when the court finds that, beyond any reasonable doubt, the fact exists, it is an offense and was committed*

by the defendant, according to the requirements under [Article 83](#) - 90 of the Criminal Code.

#B

(5) The defendant's acquittal shall be decided in the case provided under [Article 16](#) par. (1) letters a) - d).

(6) The end of the criminal proceedings shall be decided in the cases provided under [Article 16](#) par. (1) letters e) - j).

(7) When the defendant applied for the criminal proceedings to be continued according to [Article 18](#) and, as a consequence of continuing the proceedings, it finds that the cases provided under [Article 16](#) par. (1) letters a) - d) are relevant, the court shall decide the acquittal.

#M2

(8) When the defendant applied for the criminal proceedings to be continued according to [Article 18](#) and, as a consequence of continuing the proceedings, it finds that the cases provided under [Article 16](#) par. (1) letters a) - d) are not relevant, the court shall decide the end of the criminal proceedings.

#B

(9) When, during the criminal investigation, the preliminary chamber procedure or the trial, the preventive measure of the judicial control on bail was taken against the defendant or the decision was taken to replace another preventive measure with the preventive measure of the judicial control on bail and the defendant is sentenced to pay a fine, the court shall order such payment to be taken from the bail, according to the provisions under [Article 217](#).

#M2

(10) When the court proceedings were implemented according to the requirements under [Article 375](#) par. (1) and (2), when the defendant's motion that the trial take place in these conditions was dismissed or when the court investigation took place according to the requirements under [Article 377](#) par. (5) or [Article 395](#) par. (2), whereas the court retains the same situation of fact as the one described in the bill of indictment and admitted by the defendant, in case of conviction or postponing the service of the penalty, the limits for the penalty provided by law in the case of a penalty by imprisonment shall be reduced by one-third, whereas in the case of a fine, by one-fourth.

#B

ART. 397

Settling the civil action

(1) The court shall decide in the same ruling on the civil action as well.

(2) When it sustains the civil action, according to [Article 249](#) - 254, the court shall examine the need to order asset freezing concerning the civil redress, unless such measures have already been taken previously.

(3) At the same time, the court in its ruling shall also take a decision the restitution of things and the reinstatement of the previous condition, according to the provisions under [Article 255](#) and [256](#).

(4) The provisions in the ruling concerning the asset freezing and the restitution of things shall be enforceable.

(5) When, according to the provisions under [Article 25](#) par. (5), the court leaves the civil action unsettled, the asset freezing shall be maintained. These measures shall terminate as such if the victim does not file an action in the civil court no later than 30 days since the court ruling becomes final.

(6) When, during the criminal investigation, the preliminary chamber procedure or the trial, the preventive measure of the judicial control on bail was taken against the defendant or the decision was taken to replace another preventive measure with the preventive measure of the judicial control on bail and the civil action is sustained, the court shall order such payment of damages to repair the consequences of the crime be taken from the bail, according to the provisions under [Article 217](#).

ART. 398

Judicial expenses

In its ruling, the court shall also decide on the judicial expenses, according to the provisions under [Article 272](#) - 276.

ART. 399

Provisions concerning the preventive measures

(1) The court is under an obligation to make a decision, in its ruling, on maintaining, cancelling, replacing or terminating as such the preventive measure ordered throughout the criminal proceedings against the defendant.

(2) When waiving the service of the penalty, postponing the service of the penalty, acquitting or terminating the criminal proceedings, the court shall order the prompt release of the defendant who is in pre-trial detention.

(3) At the same time, the court shall order the immediate release of the defendant who is in pre-trial detention when it orders:

- a) a penalty by imprisonment no larger than the duration of the arrest and pretrial detention;
- b) a penalty by imprisonment, suspending the execution under supervision;
- c) a penalty of a fine, that shall not accompany the penalty by imprisonment;
- d) an educational measure.

(4) The ruling issued according to the requirements under par. (1) and (2) on the preventive measures shall be enforceable.

(5) When according to the provisions under par. (1) - (3), the defendant is set free, the court shall inform the administration of the detention facility thereupon.

(6) The defendant convicted by the first court and in pretrial detention shall be released as soon as the duration of the arrest and pretrial detention shall equal

the duration of the penalty received, even if the ruling is not yet final. The release shall be ordered by the administration of the detention facility, that shall be notified promptly after the issuing of the court ruling with a copy of the final part or an excerpt thereof.

(7) In the case of waiving the service of the penalty, postponing the service of the penalty, acquittal or end of the criminal proceedings, when, during the prosecution or the trial, the measure of the judicial control on bail was taken against the defendant, the court shall order the restitution of the amount posted as bail, unless compensation was ordered to be paid from this amount to redress the damages and unless the payment out of bail provided under [Article 217](#) par. (7) was ordered.

#M2

(8) The court shall seize the bail if the measure of the judicial control on bail was replaced with the measure of house arrest or pretrial detention, for the reasons mentioned under [Article 217](#) par. (9), and the payment of the amounts provided under [Article 217](#) out of the bail was not ordered.

(9) The duration of house arrest shall be deducted from the applied penalty, whereas one day of pretrial detention as house arrest shall equal one day of penalty.

(10) Once the ruling is returned, until the Court of Appeals is notified, the court may order, based on motion or ex officio, taking a preventive measure, revoking it or replacing it with respect to the convicted defendant, under the law.

#B

ART. 400

Minutes

(1) The outcome of deliberation shall be recorded in the minutes, which must have the contents provided for the operational part of the ruling. The minutes shall be signed by the members of the judicial panel.

(2) The minutes shall be drafted when the judge or the court shall order preventive measures, as well as in any other cases specifically provided by the law.

(3) The minutes shall be drafted in two original copies, of which one shall feature in the case file, whereas the other shall be filed, for conservation, in the court minutes' file.

ART. 401

Content of the court ruling

The ruling wherein the criminal court settles the merits of the case must contain an introductory part, a narrative description and the operational part.

ART. 402

Contents of the introductory part

(1) The introductory part shall comprise the mentions provided under [Article 370](#) par. (4).

(2) When a court report was drafted according to the provisions under [Article 370](#), the introductory part shall confine itself only to the following mentions: the name of the court that adjudicated the case, the date when the ruling was issued, the place where the case was tried, as well as the surnames and names of the members of the judicial panel, the prosecutor and the clerk and mention shall be made according to which the other data was recorded in the court report.

(3) The military rank of the members of the judicial panel and prosecutor must be indicated in the rulings by the military courts. When the defendant is part of the military, their rank shall also be mentioned.

ART. 403

Contents of the narrative description

(1) The narrative description must comprise:

a) data concerning the identity of the parties;

b) the description of the act that is the subject of the prosecution, whereas the time and the place where the act was committed must be indicated along with the legal charge it was qualified as in the bill of indictment;

c) the reasoning of the solution with respect to the criminal component, based on the analysis of evidence that served as grounds to settle the criminal component of the case and evidence that was removed and the reasoning of the solution with respect to the civil component, as well as the analysis of any facts that support the respective solution of the case;

d) the description of the legal grounds that justify the solutions given for the case.

#M2

(2) In the case of conviction, waiving the service of the penalty or postponing the service of the penalty, the narrative description must comprise each act that the court retained as having been committed by the defendant, the form and the degree of guilt, the aggravating or mitigating circumstances, the reoffending level, the time that shall be deducted from the penalty ordered, respectively the time that shall be deducted from the penalty set when the waiving of service of the penalty or postponing of the service of the penalty are cancelled or revoked, as well as the documents attesting to the period about to be deducted.

(3) When the court considers that the defendant is guilty only for having committed part of the acts representing the subject of prosecution, the court ruling shall emphasize which acts resulted in a conviction or, as the case may be, in the waiving of the service of penalty or postponing of the service of penalty, as well as which acts resulted in the end of the criminal proceedings or the acquittal.

(4) When the service of the penalty is waived and postponed, as well as when it is suspended under supervision, the ruling shall list out the reasons that caused

the waiving or postponing or, as the case may be, suspension and the consequences that the person against whom such solutions were taken shall have to bear if he commits any other crimes in the future or, as the case may be, if he fails to observe the supervision measures or to execute his obligations for the duration of the supervision.

#B

ART. 404

Contents of the operational part

#M2

(1) The operational part must comprise the data provided under [Article 107](#) concerning the defendant, the solution given by the court with respect to the offense, with an indication thereof concerning its name and the legal articles where it is stipulated and, in the case of an acquittal or end of the criminal proceedings, the case on which it is grounded, according to [Article 16](#), as well as the solution given with respect to the settlement of the civil action.

(2) When the court rules to convict, the operational part of the ruling shall list out the main penalty applied. When it orders for its service to be suspended, the court shall mention in the operational part of its ruling the supervision measures and obligations as well, as provided under [Article 93](#) par. (1) - (3) of the Criminal Code, which the convict must observe, the latter is informed of the consequences related to their violations and the commission of new crimes and two entities of the community shall be indicated where the obligation to provide community service shall be performed, as provided under [Article 93](#) par. (3) of the Criminal Code, following the consultation of the list concerning the concrete execution possibilities at the level of each probation service. The probation officer, based on the initial evaluation, shall decide in which of the two community institutions mentioned in the court ruling, the convict shall perform the obligation and the type of work. When the court orders the educational measure of supervision, the operational part of the court ruling shall indicate the person who will conduct the supervision and guidance for the underage offender.

(3) When the court orders waiving the service of the penalty, the operational part of the court ruling shall indicate the application of the warning, according to [Article 81](#) of the Criminal Code, and when it orders postponing the service of the penalty, the operational part of the court ruling shall list out the penalty set whose service shall be postponed, as well as the supervision measures and obligations, as provided under [Article 85](#) par. (1) and (2) of the Criminal Code, which the convict must observe, the latter is informed of the consequences related to their violations and the commission of new crimes and, if it imposed the obligation to provide community service, two entities of the community shall be indicated where this obligation shall be performed, following the consultation of the list concerning the concrete service possibilities at the level

of each probation service. The probation officer, based on the initial evaluation, shall decide in which of the two community institutions mentioned in the court ruling, the convict shall perform the obligation and the type of work and the guidance of the underage offender.

#B

(4) The operational part must also comprise, as the case may be, what the court decided regarding:

- a) the deduction of the preventive measure of deprivation of liberty and confinement to hospital, with an indication of the part of penalty served in this manner;
- b) the preventive measures;
- c) the asset freezing;
- d) the safety measures;
- e) the judicial expenses;
- f) the restitution of things;
- g) the return to the previous condition;
- h) bail;
- i) the solution to any other problem regarding the just adjudication of the case.

(5) When the court orders the penalty by imprisonment, the operational part shall indicate that the convict shall be stripped of their rights or, as the case may be, some of their rights provided under [Article 65](#) of the Criminal Code, for the duration provided in the same article.

(6) When the court ordered the penalty by imprisonment, whereas the victim applied to be informed of the release of the convict in any way, the court shall indicate it in the operational part of its ruling.

#M2

(7) The operational part must indicate that the ruling shall be subject to appeal and the time frame in which it can be filed, the date when the court ruling was issued and that it was read in a public session.

#B

ART. 405

Pronouncing the ruling

- (1) The ruling shall be pronounced in a public session by the president of the judicial panel, assisted by the clerk.
- (2) The parties shall not be summoned for the pronouncement of the ruling.
- (3) The president of the judicial panel shall pronounce the minutes of the ruling.

ART. 406

Writing and signing the ruling

- (1) The ruling shall be written no later than 30 days since its return.

(2) The ruling shall be written by one of the judges who participated in the adjudication of the case, no later than 30 days since its return and shall be signed by all the members of the judicial panel and by the clerk.

(3) The operational part of the ruling shall be the same as the minutes.

(4) When any of the members of the judicial panel cannot sign the ruling, it shall be signed by the president of the judicial panel in the former's place. When the president of the judicial panel cannot sign the ruling either, it shall be signed by the president of the court. When the clerk cannot sign the ruling, it shall be signed by the chief clerk. In all the cases, it shall be indicated in the ruling what caused them to be unable to sign it.

#M2

ART. 407

Notifying the ruling

(1) After its issuing, a copy of the minutes related to the ruling shall be notified to the prosecutor, the parties, the victim and, when the defendant is detained, to the administration of the detention facility, in view of exercising the legal avenue of appeal. When the defendant does not understand Romanian, a copy of the minutes related to the ruling shall be notified in a language they understand. When the ruling is written, these shall be notified of the entire ruling.

(2) When the court ordered for the service of the penalty to be postponed or suspended under supervision, the court ruling shall be notified to the probation service and, as the case may be, the body or authority competent to check whether the obligations ordered by the court are observed.

#B

CHAPTER III

The appeal

ART. 408

Court rulings subject to appeal

(1) Sentences may be challenged by an appeal, unless the law stipulates otherwise.

(2) Court resolutions may be challenged by an appeal only jointly with the sentence, except for the situations when, according to the law, they may be challenged by appeal separately.

(3) The appeal filed against the sentence shall be deemed as filed against the court resolutions as well.

ART. 409

Persons who may file an appeal

(1) The following may file an appeal:

a) the prosecutor, with respect to the criminal and the civil components;

b) the defendant, with respect to the criminal and the civil components;

#M2

c) the civil party, with respect to the criminal and the civil components and the party with civil liability, with respect to the civil component, whereas with respect to the criminal component, to the extent that the solution this component influenced the solution the civil component;

#B

d) the victim, with respect to the criminal component;

e) the witness, the expert, the interpreter and the counsel, with respect to the judicial expenses, their fees and the judicial fines applied;

f) any natural or legal entity whose legitimate rights were directly violated through a measure or an action of the court, with respect to the orders that caused such a violation.

(2) In the case of persons provided under par. (1) letters b) - f), the appeal may also be filed by the legal representative or by the counsel, whereas in the case of the defendant, by the spouse.

ART. 410

Time frame to file an appeal

(1) In the case of the prosecutor, the victim and parties, the time frame to file an appeal is 10 days, unless the law stipulates otherwise and starts counting since the notification of the copy of the minutes.

(2) In the case provided under [Article 409](#) par. (1) letter e), the appeal may be filed as soon as possible after the issuing of the court report wherein the court ordered the judicial expenses, the fees and the judicial fines and no later than 10 days at the latest since the return of the court ruling wherein the case was adjudicated.

(3) In the case of persons provided under [Article 409](#) par. (1) letter f), the time frame to file an appeal is 10 days and starts counting since the date when they learned of the action or measure that cause the violation.

ART. 411

Reinstating the right to appeal

(1) The appeal filed following the expiry of the time frame provided by the law shall be deemed as complying with the time frame when the Court of Appeals finds that the delay was caused by a justified ground which prevented it, whereas the motion of appeal was filed no later than 10 days since its discontinuance.

(2) The court ruling shall be final until the Court of Appeals shall admit the motion to reinstate the right to appeal.

(3) Pending the settlement of the reinstatement of the right to appeal, the Court of Appeals may suspend the service of the appealed ruling.

(4) The provisions under par. (1) and (3) shall not apply when the criminal proceedings are reopened as asked by the person convicted in absentia.

#M2

ART. 412

Filing and justifying the appeal

(1) The appeal shall be filed in a written motion that shall comprise the following:

a) the number of the case file, the date and the number of the appealed sentence or court resolution;

b) the name of the court that returned the appealed ruling;

c) the surname, the name, the personal code, the standing and domicile, residence or housing, as well as the signature of the person filing the appeal.

(2) When the person cannot sign it, the motion shall be certified by a clerk from the court whose ruling is appealed or by the counsel.

(3) The motion of appeal which is not signed or certified may be confirmed in court by the party or by his representative during the first court hearing when the procedure is lawfully fulfilled.

(4) The appeal shall be justified in writing, containing an indication of the facts and law on which it is based.

#B

ART. 413

The court where the appeal shall be filed

(1) The motion for appeal drafted according to the requirements under [Article 412](#) shall be filed with the court whose ruling is appealed.

(2) The person who is detained may file the motion for appeal with the administration of the place of detention.

(3) The motion for appeal recorded or certified according to the requirements under par. (2) or the report drafted by the administration of the place of detention shall be filed as soon as possible with the court whose ruling is appealed.

ART. 414

Waiving the appeal

(1) Following the issuing of the ruling and until the expiry of the time frame to file the appeal, the parties and the victim may specifically waive this legal remedy.

(2) The waiver may be revisited, except for the appeal related to the civil component of the case, within the time frame to file the appeal.

(3) The waiver or its revisiting may be done in person or through a special intermediary.

ART. 415

Appeal withdrawal

(1) No later than the closing of the debates with the Court of Appeals, the victim and any of the parties may withdraw the appeal they declare. The withdrawal must be done in person by the party or through a special attorney, whereas if the party is detained, it shall be done through a certified statement or through a statement recorded in a report by the administration of the place of detention. The withdrawal statement may be filed either with the court whose ruling was appealed or with the appellate court.

(2) The legal representatives may withdraw the appeal, in compliance with the requirements provided by the civil law, with respect to the civil component. The underage defendant may not withdraw the appeal filed in person or by his legal representative.

(3) The appeal filed by the prosecutor may be withdrawn by the hierarchically higher prosecutor.

(4) The appeal filed by the prosecutor and withdrawn may be taken over by the party to whose benefit it was filed.

ART. 416

The suspending effect of the appeal

The appeal filed within the time frame shall suspend the execution, both with respect to the criminal component, as well as the civil component, except when the law stipulates otherwise.

ART. 417

The devolutionary effect of the appeal and its limits

(1) The court shall try the appeal only with respect to the person who filed it and with respect to the person referred to in the motion for appeal and only with respect to the standing the appellant has at trial.

(2) Within the limitations provided under par. (1), the court is bound, besides the grounds relied upon and motions filed by the appellant, to examine the case under all its aspects related to the facts and the law.

ART. 418

Avoidance of worsening own situation in appeal

(1) The appellate court, while adjudicating the case, cannot create a more difficult situation for the one who filed for appeal.

(2) At the same time, in the appeal filed by the prosecutor for the benefit of one party, the appellate court cannot make its situation more difficult.

ART. 419

The extensive effect of the appeal

The appellate court shall examine the case by extending it also to the parties which did not file for appeal or to whom it does not refer, being able to rule also in their respect, without being able to make for these parties a more difficult situation.

ART. 420

Trial of the appeal

- (1) The appeal shall be tried with the parties and the victim summoned.
- (2) The appeal can only be tried with the defendant present, when the latter is in detention.
- (3) The participation of the prosecutor in the appeal procedure is mandatory.
- (4) The appellate court shall hear the defendant, when it is possible, according to the rules applicable to the court of first instance.
- (5) The appellate court may administer again the evidence submitted to the court of first instance and may administer new evidence, according to the requirements under [Article 100](#).
- (6) When the appeal is on trial, the president of the judicial panel shall give the floor to the appellant, then to the defendant and after to the prosecutor. If the appeal by the prosecutor is among the filed appeals, then the prosecutor shall have the floor first.
- (7) The prosecutor and the parties have the right to reply with respect to the new issues as a result of the debates. The defendant shall have the last word.
- (8) The court shall check the appealed ruling based on the reports and the material of the case file, as well as on any other items of evidence submitted before of the appellate court.
- (9) To adjudicate the appeal, the court may appreciate the evidence differently, providing the reasons thereof.
- (10) The court shall issue a decision all the grounds of appeal raised.
- (11) The rules applicable to the proceedings before the court of first instance shall apply to the appeal proceedings, to the extent to which the current title does not provide otherwise.

#M2

(12) The appeal against the court resolutions which, according to the law, may be appealed separately shall be tried in chambers, without the parties being present, which may submit written conclusions, except for the cases when the law stipulates otherwise or of those when the court feels that it is necessary to try them in a public hearing.

#B

ART. 421

Solutions for the appeal proceedings

The court, adjudicating the appeal, shall issue one of the following solutions:

1. dismiss the appeal, maintaining the appealed ruling:

- a) if the appeal is late or inadmissible;
 - b) if the appeal is not grounded;
2. sustain the appeal and:
- a) reverse the ruling of the court of first instance and issue a new ruling according to the rules referring to the settlement of the criminal action and civil action by the court of first instance;
 - b) reverse the ruling of the court of first instance and order that the case be retried by the court whose ruling was quashed as that court had tried that case while one of the parties had not been lawfully summoned and was absent or which, while lawfully summoned, could not attend and notify the court about this impossibility, raised by that party. The retrial by the court whose ruling was reversed shall also be ordered when there is any of the cases of absolute nullity, except for the case of lack of competence, when the jurisdictional court is ordered to retry the case.

ART. 422

Supplemental issues

The court, while deliberating the appeal, shall apply, as the case may be, the provisions concerning the resuming of debates and those concerning the settlement of the civil actions, the asset freezing, legal expenses and any other issues that the complete adjudication of the appeal depends on. At the same time, the appellate court shall check whether the court of first instance had justly applied the provisions concerning the deduction of the duration of arrest, pretrial detention, house arrest or confinement to hospital, and shall add, if the case may be, the time since the arrest, following the issuing of the ruling challenged by an appeal.

ART. 423

Reversing the ruling

(1) When the appeal is admitted, the challenged ruling shall be reversed, within the limitations of the provisions concerning the devolutionary and extensive effects of the appeal.

(2) The ruling may be reversed only with respect to some facts or persons or only with respect to the criminal and civil components, if it does not prevent the just adjudication of the case.

(3) When the ruling is reversed, the appellate court may maintain the pre-trial detention arrest measure.

ART. 424

The contents of the appellate ruling and its notification

(1) The decision of the appellate court must comprise the mentions provided under [Article 402](#), whereas the narrative description must include the legal and factual grounds, which resulted, as the case may be, in the dismissal or

admission of the appeal, as well as the grounds that led to the adoption of any of the solutions provided under [Article 421](#). The operational part shall comprise the solution given by the appellate court, the date when the decision is pronounced and the mention that the issuing was done in a public session.

(2) The appellate court shall rule on the preventive measures, according to the provisions referring to the contents of the sentence.

(3) When the defendant is in pre-trial detention or under house arrest, the narrative description and the operational part shall emphasize the time to be deducted from the penalty.

(4) When the retrial is ordered, the ruling shall indicate which the last procedural action still valid is from where the criminal proceedings must be resumed, otherwise all the procedural actions shall be lawfully reversed.

(5) The ruling of the appellate court shall be notified to the prosecutor, the parties, the victim and the administration of the place of detention.

ART. 425

The limits of the retrial

(1) The court that retries the case must comply with the ruling of the appellate court, to the extent to which the facts are still those taken into account for the adjudication of the appeal.

(2) If the ruling was reversed in the appeal of the prosecutor, filed against the defendant or in the appeal of the victim, the court that retries the case may aggravate the solution taken by the court of first instance.

(3) When the ruling is quashed only with respect to certain facts or persons or only with respect to the criminal component or the civil component, the court that retries the case shall issue a ruling only to the extent to which the ruling was quashed.

[#M4](#)

[CHAPTER III¹](#)

The challenge

[#M4](#)

[ART. 425¹](#)

Filing and adjudicating the challenge

(1) The legal remedy of challenge may be exercised only when specifically provided by the law, whereas the provisions of this article shall be applicable when the law does not provide otherwise.

(2) The prosecutor and the subjects to the proceedings referred to in the challenged ruling may file challenge, along with persons whose legitimate interests were violated, no later than 3 days since the issuing of the ruling in the case of the prosecutor and the notification in the case of the other persons, whereas the provisions under [Article 411](#) par. (1) shall apply accordingly.

(3) *The challenge shall be filed with the Judge for Rights and Liberties, the Preliminary Chamber Judge or, as the case may be, with the court that issued the ruling that is challenged and the reasons thereof shall be submitted by the court hearing date set for the adjudication, whereas the provisions under [Article 415](#) shall apply accordingly.*

(4) *In the case of challenge adjudication, the provisions under [Article 416](#) and [Article 418](#) shall apply accordingly; within these limits, in the case of adjudicating the challenge against the court resolution related to a preventive measure, a less severe measure than the requested one or the one ordered in the contested court report may be ordered or the obligations within the contested measure may be amended.*

(5) *The challenge shall be settled by the Judge for Rights and Liberties, respectively by the Preliminary Chamber Judge from the court that is higher than the notified one or, as the case may be, by the court higher than the notified one, respectively by the competent judicial panel of the High Court of Review and Justice, in a public session, with the participation of the prosecutor.*

(6) *The person who filed the challenge, as well as the subjects to the proceedings referred to in the challenged ruling shall be summoned to appear in court for the adjudication of the challenge, whereas the provisions under [Article 90](#) and [Article 91](#) shall apply accordingly.*

(7) *The challenge shall be adjudicated in a decision that shall not be subject to any legal remedy, whereas one of the following solutions may be issued:*

1. the challenge may be dismissed, whereas the challenged ruling shall be maintained:

a) when the challenge is filed late or is inadmissible;

b) when the challenge is not grounded;

2. the challenge may be sustained and:

a) the challenged ruling shall be reversed and the case shall be adjudicated;

b) the challenged ruling shall be reversed and the judge or the panel that issued it shall be ordered to retry the case when the provisions concerning the summons to court are found not to have been observed.

#B

CHAPTER V

Extraordinary legal remedies

#M2

SECTION 1

The challenge for annulment

#M2

ART. 426

The cases of challenge for annulment

The challenge for annulment may be filed against the final criminal court rulings in the following cases:

- a) when the appeal court proceedings took place without lawfully summoning a party or when, even though lawfully summoned, the party could not appear in court and inform the court thereupon;*
- b) when the defendant was convicted, even though there was evidence regarding a case of ending the criminal court proceedings;*
- c) when the ruling was issued by a judicial panel other than the one that participated in the debate as a court of first instance;*
- d) when the court was not made up according to the law or when there was a case of incompatibility;*
- e) when the court proceedings took place without the participation of the prosecutor or the defendant, when it was mandatory for them to be present, according to the law;*
- f) when the court proceedings took place with the counsel absent in the case when the legal assistance of the defendant was mandatory, according to the law;*
- g) when the court hearing was not public, except for the cases when the law stipulates otherwise;*
- h) when the court did not hear the defendant present, in the case when the hearing was possible according to the law;*
- i) when two final rulings were issued against a person for the same crime.*

#B

ART. 427

The motion of challenge for annulment

- (1) The challenge for annulment may be filed by any of the parties, the victim or the prosecutor.
- (2) In the motion of challenge for annulment, the appellant must show the grounds of appeal relied upon, as well as the reasons put forth to support them.

ART. 428

Time frame to file the challenge for annulment

- (1) The challenge for annulment for the grounds provided under [Article 426](#) may be filed in 10 days since the person against whom the execution is ordered was notified the ruling whose annulment is requested.
- (2) The challenge for annulment in the case provided under [Article 426](#) letter b) may be filed at any time.

ART. 429

The jurisdictional court

#M2

(1) *The challenge for annulment shall be filed with the court that issued the ruling whose annulment is requested.*

#B

(2) The challenge for annulment in the case when *res judicata* authority is relied upon shall be filed with the court where the last ruling remained final.

ART. 430

Staying the enforcement

Pending the adjudication of the challenge for annulment, the notified court, after taking the arguments of the prosecutor, may stay the enforcement of the ruling whose annulment is requested.

ART. 431

Admission in principle

(1) The court shall examine the admissibility in principle, in chambers, without summoning the parties.

(2) While finding that the motion of challenge for annulment is filed within the time frame provided by the law, that the grounds for appeal is one of those provided under [Article 426](#) and that the appeal is supported by evidence submitted or relies upon evidence that is in the case file, the court shall sustain the appeal in principle and shall order that the interested parties be summoned.

ART. 432

Court proceedings

(1) During the court hearing set to adjudicate the challenge for annulment, hearing the parties and the conclusions of the prosecutor, when finding the motion for appeal grounded, the court shall quash in a decision the ruling whose annulment is requested and shall proceed either as soon as possible, or by setting a court hearing, as the case may be, to adjudicate the appeal or to retry the case following the quashed ruling.

(2) When the challenge for annulment relies on the *res judicata* authority, the challenge shall be adjudicated based on the summoning of the parties interested in the case for which the last ruling was issued. Hearing the parties and the conclusions of the prosecutor, when finding the motion for challenge grounded, the court shall quash in a decision or, as the case may be, in a sentence, the last ruling or that part of the last ruling in whose respect there is *res judicata* authority.

(3) The challenge for annulment shall be adjudicated only with the defendant present, when the latter is detained.

(4) The sentence issued in the case of the challenge for annulment shall be subject to appeal, whereas the decision in the appeal shall be final.

SECTION 2

The appeal for review

ART. 433

The purpose of the appeal for review and the jurisdictional court

The appeal for review intends to have the High Court of Review and Justice adjudicate, according to the requirements in the law, compliance of the challenged ruling with the applicable law.

ART. 434

Rulings subject to appeal for review

(1) The decisions issued by the Courts of Appeals as appellate courts may be subject to appeal for review, except for the decision wherein the court ordered cases to be retried.

#M2

(2) *The following may not be subject to appeal for review:*

- a) the rulings returned following the retrial of the case as a result of the admission of the motion for revision;*
- b) the rulings that dismiss the motion to reopen criminal court proceedings in the case of a trial in absentia;*
- c) the rulings returned in the matter of penalty service and rehabilitation;*
- d) the rulings returned in the matter of rehabilitation;*
- e) the solutions returned with respect to crimes in the case of which the criminal proceedings shall be set in motion based on the prior complaint of the victim;*
- f) the solutions returned as a result of applying the guilty plea procedure;*
- g) the rulings returned as a result of sustaining the guilty plea agreement.*

#B

(3) The appeal for review exercised by the prosecutor against rulings that order the acquittal of the defendant cannot be intended to get the latter's conviction by the court trying the appeal for review.

ART. 435

Time frame to file the appeal for review

The appeal for review may be filed by the parties or by the prosecutor no later than 30 days since the date of notification regarding the decision of the appellate court.

ART. 436

Filing the appeal for review

(1) The following may file an appeal for review:

- a) the prosecutor, with respect to the criminal component and the civil component;

#M2

b) the defendant, with respect to the criminal component and the civil component, against the rulings that order the conviction, waiving the service of the penalty or postponing the service of the penalty or the end of the criminal court proceedings;

#B

c) the civil party and the party with civil liability, with respect to the civil component, whereas with respect to the criminal component, to the extent to which the solution of this component influenced the solution to the civil component.

(2) The defendant, the civil party and the party with civil liability may file a motion of appeal for review only through a counsel who is allowed to make final arguments before the High Court of Review and Justice.

(3) Pending the closing of debates at the court of appeal for review, the parties and the prosecutor may withdraw the appeal for review they filed. The withdrawal must be made by the party in person or through a special intermediary, whereas if the party is detained, it shall be made through a statement certified or recorded in a report by the management of the place of detention. The withdrawal statement may be filed either with the court whose ruling was appealed or with the appellate court.

(4) The legal representatives may withdraw the appeal for review observing the requirements provided by the civil law in so far as the civil component is concerned. The underage defendant may not withdraw the appeal for review filed in person or by his legal representative.

(5) The appeal for review filed by the prosecutor may be withdrawn by the hierarchically higher prosecutor.

(6) The decision of the appellate court that dismissed the appeal may not be challenged by an appeal for review by persons who did not exercise the legal remedy of the appeal or when their appeal was withdrawn.

ART. 437

The reasoning of the appeal for review

(1) The motion of appeal for review shall be written and shall comprise:

a) the party's surname and first name, domicile or residence, the counsel's surname and first name and professional domicile or, as the case may be, the surname and first name of the prosecutor who files the appeal for review, as well as the judicial body he is part of;

b) the indication of the ruling that is appealed;

c) the indication of the cases of appeals on law the motion relies on and their reasoning;

d) the signature of the person who files the appeal for review and/or the counsel's signature.

(2) All the documents relied upon in the reasoning shall be attached to the motion.

ART. 438

The cases when it is possible to file an appeal for review

(1) Rulings are subject to cassation in the following cases:

#M2

1. during the court proceedings, the provisions concerning the substantive jurisdiction or the quality of the person were not observed, when the court proceedings took place in a court that was inferior to that which is lawfully competent;

*2. *** Repealed*

*3. *** Repealed*

*4. *** Repealed*

*5. *** Repealed*

*6. *** Repealed*

#B

7. the defendant was convicted for an offense which is not provided in the criminal law;

8. the end of the criminal court proceedings was ordered wrongfully;

#M2

*9. *** Repealed*

*10. *** Repealed*

#B

11. pardon was not established or it was wrongfully considered that the penalty applied to the defendant was pardoned;

12. penalties were applied according to limits other than those provided in the law.

#M2

*13. *** Repealed*

*14. *** Repealed*

#B

(2) The cases provided under par. (1) may be grounds for reviewing a judgment if they were relied upon in the motion of appeal or during the adjudication of the appeal or when, even though relied upon, they were dismissed or the court omitted to make a decision in this respect.

(3) When the motion of appeal for review was dismissed, the party or prosecutor who filed the appeal for review may not file a new motion against the same ruling, irrespective of the ground relied upon.

ART. 439

Notification procedure

#M2

(1) The motion of appeal for review together with the attached documents shall be filed, jointly with the copies for the prosecution and the parties, with the court whose ruling is appealed.

#B

(2) The president of the court whose ruling is appealed or the judge appointed by the former shall send copies of the motion of appeal for review and the other substantiating documents, indicating that written conclusions may be submitted no later than 10 days since receipt of documents, with the same court.

(3) When the parties and the prosecutor fail to submit written conclusions, the court proceedings related to the appeal for review shall not be prevented.

(4) No later than 5 days since the submission of the written conclusions or the expiry of the deadline for submission, the president of the court or the judge appointed by the former shall submit to the High Court of Cassation the case file, the motion of appeal for review, the attached documents, the proof of communication, as well as, as the case may be, the written conclusions.

#M2

(4¹) When the motion of appeal for review is not filed by a counsel who may appear in front of the High Court of Review and Justice and argue or it is filed against a ruling provided under [Article 434](#) par. (2), the president of the court or the judge appointed by the former shall send back the motion of appeal for review to the party, using the administrative channel.

#B

(5) When the notification procedure provided under par. (2) and (4) is not fulfilled or it is not complete, the assistant magistrate of the High Court of Review and Justice, appointed to check whether the notification procedure was fulfilled and to draft the report concerning the motion of appeal for review shall fulfill the procedure or supplement it, as the case may be.

ART. 440

Admission in principle

(1) The admissibility of the motion of appeal for review shall be examined in chambers by a judicial panel made up of one judge, following the submission of the assistant magistrate's report and when the notification procedure was lawfully fulfilled.

#M2

(2) When the motion of appeal for review is not filed within the time frame provided by the law or when the provisions under [Article 434](#), [Article 436](#) par.

(1), (2) and (6), [Article 437](#) and [438](#) were not observed or the motion is obviously not grounded, the court shall dismiss the motion of appeal for review in a final court resolution.

#B

(3) When the motion of appeal for review was withdrawn, the court shall note the withdrawal in a court resolution.

(4) When it finds that the motion fulfills the requirements provided under [Article 434](#) - 438, the court shall order in its court report for the motion of appeal for review to be admitted in principle and shall refer the case so that the appeal for review could be adjudicated.

ART. 441

Staying enforcement

#M2

(1) The court which admits the motion of appeal for review in principle or the judicial panel that adjudicates the appeal for review may stay the enforcement of the court ruling, wholly or partially, providing the reasons thereof and may order that the convict observes some of the obligations provided under [Article 215](#) par. (1) and (2).

#B

(2) When the convict does not observe the obligations imposed in the court resolution, the judicial panel that will try the case of appeal for review, *ex officio* or upon request by the prosecutor, may order that the staying measure be revoked and that the service of the penalty be resumed.

(3) The provisions referring to the staying of ruling execution shall be fulfilled and the observance of imposed obligations shall be supervised by the enforcement court.

ART. 442

The devolutionary effect and its limits

(1) The court shall try the appeal for review only referring to the person who filed it and the person referred to in the motion of appeal for review and only with respect to the quality that the appellant has during the court proceedings.

(2) The court of appeal for review shall examine the case only within the limits of the review grounds provided under [Article 438](#), relied upon in the motion of appeal for review.

ART. 443

The extensive effect and its limits

(1) The court shall examine the case by extending it also to the parties that did not file an appeal for review or that it does not refer to, whereas the court is able to decide in their respect as well, without creating for these parties a more difficult situation.

(2) The prosecutor, even after the expiry of the deadline to file the motion of appeal for review, may request the extension of the appeal for review he filed observing the deadline also to cover persons other than those it referred to, without the possibility of creating a more difficult situation for them.

ART. 444

Not making own situation more difficult with the appeal for review

(1) The court while adjudicating the case cannot create a more difficult situation for the one who filed an appeal for review.

(2) In the appeal for review filed by the prosecutor for the benefit of one party, the appellate court for review cannot make its situation more difficult.

ART. 445

Parties' and prosecutor's presence

(1) The court proceedings related to the appeal for review admitted in principle shall take place with the parties summoned. [Article 90](#) and [Article 93](#) par. (5) shall apply accordingly.

(2) The participation of the prosecutor to the appeal for review procedure is mandatory.

ART. 446

Adjudicating the appeal for review

(1) The president of the judicial panel shall give the floor to the appellant, then the defendant and prosecutor. When the appeal for review by the prosecutor is among the appeals for review filed, the first to take the floor shall be the prosecutor.

(2) The prosecutor and the parties have the right to reply with respect to the new issues as a result of the debates.

ART. 447

Checking the lawfulness of the ruling

The court must make a decision concerning all cases of appeal for review relied upon in the motion by the prosecutor or the parties, checking exclusively the lawfulness of the challenged ruling.

ART. 448

Solutions for the appeal for review proceedings

(1) The court, adjudicating the appeal for review, shall issue one of the following solutions:

1. dismiss the appeal for review, maintaining the ruling appealed if the appeal for review is not grounded;

2. sustain the appeal for review, review the appealed ruling and:

a) acquit the defendant or order the end of the criminal proceedings or remove the wrong application of the law;

b) order the retrial by the appellate court or by the court with substantive jurisdiction or based on the quality of the person, if the other grounds for review provided under [Article 438](#) are relevant.

(2) When the appeal for review is aimed at the wrong settlement of the civil component, the court, after admitting the appeal, shall remove the unlawfulness

it found or order the retrial by the court whose ruling was quashed, according to the requirements under par. (1) point 2 letter b).

(3) In the case provided under par. (1) point 2 letter a), the court of appeal for review shall also quash the ruling of the court of first instance, if it finds the same violations of the law as in the appealed decision.

(4) When the convict is serving the penalty, the court, sustaining the appeal for review and issuing the review and referring the case, shall also order the former released, and can order a preventive measure.

ART. 449

Reviewing the ruling and the contents of the decision

(1) When the appeal for review is admitted, the appealed ruling shall be reviewed within the limits provided under [Article 442](#) and [443](#).

(2) The ruling may be reversed only with respect to certain facts or persons or only with respect to the civil or criminal components, if it does not prevent the just adjudication of the case.

(3) The decision of the court of appeal for review must comprise, in its introductory part, the mentions provided under [Article 402](#), whereas in the narrative description, the law that resulted in the dismissal or admission of the appeal for review. The operational part must comprise the solution returned by the appellate court for review, the date when the ruling was issued and the indication that the ruling was issued in a public session.

(4) When the retrial is ordered, the decision shall indicate which the last procedural action still valid is from where the criminal proceedings must be resumed.

ART. 450

The limits of the court proceedings

(1) The court that retries the case must comply with the ruling of the court of appeal for review, to the extent to which the facts are still those taken into account for the sustaining of the appeal for review.

(2) When the ruling is reversed only with respect to certain facts or persons, the court that retries the case shall issue a ruling to the extent to which the ruling was quashed.

ART. 451

The retrial procedure

The case shall be retried following the review of the appealed ruling according to the provisions under [Chapter II](#) or [III](#) of Title III of the special part, that shall apply accordingly.

SECTION 3

The revision

ART. 452

Rulings subject to revision

(1) The final court rulings may be subject to revision both with respect to the criminal component, as well as the civil component.

(2) When a ruling is connected to several offenses or persons, the revision may be filed for any of the offenses or any of the perpetrators.

ART. 453

Cases of revision

(1) The revision of the final court rulings with respect to the criminal component may be filed when:

a) facts or circumstances were discovered which were unknown when the case was settled and which prove that the ruling issued in the case is not grounded;

b) the ruling whose revision is filed was based on the statement by a witness, the opinion of an expert or the situations attested by an interpreter who committed the crime of lying under oath in the case whose revision is filed, thus influencing the solution reached;

c) a document which served as ground of the ruling whose revision is filed was declared counterfeit during the court proceedings or following the issuing of the ruling, a circumstance that influenced the solution reached in the case;

d) a member of the judicial panel, the prosecutor or the person who carried out criminal investigation actions committed an offense related to the case whose revision is filed for, a circumstance that influenced the solution reached in the case;

e) when two or more final court rulings cannot be reconciled;

f) the ruling was grounded on a legal provision that was declared unconstitutional after the ruling had become final, if the violation of the constitutional provision continues to bear effects which cannot be corrected unless there is a revision of the issued ruling.

(2) The revision of the final criminal court rulings, exclusively with respect to the civil component, may only be requested in the civil court, according to the

[Code of civil procedure](#).

#M2

(3) The cases provided under par. (1) letter a) and f) may be relied upon as grounds for revision only for the benefit of the convicted person or the one against whom the court ordered waiving the service of the penalty or postponing the service of the penalty.

(4) The case provided under par. (1) letter a) shall be grounds for revision if, based on the new facts or circumstances the wrongfulness of the ruling of conviction, waiving the service of the penalty, postponing the service of the

penalty or end the criminal court proceedings, whereas the cases provided under par. (1) letters b) - d) and f) shall be grounds for revision if they resulted in the issuing of an unlawful or not grounded ruling.

#B

(5) In the case provided under par. (1) letter e), all court rulings which cannot be reconciled are subject to revision.

ART. 454

Proving cases of revision

(1) The situations that constitute the cases of revision provided under [Article 453](#) par. (1) letters b) - d) shall be proven in a final court ruling wherein the court issues a decision the merits of the case, finding the existence of the counterfeit or the existence of the acts and their commission by the respective persons.

(2) When the proof cannot be made according to par. (1) as there is a cause that prevents the setting in motion or the exercise of the criminal action, the cases of revision provided under [Article 453](#) par. (1) letters b) - d) may be proven within the revision proceedings, by any method of proof.

ART. 455

Persons who may file for a revision

(1) The following may file for a revision:

- a) the parties to the trial, within the limits of their quality in the proceedings;
- b) a member of the convict's family, even following the latter's death, only if the motion is drafted for the benefit of the convict.

(2) the prosecutor may request *ex officio* the revision of the criminal component of the ruling.

ART. 456

The motion for revision

(1) The motion for revision shall be directed to the court that was the court of first instance for the case.

(2) The motion shall be submitted in writing and must be motivated, by showing the case of revision it relies upon and the means of evidence to prove it.

(3) The motion shall comprise copies of the documents that the author of the motion for revision understands to use at trial, certified as compliant with the original. When the documents are drafted in a foreign language, they shall be attached as translated by a sworn translator.

(4) When the application does not fulfill the requirements provided under par. (2) and (3), the court shall notify the author of the motion to supplement it within the time frame set by the court, failure to do so resulting in the sanction provided under [Article 459](#) par. (5).

ART. 457

The time frame to file the motion

(1) The motion of revision for the benefit of the convict may be filed at any time, even after the penalty was executed or deemed to be executed or after the death of the convict, except for the case provided under [Article 453](#) par. (1) letter f), when the motion of revision may be submitted no later than one year since the date of the publication of the decision of the Constitutional Court in the Romanian Official Journal, Part I.

(2) The motion for revision against the defendant, the acquitted person or the person with respect to whom the criminal proceedings ended may be filed within 3 months since:

a) in the cases provided under [Article 453](#) par. (1) letters b) - d), when they are not found in a final ruling, the date when the facts or circumstances were known by the person filing the motion or since the date when he became aware of the circumstances for which finding an offense may not be done in a criminal ruling, but no later than 3 years since the date when they produced;

b) in the cases provided under [Art. 453](#) par. (1) letters b) - d), if found in a final court ruling, since the date when the ruling became known by the person making the motion, but no later than one year since the date when the criminal ruling remains final;

c) in the case provided under [Art. 453](#) par. (1) letter e), since the date when the rulings impossible to reconcile became known to the person submitting the motion.

(3) The provisions under par. (2) shall also apply when the prosecutor takes action *ex officio*.

(4) The revision that does not favor the defendant may not be submitted when a case occurred that prevents the setting in motion of the criminal action or the continuation of the criminal proceedings.

ART. 458

The jurisdictional court

The court that tried the case as a court of first instance shall be competent to try the case. When the ground of the motion of appeal is the fact that there are several decisions which cannot be reconciled, the jurisdiction shall be determined according to the provisions in [Article 44](#).

ART. 459

Admission in principle

#M2

(1) When the motion for revision is received, a date for the court hearing wherein the admissibility in principle of the motion for revision shall be examined, whereas the president shall order the case file to be attached.

#B

- (2) The court shall examine the admissibility in principle, in chambers, without summoning the parties.
- (3) The court shall examine whether:
- a) the motion was filed within the deadline and by one of persons provided under [Article 455](#);
 - b) the motion was drafted observing the provisions under [Article 456](#) par. (2) and (3);
 - c) legal grounds were relied upon to reopen the criminal proceedings;
 - d) the facts and the evidence based on which the motion was drafted were not presented in a previous motion for revision that received a final solution;
 - e) the facts and the evidence based on which the motion was drafted result, obviously, in the determination of certain legal grounds which exist and which allow for a revision;
 - f) the person who filed the motion complied with the requirements of the court, according to [Article 456](#) par. (4).
- (4) When the court finds that the requirements provided under par. (3) are met, it shall order in a court resolution to sustain the motion for revision in principle.
- (5) When the court finds that the requirements provided under par. (3) were not met, it shall order in a sentence that the motion of revision be dismissed as inadmissible.
- (6) When the motion for revision was filed either for a deceased convict or when the convict who had made the application or in favor of whom the revision was carried out, died after the introduction of the application, by exception from the provisions under [Article 16](#) par. (1) letter f), the revision procedure shall follow its rules, whereas in the case of a retrial, following the admission in principle, the court shall rule according to the provisions under [Article 16](#), that shall apply accordingly.
- (7) The court resolution that admitted in principle the motion for revision, shall be final. The sentence that denies the motion for revision following the analysis of admissibility in principle, shall be subject to the same avenues of appeal as the decision that the remedy is subject to.

ART. 460

Measures that may be ordered upon the admission in principle or subsequent thereof

#M2

(1) With the admission in principle of the motion for revision, or subsequent thereof, the court may stay wholly or in part the enforcement of the ruling subject to revision, providing reasons thereof and may order that the convict observes various obligations as provided under [Article 215](#) par. (1) and (2).

#B

- (2) The prosecutor or the interested party may file a challenge against the court report wherein the stay of the ruling under revision provided under par. (1) is ordered, no later than 48 hours since the issuing of the ruling in the case of those present in court and since its notification for those who were absent. The challenge submitted by the prosecutor results in the stay of the enforcement. The provisions under [Article 597](#) par. (2) - (5) shall apply accordingly.
- (3) When the convicted person does not observe the obligations set in the court resolution, the court, ex officio, or based on the prosecutor's motion, may order for the stay to be revoked and the service of penalty to be resumed.
- (4) When the motion for revision is admitted in principle for various court rulings that cannot be reconciled, the cases where these rulings were issued shall be put together for retrial.

ART. 461

Retrial

- (1) Following the sustaining in principle of the motion for revision, the case shall be retried according to the rules of procedure concerning the proceedings before the court of first instance.
- (2) When it finds it necessary, the court shall administer again the evidence submitted before the court of first instance.
- (3) When it finds that the facts cannot be established directly or it could only be done with a long delay, the court shall order for the prosecutor from the prosecutor's office attached to it to carry out the required investigation within no longer than 3 months.
- (4) When the investigation is completed, the prosecutor shall refer the entire case file to the jurisdictional court.
- (5) Persons provided under [Article 453](#) par. (1) letters b) and d) cannot be heard as witnesses in the case subject to revision when a court ruling was the evidence for revision.

ART. 462

Solutions following the retrial

- (1) If it finds that the motion for revision is grounded, the court shall annul the court ruling, to the extent that the revision was admitted, or the court rulings that cannot be reconciled and shall issue a new ruling, according to the provisions under [Article 395](#) - 399, that shall apply accordingly.
- (2) The court shall retry the case by extending it also to the parties that had not submitted a motion for revision. The court may also issue a ruling in their respect, without creating for them a more difficult situation.
- (3) The court shall take steps required to return to the previous condition, ordering, if the case may be, the restitution of the fine paid and assets forfeited, the legal expenses which the one for whom the motion for revision was admitted was not liable to cover or other such measures.

(4) If it finds that the motion for revision is not grounded, the court shall dismiss it and shall order for the applicant to fulfill the obligation of paying the legal expenses to the state, as well as to resume the service of the penalty, if that had been stayed.

ART. 463

Avenue of appeal

The court ruling wherein the court decides on the motion for revision, following the retrial of the case, shall be subject to the same avenue of appeal as the court ruling that the revision referred to.

ART. 464

Effects related to the dismissal of the motion for revision

When the motion for revision is dismissed as inadmissible or not grounded, no new motion for the same reasons can be submitted.

ART. 465

Revision in the case of decisions by the European Court of Human Rights

(1) Final rulings in the cases where the European Court of Human Rights found a violation of the fundamental rights or liberties or ordered the dismissal of the case, as a consequence of the amicable settlement of the case between the state and the plaintiffs, may be subject to revision, if one of the severe consequences of violating the [Convention](#) for the Protection of Human Rights and Fundamental Freedoms and its additional protocols continue to occur and cannot be corrected unless the court ruling is revised.

(2) The following may apply for a revision:

- a) the person whose right was violated;
- b) the family members of the convicted person, even following the latter's death, only if the motion shall be filed for the benefit of the convict;
- c) the prosecutor.

#M2

(3) *The motion for revision shall be filed with the court that issued the ruling whose revision is applied for.*

(4) *The motion for revision may be filed no later than 3 months at the latest since the date of the publication in the Romanian Official Journal, Part I, of the final decision returned by the European Court of Human Rights.*

#B

(5) Following the referral, the court may order, ex officio, based on the prosecutor's proposal or the motion by the party, the stay of execution as related to the ruling subject to revision. [Article 460](#) par. (1) and (3) shall apply accordingly.

(6) The prosecutor's participation shall be mandatory.

(7) The parties shall be summoned to appear in court for the examination of the motion for revision. The party who is detained shall be brought to appear in court.

(8) When the parties are present for the examination by the court of the motion for revision, the court shall also listen to their conclusions.

(9) The court shall examine the motion based on the documents under the case file and shall return a decision.

(10) The court shall dismiss the motion when it finds it to be late, inadmissible or not grounded.

(11) When the court finds that the motion is grounded:

a) it shall partially reverse the ruling subject to revision with respect to the violated right and, retrying the case, applying the provisions under [Section 1](#) of Chapter V under Title III of the special part, it shall remove the consequences of the violation of the right;

b) it shall reverse the ruling and when it is mandatory to admit evidence, it shall order that the case be retried by the court where the right was violated, applying the provisions under [Section 1](#) of Chapter V under Title III of the Special Part.

#M2

(12) The court ruling thereof may be subject to appeal as provided by the law with respect to the revised court ruling.

#B

SECTION 4

Reopening criminal proceedings in case of an in absentia trial of the convicted person

ART. 466

Reopening criminal proceedings in case of an in absentia trial of the convicted person

#M2

(1) The person with a final conviction, who was tried in absentia, may apply for the criminal proceedings to be reopened no later than one month since the day when informed, through any official notification, that criminal proceedings took place in court against them.

(2) The following shall be deemed as tried in absentia: the convicted person who was not summoned to appear in court and had not been informed thereof in any other official manner, respectively, the person who even though aware of the criminal proceedings in court, was lawfully absent from the trial of the case and unable to inform the court thereupon. The convicted person who had appointed a retained counsel or a representative shall not be deemed tried in absentia if the latter appeared at any time during the criminal proceedings in court and neither shall the person who, following the notification of the conviction verdict,

according to the law, did not file an appeal, waived filing an appeal or withdrew their appeal.

(3) In the case of the person with a final conviction, tried in absentia, related to whom a foreign state ordered extradition or surrender based on the European arrest warrant, the time frame provided under par. (1) shall begin from the date when, following their bringing into country, they receive the conviction verdict.

#B

(4) The criminal proceedings in court may not be reopened when the convicted person had applied to be tried in absentia.

#M2

(5) The provisions of the previous paragraphs shall apply accordingly to the person against whom a court ruling was returned to waive the service of the penalty or to postpone the service of the penalty.

#B

ART. 467

The motion to reopen the criminal proceedings in court

(1) The motion to reopen the criminal proceedings in court may be submitted by the person tried in absentia and shall be filed with the court that tried the case in absentia, either as a court of first instance, or as an appellate court.

(2) When the person's trial is deprived of liberty, the motion may be submitted with the administration of the penitentiary, that shall refer it as soon as possible to the jurisdictional court.

(3) The motion shall be put in writing and must be reasoned as related to the fulfillment of the requirements provided under [Article 466](#).

(4) The motion may be accompanied by copies of the documentary evidence which the person tried in absentia understands to use during the court proceedings, certified as copies of the original. When the documents are written in a foreign language, they shall be accompanied by their translation.

(5) When the motion fails to meet the requirements provided under par. (3) and (4), the court notifies the author of the motion that they should supplement it no later than the date of the first court hearing or, as the case may be, in a short time frame, as determined by the court.

ART. 468

Preliminary steps

#M2

(1) When the motion to reopen the criminal proceedings in court is received, a date is set for the hearing where the admissibility shall be examined in principle, whereas the president shall order that the case file be attached, as well as that the parties and main interested subjects of the proceedings be summoned to appear in court.

#B

(2) When the person who submitted the motion to reopen the criminal proceedings in court is deprived of liberty, even in another case, the president shall order that the former be notified as related to the date of the court hearing and shall take action to publicly appoint a counsel.

(3) The person deprived of liberty shall be brought to court for the trial.

#M2

ART. 469

Court proceedings related to the motion to reopen the trial

(1) The court shall hear the arguments by the prosecutor, the parties and the main subjects of the proceedings, and examine whether:

a) the motion was submitted within the deadline and by one of persons provided under [Article 466](#);

b) legal grounds were relied upon to reopen the criminal proceedings;

c) the reasons based on which the motion was submitted had not been shown in a prior motion to reopen criminal proceedings, that had been tried by the court of last resort.

(2) The motion shall be examined as a matter of emergency and when the convicted person is serving the prison sentence applied in the case whose reopening is applied for, the court may wholly or partially stay the enforcement of the court ruling and provide the reasons thereof and may order the convict to observe one of the obligations provided under [Article 215](#) par. (1) and (2).

When the service of the prison sentence has not begun, the court may order the convict to observe one of the obligations provided under [Article 215](#) par. (1) and (2).

(3) If the court finds that the requirements provided under par. (1) are fulfilled, it shall order in a court resolution that the motion to reopen criminal proceedings be admitted.

(4) If the court finds that the requirements provided under [Article 466](#) are not fulfilled, it shall order in a sentence that the motion to reopen criminal proceedings be denied.

(5) The court report wherein the motion to reopen criminal proceedings is admitted may be challenged jointly with the merits.

(6) The court ruling that rejects the motion to reopen criminal proceedings shall be subject to the same legal remedies as the court ruling issued with the convict in absentia.

(7) Sustaining of the motion to reopen the criminal proceedings may result in the rightful reversal of the ruling issued in the absence of the convicted person.

(8) The court shall reopen the criminal proceedings by extending it also to the parties that had not submitted any application. The court may also issue a ruling in their respect, without creating for them a more difficult situation.

(9) Upon the sustaining the motion to reopen criminal proceedings, the court, ex officio or by request by the prosecutor, may order that one of the preventive

measures provided under Art. 202 par. (4), letters b) to e) be taken. The provisions of the [Title V](#) of the general parties shall apply accordingly.

#B

ART. 470

Retrial of the case

The case shall be retried according to the rules of procedure applicable to the stage in the proceedings for which the reopening of the criminal proceedings was ordered.

CHAPTER VI

Provisions ensuring uniform case law

SECTION 1

The appeal in the interest of the law

ART. 471

The motion of appeal in the interest of the law

#M2

(1) To ensure the uniform interpretation and application of the law by all courts of law, the Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice, ex officio or based on the request of the Minister of Justice, the management board of the High Court of Review and Justice or the management boards of the Courts of Appeals, as well as the Romanian Ombudsman, have as a duty to ask the High Court of Review and Justice to issue a ruling on legal issues settled differently by the courts of law.

#B

(2) The motion must comprise the different solutions for the legal issue, as well as their grounds, the case law of the Constitutional Court, the High Court of Review and Justice, the European Court of Human Rights, or, as the case may be, the European Union Court of Justice, the opinions expressed in the doctrine, which are relevant for the field, as well as the solution proposed to be taken for the appeal in the interest of the law.

(3) The motion for appeal in the interest of the law must be accompanied by copies of the final court rulings, from which one may infer that the legal issues which are the object of the trial had been settled differently by the courts of law, otherwise the motion shall be dismissed as inadmissible.

ART. 472

Admissibility requirements

The appeal in the interest of the law shall be admitted to court only if evidence is filed according to which the legal issues making up the subject of the court

proceedings had been settled differently in final court rulings, that shall be annexed to the motion.

ART. 473

Court proceedings in the case of an appeal in the interest of the law

#M2

(1) The appeal in the interest of the law shall be tried by a judicial panel made up of the Chief Justice of the High Court of Review and Justice, or, if the latter is absent, the Deputy Chief Justice of the High Court of Review and Justice, the presidents of the chambers thereof, a number of 14 judges of the chamber competent to try the legal issue that had been settled differently in the courts of law, as well as 2 judges each from the other chambers. The president of the judicial panel shall be the Chief Justice of the High Court of Review and Justice or, if the latter is absent, the Deputy Chief Justice of the High Court of Review and Justice.

(2) When the legal issue is of interest for two or several chambers of the High Court of Review and Justice, the Chief Justice of the High Court of Review and Justice shall determine the chambers from which justices are to be selected to make up the judicial panel.

#B

(3) Following the referral made to the High Court of Review and Justice, its Chief Justice shall take the required steps for the random appointment of justices of the chamber competent to try the legal issue that had been settled differently by the courts of law, as well as that of the justices from the other chambers who make up the judicial panel provided under par. (1).

(4) When the referral is received, the president of the judicial panel shall appoint a justice from the chamber competent to try the legal issue settled differently by the courts of law to develop a report concerning the appeal in the interest of the law. When the legal issue is of interest for two or several chambers, the president of the judicial panel shall appoint 3 justices from within these chambers to develop the report. The rapporteurs shall not be incompatible.

(5) To develop the report, the president of the judicial panel may ask recognized experts for a written opinion on the legal issues settled differently.

(6) The report shall comprise the different solutions given to the legal issue, as well as the grounds thereof, the relevant case law of the Constitutional Court, the High Court of Review and Justice, the European Court for Human Rights, the European Union Court of Justice, as well as the opinion of the consulted experts, as the case may be, as well as the doctrine in this matter. At the same time, the judge-rapporteur, or, as the case may be, the judges-rapporteur, shall develop and provide reasons for the draft solution, as proposed for the appeal in the interest of the law.

(7) The session of the judicial panel shall be convened by its president, no later than 20 days before its taking place. With the notice concerning the session, each justice shall receive a copy of the report and proposed solution.

(8) All the justices on the panel shall take part in the session. If there are objective reasons, they will be replaced, according to the rules provided under par. (3).

#M2

(9) The Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice or the prosecutor appointed by the former, the justice appointed by the management board of the High Court of Review and Justice, the Courts of Appeals or the Romanian Ombudsman or their representative, as the case may be, shall come before the judicial panel to make the case of the appeal in the interest of the law.

#B

(10) The appeal in the interest of the law shall be tried no later than 3 months of the date when the referral is filed to court, whereas the solution shall be adopted with at least two-thirds of the number of judges making up the panel.

Abstentions from the vote shall not be allowed.

ART. 474

The contents and effects of the court ruling

(1) The judicial panel of the High Court of Review and Justice shall return a decision regarding the motion of appeal in the interest of the law.

(2) The decision shall be issued in the interest of the law alone and shall bear effects neither on the examined court rulings, nor on the situation of the parties to those court proceedings.

(3) The reasons for this decision shall be published no later than 30 days since the decision, which shall be published no later than 15 days since the writing, in the Romanian Official Journal, Part I.

(4) The settlement of the legal issues shall be binding for courts as of the date of the publication of the decision in the Romanian Official Journal, Part I.

#M4

ART. 474¹

The effects of the decision cease or change

The effects of the decision shall cease when the legal provision that caused the settled legal issue is repealed, found unconstitutional or amended, except for the case when it shall feature in the new regulation.

#M2

SECTION 2

Making a referral to the High Court of Review and Justice for a preliminary ruling to settle legal issues

#M2

ART. 475

The subject of the referral

If, during the proceedings in court, a judicial panel of the High Court of Review and Justice, the Courts of Appeals or the Tribunals, entrusted with the adjudication of a case as a court of last resort, finds that there is a legal issue whose clarification is paramount for the settlement on the merits of the respective case and about which the High Court of Review and Justice has not issued any decision in a preliminary ruling or in an appeal in the interest of the law and which is not the subject of a pending appeal in the interest of the law, they may apply to the High Court of Review and Justice for a ruling to settle, in principle, the legal issue referred to it.

#M2

ART. 476

Trial procedure

(1) The High Court of Review and Justice shall be notified by the judicial panel following adversarial debates if the requirements provided under [Article 475](#) shall be fulfilled, in a court report that may not be appealed in court. If the judicial panel decides to notify the High Court in the court report, the latter shall comprise the reasons supporting the admissibility of the referral, according to the provisions under [Article 475](#), the point of view of the judicial panel and of the parties.

(2) Based on the court report provided under par. (1), the case may be stayed until the issuing of the preliminary court ruling for the settlement of the legal issue. If the court did not order the stay of proceedings at the same time with the referral, whereas the court investigation is completed before the High Court of Review and Justice rules on the referral, the court shall stay the debates until the return of the decision provided under [Article 477](#) par. (1). If the defendant is under house arrest or in pre-trial detention, the provisions under [Article 208](#) shall apply accordingly for the entire duration of the stay of proceedings.

(3) After the registration of the case with the High Court of Review and Justice, the court resolution concerning its referral shall be posted on the webpage of this court.

(4) The similar cases, on the dockets of the courts of law, may be stayed until a decision the referral is reached.

(5) The referral shall be allocated by the Chief Justice, or, if the latter is absent, by one of the Deputy Chief Justice of the High Court of Review and Justice or by the person appointed by the latter.

(6) The referral shall be tried by a judicial panel made up by the president of the corresponding chamber of the High Court of Review and Justice or by a justice appointed by the former and 8 justices of the respective chamber. The president

of that chamber, or, if the former is unable to attend, the justice appointed by them shall be the president of the judicial panel and shall take the required measures for the random appointment of justices.

(7) When the panel is established according to par. (6), its president shall appoint a justice to develop a report on the legal issue on trial. The justice who is appointed as rapporteur shall not become incompatible.

(8) When the legal issue relates to the activity of several chambers of the High Court of Review and Justice, the Chief Justice, or, if the latter is absent, one of the Deputy Chief Justices of the High Court of Review and Justice shall provide the referral to the presidents of the chambers interested in the settlement of the legal issue. In this case, the panel shall be made up of the Chief Justice, or if the latter is absent, the Deputy Chief Justice of the High Court of Review and Justice who shall preside the panel, the presidents of the chambers interested in the settlement of the legal issue, as well as 5 justices from each of the respective chambers, randomly allocated by the president of the judicial panel. When the panel is established, the president of the panel shall appoint a justice from each chamber to develop a report. The rapporteurs shall not be incompatible.

(9) The report shall be notified to the parties, who, no later than 15 days since the notification may submit their points of view in writing on the legal issue on trial, either through their counsel, or, as the case may be, their legal advisor.

(10) [Article 473](#) par. (5) - (8) shall apply accordingly.

(11) The referral shall be tried without summoning the parties, no later than 3 months since the date when it was registered, whereas the solution shall be adopted with at least two thirds of the number of justices making up the panel. Abstentions from the vote shall not be allowed.

#M2

ART. 477

The contents and effects of the court ruling

(1) When seized, the judicial panel for the settlement of legal issues shall return a decision, based only on the legal issues subject to settlement.

(2) [Article 474](#) par. (3) shall apply accordingly.

(3) The settlement of the legal issues shall be binding for courts as of the date of the publication of the decision in the Romanian Official Journal, Part I.

(4) [Article 474¹](#) shall apply accordingly.

#M4

ART. 477¹

The effects of the decision cease or change

The effects of the decision shall cease when the legal provision that caused the settled legal issue is repealed, found unconstitutional or amended, except for the case when it subsists in the new regulation.

#B

TITLE IV

Special procedures

CHAPTER I

Guilty plea

ART. 478

Parties to the guilty plea and its limits

- (1) During the criminal investigation, after the formal filing of charges, the defendant and prosecutor can conclude an agreement as a result of the defendant pleading guilty.
- (2) The effects of the guilty plea shall be subject to approval by the hierarchically superior prosecutor.
- (3) The guilty plea can be initiated by both the prosecutor and the defendant.
- (4) The limits of the guilty plea shall be set by prior written agreement from the hierarchically superior prosecutor.
- (5) If formal charges have been filed against several defendants, a distinct guilty plea can be concluded with each one of them, without impact on the benefit of the doubt extended to defendants who have not concluded such an agreement.
- (6) Underage defendants cannot enter a guilty plea.

ART. 479

Object of the guilty plea

The object of the guilty plea is admission to have committed the offense and accepting the charges on which criminal action has begun, and regards the type and amount of punishment, as well as how the punishment shall be served.

ART. 480

Conditions for concluding a guilty plea

- (1) A guilty plea can only be concluded concerning the offenses for which the law requires a penalty of a fine or no more than 7 years of imprisonment.
- (2) A guilty plea can be concluded when the gathered evidence provides sufficient information that the offenses for which charges have been filed exists, and that the defendant is the author of that offense. On entering a guilty plea legal assistance is mandatory.

#M2

(3) *** *Repealed*

#B

ART. 481

Format of the guilty plea

- (1) A guilty plea shall be concluded in writing.

(2) In the situation where a guilty plea is concluded, the prosecutor shall no longer return an indictment concerning the defendants that entered the guilty plea.

ART. [482](#)

Contents of the guilty plea

A guilty plea contains:

- a) date and place of signing;
- b) surname, name and capacity of the signatory parties;
- c) information on the person of the defendant, as stipulated at [Art. 107](#) par. (1);
- d) description of the offense that makes the object of the guilty plea;
- e) charges for that offense and penalty required by law;
- f) evidence and methods of proof;
- g) specific statement by the defendant that they admit having committed the offense and accept the charges that have been filed formally;

[#M2](#)

h) type and amount of punishment and how the punishment is to be served, or a resolution to waive enforcement of the penalty or postpone enforcement of the penalty on which the prosecutor and defendant have agreed;

[#B](#)

- i) signatures of the prosecutor, defendant and defense counsel.

ART. 483

Referring the guilty plea to court

(1) After signing the guilty plea, the prosecutor shall file with the court that would have jurisdiction to try the case on the merits and submit the guilty plea, accompanied by the criminal investigation file.

(2) In the situation where the guilty plea only covers some of the offenses or is entered by only some of the defendants, and prosecution is to move ahead for the other offenses or defendants, filing with the court shall be performed separately. The prosecutor shall only submit the criminal investigation acts that concern the offenses and offenders covered by the guilty plea.

(3) In the situation where [Art. 23](#) par. (1) applies, the prosecutor shall submit the guilty plea in court accompanied by the civil settlement or mediation agreement.

ART. 484

Procedure before the court

(1) If the guilty plea is missing one of the mandatory mentions or in case of non-compliance with the conditions stipulated at [Art. 482](#) and [483](#), the court shall order the omissions corrected within no more than 5 days and notifies the fact to the chief prosecutor of the prosecutor's office that entered the plea agreement.

(2) The court shall rule on the guilty plea following a non-adversarial procedure, by judgment returned in public session, after hearing the prosecutor, the defendant and the latter's defense counsel, as well as the civil party if present.

ART. 485

Court resolutions

#M2

(1) On examining the plea agreement the court shall return one of the following resolutions:

a) to sustain the guilty plea and order one of the solutions under [Art. 396](#) par.

(2) - (4), which cannot create for the defendant a situation more difficult than the one that is subject to the agreement, if the conditions are met that are stipulated at [Art. 480](#) - 482 concerning all the offenses the defendant is charged with and that made the object of the agreement;

b) to deny the guilty plea and send the case to the prosecutor for them to continue the criminal investigation, if the conditions are not met that are stipulated at [Art. 480](#) - 482 concerning all the offenses the defendant is charged with and that made the object of the agreement, or if they feel the solution put in place under the plea agreement between the prosecutor and the defendant is unjustifiably lenient in relation to the seriousness of the offense or the hazard posed by the offender.

#B

(2) The court can sustain the guilty plea only for some of the defendants.

(3) In the situation described at par. (1) lett. b), the court shall rule ex officio on the defendants' being placed under arrest.

(4) [Art. 396](#) par. (9), [Art. 398](#) and [Art. 399](#) shall apply accordingly

#M2

ART. 486

Settling the civil action

(1) In the situation where the court sustains the guilty plea and the parties have entered a civil settlement or mediation agreement concerning the civil action, the court shall include that in its judgment.

(2) In the situation where the court sustains the guilty plea the parties have not entered a civil settlement or mediation agreement concerning the civil action, the court shall leave the civil action unsettled. In that situation the resolution to sustain the guilty plea does not have res judicata authority on the extent of claims brought before the civil court.

#B

ART. 487

Contents of the sentence

The sentence shall comprise:

- a) the mentions stipulated at [Art. 370](#) par. (4), [Art. 403](#) and [404](#);
- b) the offense covered by the guilty plea and the charges for it.

#M2

ART. 488

Avenues of appeal

(1) The prosecutor and defendant can challenge the sentence returned as under [Art. 485](#), by appeal, within 10 days of its being communicated.

(2) To challenge a sentence that sustains the guilty plea agreement an appeal can be filed only with respect to the type and amount of punishment or how it is to be served.

(3) The defendant shall be summoned for the trial on appeal.

(4) The appellate court shall return one of the following resolutions:

a) to deny the appeal and sustain the appealed sentence, if the appeal is tardy or inadmissible or unfounded;

b) to sustain the appeal, invalidate the sentence that sustained the guilty plea agreement only with respect to the type and amount of punishment or how it is to be served and return a new judgment as under [Art. 485](#) par. (1) lett. a), which applies accordingly;

c) to sustain the appeal, invalidate the sentence that denied the guilty plea agreement, and sustain the guilty plea, as under [Art. 485](#) par. (1) lett. a) and [Art. 486](#) which apply accordingly.

#M2

CHAPTER I¹

Challenge of the duration of the criminal trial

#CIN

NOTE:

*Herein below we quote the stipulations of [Art. 105](#) in Law #255/2013 (**#M2**).*

#M2

"ART. 105

The stipulations of [Art. 488¹](#) - 488⁶ in Law #135/2010, as amended and supplemented by this Law, concerning the challenge on grounds of reasonable duration of the criminal trial, shall only apply to criminal trials that began after the enactment of [Law #135/2010](#)."

#M2

ART. 488¹

Filing a challenge

(1) If the criminal investigation or the criminal trial are not completed within a reasonable duration of time, parties can file a challenge and move for the procedure to be sped up.

(2) The challenge can be filed by the suspect, defendant, victim, civil party and person who carries civil liability. During the trial the challenge can also be filed by the prosecutor.

(3) The challenge can be filed as follows:

a) at least one year since the criminal investigation began, in the situation of cases at the stage of the criminal investigation;

b) at least one year since the criminal trial started, in the situation of cases at the stage of trial in first instance;

c) after at least 6 months since an appeal was filed in court, in the situation of cases at the stage of ordinary or extra-ordinary appeals.

(4) A challenge can be withdrawn at any moment before it is ruled upon. A withdrawn challenge cannot be re-filed at the same procedural stage.

#M2

ART. 488²

Jurisdiction to rule

(1) Jurisdiction to rule on a challenge shall belong as follows:

a) in criminal cases at the stage of the criminal investigation it shall belong to the Judge for Rights and Liberties at the court that would have jurisdiction to try the case in first instance;

b) in criminal cases at the stage of trial or in avenues of appeal, ordinary or extra-ordinary, it shall belong to the court that is hierarchically superior to the court that has the case on its docket.

(2) When the judicial procedure that is being challenged is on the docket of the High Court of Review and Justice, it shall belong to a different panel of Justices in the same Chamber.

#M2

ART. 488³

Contents of the challenge

The challenge shall be filed in writing and comprise:

a) surname, name, domicile or residence of the individual, or name and head office of the legal entity, as well as the capacity of that individual or legal entity that files the challenge;

b) name and capacity of the person who represents a party in the trial, and in the case of representation by counsel the latter's name and place of business;

c) mailing address;

d) name of the prosecutor's office or court, and number of the case file;

e) reasons on the merits and in law that the challenge relies upon;

f) date and signature.

#M2

ART. 488⁴

Procedure to rule on a challenge

(1) In order to rule on a challenge the Judge for Rights and Liberties or the court shall order the following steps taken:

- a) inform the prosecutor, or the court on whose docket the case is, of the existence of a challenge, with mention of the fact they are entitled to formulate a point of view concerning it;*
- b) transmittal, no later than 5 days, of the case file or a certified copy of the case file, by the prosecutor or court on whose docket the case is;*
- c) inform the other parties in the trial and, as the case may be, the other persons stipulated at [Art. 488¹](#) par. (2), of the existence of the challenge and their right to formulate a point of view within the deadline allocated for the purpose by the Judge for Rights and Liberties or by the court.*

(2) In the situation where the suspect or defendant is in detention, in that case or another case the information stipulated at par. (1) lett. c) shall be sent to the suspect or defendant, as well as to their defense counsel, whether retained or appointed by the court.

(3) Failure to return a point of view as stipulated at par. (1) lett. a) and c) within the deadline set by the court shall not preclude a ruling on the challenge.

(4) The Judge for Rights and Liberties or the court shall rule on the challenge in no more than 20 days after it was filed.

(5) The challenge shall be resolved by judgment, in chambers, without participation by the parties and the prosecutor.

#M2

ART. 488⁵

Ruling on a challenge

(1) The Judge for Rights and Liberties or the court, in ruling on the challenge, shall compute the duration of procedures based on the work and material in the case file and the points of view formulated by the sides and shall return a judgment.

(2) The Judge for Rights and Liberties or the court, in establishing the reasonable character of the duration of judicial procedures, shall consider the following elements:

- a) nature and object of the case;*
- b) complexity of the case, including the number of participants and difficulties in submitting evidence;*
- c) international connections of the case;*
- d) the procedural stage the case is at, and the duration of previous procedural stages;*
- e) behavior of the challenger as part of the challenged judicial procedure, including in terms of exercising their trial and procedural rights and in terms of complying with their obligations as part of the trial;*

- f) behavior of the other participants in the case, including the involved authorities;*
- g) advent of legal amendments applicable in the case;*
- h) other elements of a nature to impact the duration of the procedure.*

#M2

ART. 488⁶

Resolutions

- (1) When they feel the challenge is grounded, the Judge for Rights and Liberties or the court will sustain the challenge and set a time frame within which the prosecutor must deal with the case, or the court of law must dispose of the case, as under [Art. 327](#), and the time frame inside which another challenge cannot be filed.*
- (2) In all situations, the Judge for Rights and Liberties or the court that is to rule on the challenge cannot provide guidance nor offer solutions on matters related to facts or law, that would anticipate the final resolution on the challenge or impair the case judge's freedom to rule, under the law, on the matter brought before them or, as the case may be, the prosecutor's freedom to return the resolution they believe to be legal and grounded.*
- (3) If the finding is that the reasonable duration was exceeded, a new challenge in the same case shall only be dealt in exclusive consideration of reasons occurred after the filing of the previous challenge.*
- (4) Abuse of law, consisting in filing a challenge in ill-faith, shall be punishable by a judicial fine of no less than 1000 RON and no more than 7000 RON and compelling to cover the judicial expenses occasioned by that challenge.*
- (5) The judgment shall receive its rationale within 5 days of pronouncement. The case file shall be sent back on the day of releasing the rationale.*
- (6) The judgment shall be communicated to the challenger and sent as information to all the parties or persons listed at [Art. 488⁴](#) par. (1) lett. c) who are participants in the case, and who will be held to comply with the time-frames stipulated therein.*
- (7) The judgment whereby the Judge for Rights and Liberties or the court of law rule in the case cannot be subject to any avenue of appeal.*
- (8) A challenge filed outside the time frames stipulated in this Chapter shall be sent back to the challenger via administrative procedure.*

#B

CHAPTER II

Procedure to prosecute legal entities

ART. 489

General stipulations

(1) In the situation of offenses committed by legal entities that are stipulated at [Art. 135](#) par. (1) in the Criminal Code, during the performance of their objects or in the interest or on behalf of the legal entity, this Code's stipulations shall apply accordingly, with the exceptions and supplements stipulated in this Chapter.

(2) Applicable in the procedure to prosecute legal entities are also the stipulations of the Preliminary Chamber procedure, which shall operate accordingly.

ART. 490

Object of the criminal action

The object of the criminal action is to hold legal entities criminally liable that have committed criminal offenses.

#M2

ART. [491](#)

Representation for the legal entity

(1) During the various proceedings and procedures the legal entity shall be represented by its legal representative.

(2) If criminal action has started against the legal entity's legal representative for the same offense or related offenses, said representative shall appoint a proxy to stand in for them.

(3) In the case stipulated at par. (2), if the legal entity has not appointed a proxy, such person shall be appointed, as the case may be, by the prosecutor who performs or supervises the criminal investigation, by the Preliminary Chamber Judge or by the court, selected from the ranks of insolvency practitioners who are certified under the law. Insolvency practitioners thus appointed shall operate, accordingly, under the stipulations of [Art. 273](#) par. (1), (2), (4) and (5).

#M2

ART. [492](#)

Place of summons for the legal entity

(1) A legal entity shall be sent the summons at their head office. If such head office is fictitious or the legal entity has stopped operating from their declared head office, and the new head office is not known, a notice shall be posted at the head office of the judicial body and the stipulations of [Art. 259](#) par. (5) shall apply accordingly.

(2) If the legal entity is represented by a proxy, appointed as under [Art. 491](#) par. (2) and (3), the summons shall be sent to the proxy's domicile or at the head office of the insolvency practitioner who was appointed as proxy.

#M2

ART. 493

Preventive measures

(1) During the criminal investigation the Judge for Rights and Liberties, on proposal from the prosecutor or, as the case may be, the Preliminary Chamber Judge or the court, can order, if reasonable doubt exists to justify reasonable suspicion that the legal entity has committed a criminal offense and only in order to provide a smooth operation of the criminal trial, one of the following steps to be taken:

- a) forbid the initiation or, as the case may be, suspension of the procedure to dissolve the legal entity or liquidate it;*
- b) forbid the initiation or, as the case may be, suspension of the legal entity's merger, division or reduction in nominal capital, that began prior to the criminal investigation or during it;*
- c) forbid asset disposal operations that are likely to diminish the legal entity's assets or cause its insolvency;*
- d) forbid the signing of certain legal acts, as established by the judicial body;*
- e) forbid activities of the same nature as those on the occasion of which the offense was committed.*

(2) To ensure compliance with the measures described at par. (1), the legal entity can be compelled to post bail consisting of an amount of money that can be no smaller than 10000 RON. The bail shall be returned on the date the judgment remains final that convicts, postpones enforcement of the penalty, waives enforcement of the penalty, or dismisses the criminal case, if the legal entity has complied with the preventive measure or measures, as well as in the situation where the final judgment was to acquit the legal entity.

(3) The bail money shall not be returned in case the legal entity does not comply with the preventive measure or measures, and shall be transferred to the state budget as of the date the judgment in the case remains final, and also if an order was returned to use the bail money to cover, in this order, the financial compensation for the recovery of losses caused by the offense, judicial expenses or the fine.

(4) The preventive measures described at par. (1) can be ordered for a period of no more than 60 days, which can be extended during the criminal investigation and maintained during the preliminary chamber procedure and the trial, if the grounds still apply that caused those measures to be taken, and each extension can be awarded for no longer than 60 days.

(5) During the criminal investigation the preventive measures shall be ordered by the Judge for Rights and Liberties, by reasoned judgment returned in chambers, with the legal entity having been summoned.

(6) The prosecutor's participation is mandatory.

(7) The judgment can be challenged before the Judge for Rights and Liberties or, as the case may be, the Preliminary Chamber Judge or hierarchically superior court, by the legal entity and by the prosecutor, within 24 hours of its

having been pronounced, for those who were present, and of its having been communicated, for the legal entity that was absent.

(8) Preventive measures can be rescinded by the Judge for Rights and Liberties on request from the prosecutor or the legal entity, and by the Preliminary Chamber Judge and the court and ex officio only when it is found that the reasons that caused the measures to be taken or maintained have ceased to apply. The stipulations of par. (5) - (7) shall apply accordingly

(9) The measures described at [Art. 265](#) and [Art. 283](#) par. (2) can be ordered against the representative or proxy of the legal entity, and the measure described at [Art. 283](#) par. (2) can be ordered against the insolvency practitioner.

(10) Preventive measures ordered do not preclude seizure as under [Art. 249](#) - 256.

#M2

ART. 494

Seizure measures

Seizure measures can be ordered against the legal entity and [Art. 249](#) - 256 and [Art. 549¹](#) shall apply accordingly.

#B

ART. 495

Information procedure

(1) During the criminal investigation the prosecutor shall inform the body that authorized the incorporation of the legal entity and the body that registered the legal entity about the commencement of the criminal investigation and prosecution of that legal entity, at the date when those measures are ordered, for them to perform the necessary mentions.

(2) In the situation of the entities that are not subject to the requirement to get registered or authorized in order to acquire legal entity status, the information described at par. (1) shall be sent to the body that established that entity.

(3) The bodies stipulated at par. (1) and (2) are under an obligation to communicate to the judicial body, within 24 hours of the date of registration, in certified copy, any mention they have registered as regards that legal entity.

(4) The legal entity is under an obligation to communicate to the judicial body, within 24 hours, their intention to merge, divide, deregister, get reorganized, liquidated, or to reduce their nominal capital.

(5) The stipulations of par. (1) - (3) shall apply accordingly also in the case of preventive measures against the legal entity.

(6) After the sentence to pay a fine remains final, the enforcement court shall send a copy of the text of the sentence to the body that authorized the incorporation of the legal entity, the body that registered the legal entity, the body that established the entity that is not subject to authorization or

registration, and the bodies that have oversight and supervision authority over that legal entity so they can perform the necessary mentions.

(7) Failure to comply, immediately or within the required time frames, with obligations ordered as under par. (3) - (5) constitutes a judicial violation and shall be punishable by a judicial fine as under [Art. 283](#) par. (4).

#M2

ART. 496

Effects of merger, acquisition, division, reduction of nominal capital, deregistration or liquidation of a convicted legal entity

(1) If, between the time when a conviction of a legal entity remains final and the time the sentence is enforced, there occurs a merger, acquisition, division, deregistration, liquidation or reduction of nominal capital of the convicted legal entity, the authority or entity with authority to authorize or register that operation is under an obligation to notify the enforcement court about it and gather information about the legal entity that was created following the merger or acquisition or that has obtained parts of the divided legal entity's assets.

(2) The legal entity that was created following the merger or acquisition or that has obtained parts of the divided legal entity's assets shall become responsible for the obligations and restrictions of the convicted legal entity, and [Art. 151](#) in the Criminal Code shall apply accordingly.

#B

ART. 497

Enforcing a sentence to pay a fine

#M2

(1) The legal entity that is convicted and sentenced to pay a fine is under an obligation to present the receipt attesting to payment of the fine in full to the judge delegate in charge of enforcement, within 3 months of the date the conviction remained final.

(2) When the convicted legal entity finds itself at an impossibility to pay the entire amount of the fine within the time frame set at par. (1), the judge delegate in charge of enforcement, on request from the legal entity, can order the payment to be performed in monthly installments over a period of no more than 2 years.

#B

(3) In case of failure to comply with the obligation to pay the full amount of the fine within the time frame set in par. (1) or failure to pay one of the scheduled monthly installments, the enforcement court shall communicate a selection from that part of the sentence that regards payment in full or scheduling of monthly payments to the bodies that have authority to foreclose on the unpaid debt.

#M2

ART. 498

Enforcing the additional penalty of dissolving the legal entity

(1) A copy of the operational part of the decision shall be communicated, at the date it remains final, by the judge delegate in charge of enforcement to the concerned legal entity and to the body that authorized the incorporation of that legal entity, respectively to the body that registered the legal entity, at the same time requiring to be informed of how the measure was performed.

(2) On the date the sentence to dissolve the legal entity remains final, the legal entity shall be placed under liquidation.

#B

ART. 499

Enforcing the additional penalty of suspending the legal entity's operation

A copy of the operational part of the decision that suspends the operation of one or several of the legal entity's activities shall be communicated, on the date it remains final, to the body that authorized the incorporation of the legal entity, the body that registered the legal entity or the body that established the legal entity that is not subject to authorization or registration, and to the bodies that have authority to oversee and supervise the legal entity, so that can take the necessary steps.

ART. 500

Enforcing the additional penalty of closing down certain operation locations of the legal entity

A copy of the operational part of the decision to close certain operation locations of the legal entity's shall be communicated, on the date it remains final, to the body that authorized the incorporation of the legal entity, the body that registered the legal entity or the body that established the legal entity that is not subject to authorization or registration, and to the bodies that have authority to oversee and supervise the legal entity, so that can take the necessary steps.

ART. 501

Enforcing the additional penalty of banning the legal entity from taking part in public procurement tenders

(1) A copy of the operational part of the decision to ban the legal entity from taking part in public procurement tenders shall be communicated, on the date it remains final, to:

- a) the Trade Registry Office, which shall provide publication thereof in the Trade Registry;
- b) the Ministry of Justice, which shall provide publication thereof in the National Record of Non-Profit Legal Entities;
- c) any authority that keeps a record of legal entities, so they can have it published;

#M2

d) the administrator of the electronic public procurement system.

#B

(2) A copy of the operational part of the decision to ban the legal entity from taking part in public procurement tenders shall be communicated, on the date it remains final, to the body that authorized the legal entity's incorporation and the body that registered the legal entity, so they can take the appropriate steps.

#M2

ART. [501¹](#)

Enforcing the additional penalty of placing under judicial supervision

(1) The responsibilities of the judicial administrator in supervising the operation of the legal entity are listed among the orders in the conviction judgment that sentenced the entity to be placed under judicial supervision.

(2) The judicial administrator cannot act instead of the legal entity's officials in managing the activities of the legal entity.

#B

ART. [502](#)

Enforcing the additional penalty of posting or publishing the conviction judgment

#M2

(1) A selection from the conviction judgment that regards the enforcement of the additional penalty to have said judgment posted shall be communicated, on the date it remains final, to the convicted legal entity which is to post it in the format, place and period set by the court.

(2) A selection from the conviction judgment that regards the enforcement of the additional penalty to have said judgment published shall be communicated, on the date it remains final, to the convicted legal entity which is to publish it in the format set by the court, at their own expense, in the print or audio-visual media or by any other avenue of audio-visual communication set by the court.

#B

(3) The convicted legal entity shall submit in court proof of compliance with the obligation to post or publish the conviction judgment, as the case may be, within 30 days or receiving communication of the judgment, but no later than 10 of beginning to serve the sentence or, as the case may be, the primary sentence.

(4) A copy of the entirety or a selection from conviction judgment shall be communicated on the date it remains final to the body that authorized the incorporation of the legal entity, the body that registered the legal entity or the body that established the legal entity that is not subject to authorization or registration, and to the bodies that have authority to oversee and supervise the legal entity, so that can take the necessary steps.

ART. [503](#)

Supervision of enforcement of additional penalties for legal entities

(1) In case the additional penalties for the legal entity are not served, in ill-faith, the enforcement court shall act as under [Art. 139](#) par. (2) or, as the case may be, [Art. 140](#) par. (2) or (3) in the Criminal Code.

#M2

(2) The court shall be informed ex officio by the judge delegate of the enforcement court, as under [Art. 499](#) - 502.

#B

(3) The legal entity shall be summoned to trial.

(4) Participation by the prosecutor is mandatory.

(5) After hearing the prosecutor's closing argument and the convicted legal entity, the court shall rule in a sentence.

CHAPTER III

Procedure in cases with underage offenders

ART. 504

General stipulations

Investigating and prosecuting criminal offenses committed by underage offenders, as well enforcement of judgments against them, shall be performed according to regular procedure, with the supplements and exceptions stipulated in this Chapter and in [section 8](#) in Chapter I, Title V of the General Part.

ART. 505

Persons summoned before the criminal investigation body

(1) When the suspect or defendant is an underage person who has not turned 16, for any hearing or confrontation of the juvenile the criminal investigation body shall summon their parents or, as the case may be, their legal guardian, custodian or person in whose care or under whose supervision the juvenile was placed temporarily, as well as the General Department for Social Assistance and Child Protection in the locality where the hearing is to take place.

(2) When the suspect or defendant is an underage person who has turned 16, summoning the individuals described in par. (1) shall only be ordered if the criminal investigation body deems it necessary.

(3) Failure by the legally summoned individuals to attend the hearing or confrontation of the juvenile does not preclude those procedures from taking place.

ART. 506

Evaluation report of the underage defendant

(1) In cases with underage defendants the criminal investigation bodies can, when they deem it necessary, require an evaluation report from the Probation

Service attached to the Tribunal in whose territorial jurisdiction the underage person lives, as under the law.

(2) In cases with underage defendants the court is under an obligation to order the evaluation report from the Probation Service attached to the Tribunal in whose territorial jurisdiction the underage person lives, as under the law. In the situation where the report has already been required during the criminal investigation, as under par. (1), the court's ordering an evaluation report is optional.

#M2

(3) *** *Repealed*

(4) In its evaluation report the requested Probation Service can make reasoned recommendations concerning educational measures that can be ordered in relation to the juvenile.

(5) *** *Repealed*

#B

ART. 507

Composition of the court

(1) The cases where the defendant is underage shall be tried according to regular jurisdiction rules by judges specifically designated under the law.

(2) A court made up according to par. (1) shall retain jurisdiction to try the case under the special procedural stipulations concerning underage defendants, even if in the meantime the defendant has turned 18.

(3) The defendant who committed an offense while underage shall be tried under the procedure applicable to cases with underage defendants if at the date the case is filed they had not yet turned 18.

ART. 508

Persons summoned to attend trial of underage defendants

(1) For the trial of an underage defendant summons shall be sent to the Probation Service, the defendant's parents or, as the case may be, their legal guardian, custodian or person or person in whose care or under whose supervision the juvenile was placed temporarily.

(2) The persons described at par. (1) have a right and a duty to provide clarifications, file motions and submit recommendations as to steps that could potentially be taken.

(3) Failure by the legally summoned individuals to attend the trial does not preclude the trial from taking place.

ART. 509

Operation of the trial

(1) Cases with underage defendants shall be tried urgently and with precedence.

(2) The trial session is not public. Subject to the court's agreement, the trial can be attended by persons who are additional to those stipulated at Art. 508.

#M2

(3) When the defendant is an underage person aged less than 16, the court, if it feels that hearing certain items of evidence can exercise a negative influence on the defendant, can have the defendant temporarily removed from the courtroom. Similar conditions apply to the possibility to also temporarily remove from the courtroom the defendant's parents, or legal guardian, custodian or person in whose care or under whose supervision the juvenile was placed temporarily.

#B

(4) On admitting the persons described at par. (3) back into the courtroom the presiding judge shall inform them of the main acts that were performed in their absence.

(5) An underage defendant can only be heard once, and hearing them again shall only be allowed by the judge in thoroughly justified situations.

ART. 510

Defendants underage and adult

(1) When the same case has several defendants, some of whom are underage and some of whom are adults, and disjoinder of the case is not possible, the trial shall be performed as under Art. 507 par. (1) and the regular procedure.

(2) The procedure for cases with underage defendants shall apply to the underage defendants in such cases.

#M2

ART. 511

Enforcing non-custodial educational measures

In the situation where any of the non-custodial educational measures were ordered for the underage defendant after the judgment remains final, a date shall be set for bringing the juvenile in, summoning their legal representative, a representative of the Probation Service in charge of enforcing the measure and the persons appointed to supervise compliance with the measure.

#M2

ART. 512 *** *Repealed*

#B

ART. 513

Extending or replacing non-custodial educational measures

(1) The court that ordered a non-custodial educational measure shall have authority to extend it in the situation where the juvenile, in ill-faith, fails to comply with the serving conditions and obligations ordered to them.

(2) The court that ordered a non-custodial educational measure shall have authority to replace the original measure by another non-custodial educational measure that is harsher or replace the original measure by a custodial educational measure, for one of the reasons stipulated at Art. 123 in the Criminal Code.

ART. 514

Enforcing internment in an education center

(1) In case the educational measure of internment in an education center has been ordered against the juvenile, enforcement shall be performed by sending a copy of the judgment to the local police of the juvenile's place of domicile, after the judgment remains final.

(2) The police shall take steps to have the juvenile interned.

(3) On enforcing the educational measure of internment in an education center, the police can enter the domicile or residence of a person without the latter's consent, as well as in the head office of a legal entity without consent from its legal representative.

(4) If the juvenile against whom an educational measure of internment in an education center was ordered cannot be found, the police shall record that in a report and immediately notify the jurisdictional bodies that the juvenile is wanted, and that all border checkpoints should also be required to stop them. One copy of the report shall be sent to the educational center where internment was ordered.

(5) A copy of the judgment shall be handed at the educational center where the juvenile is interned, at the start of enforcement.

(6) The head of the educational center shall immediately notify the performance of internment to the court that ordered it.

ART. 515

Enforcing internment in a custodial center

(1) The educational measure of interning the juvenile in a custodial center shall be enforced by sending a copy of the final judgment that ordered it to the local police of the juvenile's location, when the juvenile is not in custody, or the warden of the place of detention when the juvenile is under pre-trial arrest.

(2) Once the educational measure of interning the juvenile in a custodial center is enforced, the delegate judge shall also issue the order that bans the juvenile from leaving the country. The rules on writing and contents of the order in case of enforcing a prison sentence shall apply accordingly.

(3) If enforcing the measure is the responsibility of the police, Art. 514 par. (2) - (4) shall apply accordingly.

(4) A copy of the judgment shall be handed at the custodial center where the juvenile is interned.

(5) The head of the custodial center shall immediately notify the performance of internment to the court that ordered it.

ART. 516

Changing the educational measure of internment in an education center

(1) Maintaining the educational measure of interning the juvenile in an education center, extending it or replacing it by internment in a custodial center in the cases described at Art. 125 par. (3) in the Criminal Code shall be ordered by the court that has jurisdiction to try the new offense or the multiple offense committed previously.

#M2

(2) Replacing internment of the juvenile by the educational measure of daily assistance and release from the educational center at the age of 18 shall be ordered, as under the law on enforcement of criminal penalties, by the court in whose territorial jurisdiction the educational center is located, equal in rank to the enforcement court. Cancellation of replacement or release, in case the juvenile, in ill-faith, fails to comply with the conditions for serving the educational measure or with their ordered obligations, shall be ordered, ex officio or based on report from the Probation Service, by the court that tried the case on the merits.

#B

(3) In the situation described at Art. 125 par. (7) in the Criminal Code, cancellation or replacement shall be ordered by the court that has jurisdiction to try the new offense committed by the juvenile.

ART. 517

Changing the educational measure of internment in a custodial center

(1) Extending the educational measure of interning the juvenile in a custodial center in the situations described at Art. 125 par. (3) in the Criminal Code shall be ordered by the court that has jurisdiction to try the new offense or the multiple offense committed by the juvenile.

(2) Replacing internment of the juvenile by the educational measure of daily assistance and release from the custodial center at the age of 18 shall be ordered, as under the law on enforcement of criminal penalties, by the court in whose territorial jurisdiction the educational center is located, equal in rank to the enforcement court. Cancellation of replacement or release, in case the juvenile, in ill-faith, fails to comply with the conditions for serving the educational measure or with their ordered obligations, shall be ordered, ex officio or based on report from the Probation Service, by the court that tried the case on the merits.

(3) In the situation described at Art. 125 par. (7) in the Criminal Code, cancellation and extension shall be ordered by the court that has jurisdiction to try the new offense committed by the juvenile.

ART. 518

Changing the regime of service

In the situations described at Art. 126 in the Criminal Code, having the custodial educational measure continue to be served in a penitentiary by the interned person who has turned 18 years of age can be ordered as under the law on enforcement of criminal penalties, by the court in whose territorial jurisdiction the educational center or custodial center is located, equal in rank to the enforcement court.

ART. 519

Postponing or interrupting service of custodial measures

Serving the educational measure of internment in an educational center or the educational measure of internment in a custodial center can be postponed or interrupted in the situations and conditions stipulated by law.

ART. 520

Stipulations concerning appeal

The stipulations concerning trial on the merits for cases of offenses committed by juveniles shall apply accordingly to the trial of the appeal.

CHAPTER IV

Procedure for issuing a wanted notice

ART. 521

Wanted notice

- (1) A wanted notice is requested and granted to identify, search for, locate and apprehend an individual in order to bring them before the judicial bodies or to enforce certain court orders.
- (2) A wanted notice is requested and ordered in the following situations:
 - a) it was not possible to enforce a pre-trial arrest warrant, a warrant to enforce a custodial penalty, a custodial educational measure, a medical internment measure or the expulsion measure, because the person against whom one of those measures was ordered could not be found;
 - b) the person escaped from legal arrest or detention or ran away from an educational center, custodial center or medical facility where they were medically interned;
 - c) to find a person who is wanted internationally and information exists that they are in Romania.
- (3) A wanted notice is requested by:
 - a) the police body that found the impossibility of enforcing a measure as under par. (2) lett. a);

b) the management of the place of detention, educational center or medical facility stipulated at par. (2) lett. b);

c) the judicial body that has jurisdiction under special law, in the situation of par. (2) lett. c);

(4) A person is placed on wanted status by order of the General Police Inspectorate of Romania.

(5) The wanted order shall be communicated within the shortest delays to the bodies that have authority to issue passports; the latter are under an obligation to refuse issuance of a passport or, as the case may be, temporarily seize the passport for the duration of the wanted notice; the order shall also be communicated to the border police for an alert to be placed on the person.

(6) A copy of the wanted order shall also be communicated to:

a) the entity before whom the wanted person will be brought at the time they are apprehended;

b) the jurisdictional judicial body that supervises the search for the wanted person.

ART. 522

Searching for a wanted person

(1) The wanted order shall be immediately enforced by the jurisdictional structures of the Ministry of the Administration and Interior that are to perform nationwide activities to identify, search for, locate and apprehend the wanted individual.

(2) Public entities are under an obligation to provide support, as required by law and according to their legal authority, to the police who are searching for a wanted individual.

(3) The activity of searching for a individual for the purpose of placing them on pre-trial arrest, carried out by the police, shall be supervised by prosecutors especially appointed from the prosecutor's office attached to the Court of Appeals in whose jurisdiction the court is located that tried the motion for pre-trial custody warrant on the merits. When the pre-trial custody warrant was returned in a case under the jurisdiction of the Prosecutor General's Office, supervision of the search activities shall be the responsibility of the prosecutor who is performing or has performed the criminal investigation in the case.

(4) In the other situations, the activity of searching for wanted individuals shall be supervised by prosecutors especially appointed by the prosecutor's office attached to the Court of Appeals in whose jurisdiction the enforcement court is located or another court that has jurisdiction under special law.

ART. 523

Activities that can be performed during the search procedure

(1) With a view to identifying, searching for, locating and apprehending the wanted persons the following activities can be performed, in the conditions stipulated by law:

- a) electronic surveillance;
- b) intercepting, seizing and searching mail and items;
- c) search warrants;
- d) seizing items or documents.

#M2

e) *** *Repealed*

(2) The activities at par. (1) lett. a) - c) can only be performed on the basis of a warrant issued by the Judge for Rights and Liberties from the court that has jurisdiction to try the case on the merits or the enforcement court or by the Judge for Rights and Liberties from the court that has jurisdiction under special law in the situation stipulated at Art. 521 par. (2) lett. c).

#B

(3) The activities at par. (1) lett. d) can only be performed on the basis of a warrant issued by the prosecutor who supervises the activity of the police who are searching for the wanted person.

#M2

ART. 524

Electronic surveillance, intercepting, seizing and searching mail and items, and search warrants in the procedure of finding a wanted person

(1) Electronic surveillance, intercepting, seizing and searching mail and items and search warrants can be ordered, on request from the prosecutor who supervises the activity of the police who are searching for the wanted individual, by the Judge for Rights and Liberties from the jurisdictional court, if the judge feels that identifying, searching for, locating and apprehending cannot be performed by using other means or would be delayed for very long.

(2) Art. 138 - 144, and respectively Art. 147 and Art. 157 – 160, shall apply accordingly.

#M2

ART. 525

Seizing items or documents in the procedure of finding a wanted person

(1) Seizing items or documents in order to identify, search for, locate and apprehend wanted individuals can be ordered by the prosecutor who supervises the activity of the police who are searching for the wanted individual.

(2) Art. 169 and 171 shall apply accordingly.

#B

ART. 526

Calling off the search

(1) The search shall be called off at the moment the wanted individual is apprehended or when the reasons no longer apply that made it necessary to declare that person wanted.

(2) The order to call the search off shall be issued by the General Police Inspectorate of Romania, and a copy of it shall be immediately sent to:

a) the jurisdictional prosecutor's office that supervises the search for the wanted individual;

b) the bodies that have authority to issue passports and the border police.

#M2

(3) The prosecutor who supervises the search for the wanted individual shall immediately order a cessation of the surveillance activities undertaken under Art. 524, and inform the Judge for Rights and Liberties about it.

#B

CHAPTER V

Rehabilitation procedure

ART. 527

Rehabilitation

Rehabilitation occurs either by law, in the situations stipulated at Art. 150 or 165 in the Criminal Code, or on request, in which case it is granted by the court in the conditions described in this Chapter.

ART. 528

Rehabilitation by law

(1) On completion of the 3-year time frame stipulated in Art. 165 in the Criminal Code, if the convicted individual has not committed another offense the criminal records authority shall delete ex officio the mentions on the penalty served by the convicted individual.

#M2

(2) On completion of the 3-year time frame stipulated in Art. 150 in the Criminal Code, if the convicted individual has not committed another offense the body that authorized the incorporation of the legal entity and the body that registered the legal entity shall delete ex officio the mentions of the penalty served by the legal entity

#B

ART. 529

Judicial rehabilitation

Jurisdiction to rule on judicial rehabilitation shall go to either the court that tried on the merits the case where the conviction was returned for which rehabilitation is now requested, or a similar court that has jurisdiction over the convicted

individual's place of domicile, or last place of domicile in case the individual lives abroad at the date they file for rehabilitation.

ART. 530

Request for rehabilitation.

(1) The request for judicial rehabilitation shall be filed by the convicted individual and after their death by their spouse or close relatives. The spouse or close relatives can take up a rehabilitation procedure that started before the individual's death.

(2) Judicial rehabilitation shall be ordered in the situations and conditions established at Art. 166 and 168 in the Criminal Code.

(3) The request shall mention:

a) address of the convicted individual, or another person's address when it is the latter who files the request;

b) the conviction for which rehabilitation is requested and the offense the conviction was returned for;

c) the localities where the convicted individual lived and jobs they held in the entire time interval since serving the sentence and until filing the request, and in case serving the sentence came under the statute of limitations, between the date the conviction remained final and the date the request is filed;

d) grounds for the request;

e) useful information for tracking the case file and any other information that would be useful in dealing with the request.

(4) On demand, documents shall be appended that prove the conditions for rehabilitation are met.

ART. 531

Preliminary measures

After a time frame is set for dealing with the rehabilitation request, the requesting person shall be summoned before the court, as well as the persons the court believes should be heard, steps shall be taken to bring in the case file of the conviction and a copy shall be required of the criminal record of the convicted individual.

ART. 532

Denying the request for failure to meet requirements of format and contents

(1) A rehabilitation request shall be denied for failure to meet requirements of format and contents in the following situations:

a) it was filed before the legal date;

b) it is missing the mention stipulated at Art. 530 par. (3) lett. a) and the requester has failed to appear in court on the hearing date;

c) it is missing one of the mentions stipulated at Art. 530 par. (3) lett. b) - e) and the requester did not fill in the application either at the hearing date or at the date of the continuance granted them for filling in the application.

(2) In the case stipulated at par. (1) lett. a), the request can be filed again after completion of the legal time frame, and in the cases stipulated at par. (1) lett. b) and c), at any time.

(3) In the situation where serving the penalty came under the statute of limitations, the rehabilitation request cannot be filed by the person stipulated at Art. 530 par. (1), if the failure to serve is attributable to the convicted individual.

ART. 533

Dealing with the request

(1) On the established hearing date, in non-public session, the court shall hear the summoned persons who are present, the arguments of the prosecutor and the requester, and shall examine whether the conditions required by law for granting rehabilitation are met.

(2) If, before dealing with the convicted individual's rehabilitation request, the individual is prosecuted for another offense, examining of the request shall be suspended until a final judgment in that case.

ART. 534

Situations for civil compensation

(1) When the convicted individual or person who filed the rehabilitation request proves it was impossible for them to pay civil compensation and judicial expenses, the court, after examining the circumstances, can award rehabilitation or set a time frame within which the amount owed shall be paid in full or in part.

(2) The time frame stipulated at par. (1) cannot exceed 6 months.

(3) In the situation where liability for the debt owed is shared between the convicted individual and other individuals the court shall set the amount payable for the rehabilitation award by the convicted individual or their descendants.

(4) The rights awarded to the civil party under the conviction judgment shall not be changed by the rehabilitation award.

ART. 535

Challenge

The court judgment on rehabilitation can be challenged within 10 days of its being communicated, and the challenge shall go before the hierarchically superior court. Trial of the challenge to the first court's judgment shall take place in non-public session, with the challenger being summoned before the court. The prosecutor's participation is mandatory. The judgment returned by the court that examined the challenge is final.

ART. 536

Rescinding rehabilitation

(1) In the situation stipulated at Art. 171 in the Criminal Code, the court at Art. 529 shall rule to rescind rehabilitation, ex officio or on request by the prosecutor.

(2) Art. 533 shall apply accordingly.

ART. 537

Mentions of rehabilitation

After the judgment awarding or rescinding rehabilitation remains final the court orders mention of it to be made in the judgment that returned the conviction.

CHAPTER VI

Procedure for material or moral compensation in case of judicial error or illegal deprivation of freedom or other cases

ART. 538

Right to receive compensation in case of judicial error

(1) A person who received a final conviction, irrespective of whether the penalty or custodial educational measure was enforced, is entitled to receive compensation from the government for their losses in the situation where a final acquittal judgment is returned following retrial of the case, nullification or quashing of the conviction judgment on grounds of a new or recently-discovered fact that proves a judicial error has taken place.

(2) Par. (1) also applies in the situation where a criminal trial is reopened in the case of a convicted individual who was tried in absentia, if the retrial returns a final acquittal.

(3) The person described at par. (1) and the person described at par. (2) shall not be entitled to demand compensation from the government if they caused the conviction judgment by misrepresentation or otherwise, unless they were compelled to act that way.

(4) Also not entitled to compensation is the convicted individual who carries the entire or part of the blame for the failure to make timely discovery of the new or recently-discovered fact.

ART. 539

Right to receive compensation in case of illegal deprivation of freedom

(1) Also entitled to compensation is the person who, during the criminal procedure, was deprived of their freedom unlawfully.

(2) Unlawful deprivation of freedom must be a finding, as the case may be, by prosecutorial order, final judgment by the Judge for Rights and Liberties or the Preliminary Chamber Judge, or by final judgment or sentence by the court of law that tries the case.

ART. 540

Manner and extent of compensation

(1) In establishing the extent of compensation consideration shall be given to the duration of unlawful deprivation of freedom, as well as to the consequences it caused for the person, their family or the person found in the situation described at Art. 538.

(2) Compensation shall consist of a sum of money or the setting up of an annuity, or of the obligation that the government pays for the unlawfully detained person to be placed in the care of a social or medical care institute.

(3) In selecting the manner and extent of compensation, consideration shall be given to the situation of the person entitled to it and the nature of loss they suffered.

(4) Persons entitled to compensation who were employed before being deprived of freedom or incarceration following enforcement of a penalty or a custodial educational measure shall receive an inclusion of the time they spent deprived of freedom in their total legal seniority.

(5) In all cases the costs of compensation shall be borne by the government, through the agency of the Ministry of Public Finance.

ART. 541

Action for compensation

(1) Action for compensation can be filed by the person entitled to it as under Art. 538 and 539, and after their death, it can be taken up or filed by their dependents at the date of their death.

(2) Action for compensation can be filed within 6 months of the date the court judgment remained final, or the judicial bodies' orders and decisions, whereby the judicial error was established or the unlawful deprivation of freedom.

(3) The entitled person can file for compensation with the Tribunal in whose territorial jurisdiction they live, by legal action against the government, which shall be summoned through the Ministry of Public Finance.

(4) This action is exempt from judicial stamp fee.

ART. 542

Action for redress

(1) In case compensation was awarded under Art. 541, as well as in the situation where the Romanian State was convicted by an international court for one of the cases stipulated at Art. 538 and 539, action for redress in order to recover the amount of compensation paid can be filed against the person who, in ill-faith or grave negligence, caused the situation that warranted compensation, or against the entity where the aforementioned person is insured for damage caused in the exercise of their profession.

(2) The State must prove in its action for redress, by prosecutorial order or final criminal sentence, that the person insured as described at par. (1) has caused, in

ill-faith or grave negligence, the judicial error or unlawful deprivation of freedom that caused losses.

CHAPTER VII

Procedure in the situation where criminal case files and documents disappear

ART. 543

Finding that a case or document has disappeared

- (1) In the situation where a criminal case file or a document in such a case file has disappeared, the criminal investigation body or chief judge of the court that had the case or document shall write a report finding the disappearance and the steps taken to find it.
- (2) Based on the report, proceedings shall be undertaken as under this Chapter.

ART. 544

Object of the special procedure

- (1) When the missing case file or document is required by a justified interest and cannot be reconstituted using regular procedure, either the prosecutor by prosecutorial order or the court by judgment, as the case may be, shall order the missing case file or document replaced or reconstituted.
- (2) The court shall rule by judgment, without summoning the parties, except for the situation where the court feels it is necessary to summon them.
- (3) The judgment shall not be subject to any avenue of appeal.

ART. 545

Jurisdiction in case of replacement or reconstitution

- (1) Replacing or reconstituting shall be performed by the criminal investigation body or by the court of law on whose docket the case is, while in cases that received a final solution, by the court that has the case file on storage.
- (2) When the disappearance has been found by a criminal investigation body or court of law other than those described at par. (1), the criminal investigation body or the court of law that found the disappearance shall send to the jurisdictional criminal investigation body or court or law all the material that is needed for replacing or reconstituting the missing document.
- (3) In case a criminal case file disappeared during the Preliminary Chamber procedure, replacing or reconstituting shall be performed by the court within which the Preliminary Chamber operates.

ART. 546

Replacing the document

(1) Replacing the missing document takes place when official copies of that document exist. The criminal investigation body or court of law shall take steps to obtain the copy.

(2) The obtained copy shall stand in for the original until the original is found.

(3) The individual or authority that surrendered the official copy shall be issued with a certified copy of that.

ART. 547

Reconstituting the document or case file

(1) When no official copy of the missing document exists, the document shall be reconstituted.

(2) Reconstituting a case file shall be performed by reconstituting the documents it contained.

(3) Any manner of evidence allowed by law can be used in reconstituting the file.

(4) The result of reconstituting shall be found complete, as the case may be, by prosecutorial order or by court decision with summoning the parties, after hearing the parties and the prosecutor.

(5) Failure by the legally summoned parties to come to court shall not preclude a decision in the case.

(6) The decision to reconstitute can be challenged by appeal.

(7) Any person that can justify a legitimate interest can file a complaint against the prosecutorial order finding the reconstitution complete, and Art. 336 - 339 shall apply accordingly

CHAPTER VIII

Procedure for international judicial cooperation and implementation of international treaties in criminal matters

SECTION 1

General stipulations

ART. 548

International judicial assistance

#M2

(1) International judicial cooperation shall be requested or granted in compliance with the stipulations of the legal acts of the European Union, the international treaties for international judicial cooperation that Romania is a party to, and with the stipulations of the special law and this Chapter, unless the international treaties stipulate otherwise.

#B

(2) Acts performed by seconded foreign members of a joint investigative team on the basis of and in compliance with the orders of the team leader shall carry similar value to those performed by the Romanian criminal investigation bodies.

SECTION 2

Recognition of foreign judicial acts

ART. 549

Enforcement of civil orders in a foreign criminal judgment

Enforcement of civil orders in a foreign criminal judgment shall be performed according to the rules stipulated for enforcing foreign civil judgments.

#M2

CHAPTER IX

Procedure for forfeiture or invalidation of a document when a case is closed

#M2

ART. 549¹

Procedure for forfeiture or invalidation of a document when a case is closed

(1) In the situation where the prosecutor has ordered the case closed or dropped charges and requested the Preliminary Chamber Judge to order special forfeiture or a document to be invalidated, the prosecutorial order to close the case accompanied by the case file shall be sent to the court that would have legal jurisdiction to try the case on the merits, after expiry of the deadline stipulated at Art. 339 par. (4) or, as the case may be, at Art. 340 or after a ruling to deny the complaint.

(2) The Preliminary Chamber Judge shall communicate, to the persons whose legitimate rights or interests might be affected, a copy of the order and inform them they have 10 days since receiving communication to file motions in writing.

(3) After expiry of the deadline stipulated at par. (2), the Preliminary Chamber Judge shall rule on the request by motivated judgment returned in chambers without participation of the prosecutor or persons described at par. (2), in one of the following ways:

a) deny the proposal and order, as the case may be, the asset returned or lifting the security measure that was taken with a view to forfeiture;

b) sustain the proposal and order the assets forfeited or, as the case may be, invalidation of the document.

(4) Within 3 days of communication of the judgment, the prosecutor and the persons described at par. (2) can file a reasoned challenge. A challenge filed without a rationale shall be inadmissible.

(5) The challenge shall be ruled upon by the court that is hierarchically superior to that which first tried the matter or, when the court that first tried the matter is

the High Court of Review and Justice, by the panel that has legal jurisdiction which shall rule by reasoned judgment without participation of the prosecutor or persons described at par. (2), in one of the following ways:

- a) deny the challenge as tardy, inadmissible or lacking grounds;
- b) sustain the challenge, invalidate the original judgment and retry the matter as under par. (3).

#B

TITLE V

Enforcement of criminal sentences

CHAPTER I

General provisions

ART. 550

Enforceable court decisions

- (1) Sentences of criminal courts become enforceable on the date when they remain final.
- (2) Sentences that are not final are enforceable when the law stipulates for this.

ART. 551

Date when first instance sentences remain final

First instance sentences remain final:

1. on the date of their return, when sentences are not subject to challenge or appeal;
2. on the expiry date of the term for filing an appeal or a challenge;
 - a) when an appeal or challenge was not filed within the legal term;
 - b) when a filed appeal or, as applicable, challenge was withdrawn within the legal term;
3. on the date of an appeal or, as applicable, a challenge withdrawal, if this takes place after the expiry of the legal term for filing an appeal or a challenge;
4. on the rendering date of a sentence whereby the appeal or, as applicable, the challenge was rejected.

ART. 552

Date when sentences returned by appellate courts and court decisions returned in appeal remain final

- (1) Sentences returned by appellate courts remain final on the date when they are returned, when an appeal was admitted and the trial ended before the appellate courts.
- (2) Sentences returned in relation to court decisions appealed through challenges remain final on the date when they are returned, when a challenge was admitted and the trial ended before the court deciding upon it.

ART. 553

The enforcement court

(1) Sentences of criminal courts remained final in first instance or with the hierarchically superior court or the appellate court shall be enforced by the first court.

(2) Sentences returned in first instance by the High Court of Review and Justice shall be enforced by the Bucharest Tribunal or by the military Tribunal, as applicable.

(3) When sentences remain final before the appellate court or the hierarchically superior court, the latter shall send to the enforcement court an extract of that sentence, with the data necessary to enforcement, on the date of its rendering by the appellate court or, as applicable, by the hierarchically superior court.

(4) The stipulations of par. (1) -(3) are applicable also in respect of sentences that are not final but are enforceable, except for those related to safety measures, asset freezing and preventive measures, which are enforced, as applicable, by the Judge for Rights and Liberties, the Preliminary Chamber Judge or the court having ordered them.

(5) When sentences returned by appellate court are modified through decisions of the High Court of Review and Justice, returned in appeal in review, the High Court of Review and Justice shall act as per par.(3).

#M2

(6) In case of non-custodial penalties and measures, the judge delegate in charge of enforcement of the enforcement court may delegate some responsibilities to the judge delegate in charge of enforcement of the court having a level corresponding to the enforcement court under whose territorial jurisdiction the person subject to enforcement resides.

#B

ART. 554

Judge delegate in charge of enforcement

(1) The enforcement court shall appoint one or more of its judges to enforce sentences.

#M2

(2) If upon enforcement of a sentence or during its service any ambiguity or obstacle to enforcement occurs, the judge delegate in charge of enforcement may notify the enforcement court, which shall act as per the provisions of Arts. 597 and 598.

#B

CHAPTER II

Enforcement of sentences

SECTION 1

Enforcement of main penalties

ART. 555

Enforcement of imprisonment or of life detention penalties and of additional penalties

#M2

(1) Imprisonment and life detention penalties are enforced by issuing an enforcement warrant. Such enforcement warrant shall be issued by the judge delegate in charge of enforcement on the date when the sentence of the trial court remains final or, as applicable, on the date when they receives the extract provided for by Art. 553 par.(3), shall be prepared in 3 counterparts and shall include: name of the enforcement court, warrant issuance date, data regarding the convict's person, number and date of the sentence to be enforced and the court that returned it, the penalty applied and the applicable legal provisions, the additional penalty applied, the time of custody and of preventive or house arrest, which was deducted from the penalty term, a mention whether the convicted person is a repeat offender, and, as applicable, the mention set forth by ART. 404 par.(6), the arrest and detention order, the signature of the judge delegate, and the stamp of the enforcement court.

#B

(2) If the convicted person is not in custody, simultaneously with the issuance of the warrant for enforcement of an imprisonment or of a life detention penalty, the judge delegate in charge of enforcement shall issue also an order prohibiting the convict to leave the country. Such order is prepared in 3 copies and includes: name of the enforcement court, the order issuance date, data regarding the convict's person, the penalty rendered against them and number and date of the conviction sentence, name of the court that returned it, number of the penalty enforcement warrant issued on the convict's name, an order prohibiting them to leave the country, the signature of the judge delegate, and the stamp of the enforcement court.

ART. 556

Sending of warrants for enforcement purposes

#M2

(1) For the implementation of an enforcement warrant, two counterparts of it are sent to the law enforcement bodies from the convict's domicile or residence, and if the latter does not have their domicile or residence in Romania, to the law enforcement bodies under whose territorial jurisdiction the enforcement court is located, when the convict is free, or, as applicable, to the commander of the detention facility, when the convict is arrested.

(1^1) If an enforcement warrant contains clerical errors, but allows for the identification of the person for enforcement purposes, by correlating the

person's identification data existing in the records of the law enforcement bodies and the court sentence, law enforcement bodies shall enforce the sentence and, at the same time, shall request the court to correct the identified clerical errors.

#B

(2) For the enforcement of an order prohibiting a person to leave the country, a counterpart of it shall be sent immediately to the body having jurisdiction to issue passports and to the General Inspectorate of the Border Police.

#M2

(2¹) An enforcement warrant or an order prohibiting a person to leave the country may be transmitted to competent bodies also via fax, electronic mail or by any other means able to produce a written document in conditions that would allow the recipient authorities to establish its authenticity.

#B

(3) If a convicted person is on unconditional release, the enforcement bodies specified at par.(1) and(2) are under an obligation to take the steps established by law for the enforcement of the warrant for the penalty service and of the order prohibiting a person to leave the country on the date of their receipt.

#M2

ART. 557

Enforcement of warrants for a penalty service and of orders prohibiting persons from leaving the country. Approval of the court for a person to leave the country

#B

(1) Based on an enforcement warrant, law enforcement bodies shall arrest a convict. The arrested person is handed a copy of the warrant and is taken to the closest detention facility, where law enforcement bodies hand over the other copy of the enforcement warrant.

(2) For the implementing of a warrant issued for the enforcement of a final conviction sentence, law enforcement bodies may enter the domicile or residence of a person without their consent, as well as the premises of legal entities without the consent of their legal representative.

(3) The provisions of Art. 229 on taking protection measures shall apply accordingly, and the obligation to inform rests with law enforcement bodies.

(4) If a person against whom a warrant was issued is not found, law enforcement bodies shall record this in a report and shall take steps for putting out a wanted order and placing the person the border checkpoint watchlist. A copy of such minutes, together with a copy of the enforcement warrant, shall be sent to the court having issued the warrant.

(5) If a convicted person refuses to comply with the warrant or attempts to escape, they shall be forced to comply.

(6) When a convict is in detention, a copy of the enforcement warrant shall be handed to the warden of the detention facility.

(7) The commander of the detention facility shall record in a report the date and time when a convict started their penalty service.

(8) A copy of the minutes shall be sent forthwith to the enforcement court.

(9) Based on an order prohibiting a person to leave the country, authorized bodies shall deny issuance of a passport to a convicted person or, as applicable, shall proceed to their seizure, and shall take steps to alert all border checkpoints in respect of the convict.

#M2

(10) During a supervision term, a person under supervision may request the enforcement court, based on well-grounded reasons, to approve their leaving the territory of Romania under Art. 85 par.(2) item i) or Art. 93 par.(2) item d) of the Criminal Code. The enforcement court shall decide on such application in chambers, after hearing the person under supervision and the probation officer, through a final court resolution. If it admits the application, the court shall set the time period while the person under supervision may leave the territory of Romania.

#B

ART. 558

Notification arrest for warrant enforcement purposes

(1) Immediately after an arrest for warrant enforcement purposes, a convict has the right to inform personally or to request the administration of the detention facility to inform a member of their family or another person appointed by them, of their arrest and on the location where they are detained.

(2) If a convicted person is not a Romanian citizen, they also have the right to inform or to request the notification of the diplomatic mission or consular office of the state the citizen of which they are or, as applicable, a humanitarian international organization, if they do not want to receive assistance from the authorities of their country of origin, or the representative office of the competent international organization, if they are a refugee or, for any other reason, is under the protection of such organization.

#M2

ART. 559

Enforcement of criminal fines

(1) Persons sentenced to pay a fine are under an obligation to submit the receipt confirming the full payment of the fine with the judge delegate in charge of enforcement, within 3 months as from the date when the court sentence remains final.

(2) When a convicted person is unable to pay the full fine within the term set under par.(1), the judge delegate in charge of enforcement, upon request by the convict, may order rescheduling of the fine payment for a time interval of maximum 2 years, in monthly installments.

#B

ART. 560

Replacement of a penalty by fine by community service

(1) According to Art. 64 par.(1) of the Criminal Code, the enforcement court is the one having jurisdiction to decide upon the replacement of an unfulfilled obligation to pay a fine by community service.

#M2

(2) The court may be notified *ex officio* or by the body enforcing the fine, under the law, or by the convicted person. In ordering the replacement of a penalty by fine by community service, the court shall mention in the decision's enacting terms two entities of the community with which the community service will be performed. The probation officer, based on an initial assessment, shall decide in which of the two community institutions mentioned in the court decision the obligation will be performed and on the activity type.

#B

(3) The obligation to perform community service shall be enforced by sending a copy of the court sentence to the probation service.

ART. 561

Replacement of community service by an imprisonment term

(1) The court having jurisdiction to order, as per Art. 64 par.(5) item a) of the Criminal Code, replacement of community service work by an imprisonment term is the enforcement court and, in the case set by Art. 64 par.(5) item b) of the Criminal Code, is the court ruling in first instance on the offense committed prior to the full performance of the community service work.

(2) The court may be seized *ex officio* or by the body enforcing the fine, under the law, or upon notification from the probation service.

(3) The court decision shall be enforced according to Arts. 555 - 557.

SECTION 2

Enforcement of ancillary penalties

#M2

ART. 562

Prohibition of specific rights

A penalty consisting of a prohibition of specific rights shall be enforced by the judge delegate in charge of enforcement of the enforcement court, who shall send a copy of the sentence's enacting terms, depending on the rights the exercise of which was prohibited, to the public- or private-law legal entity authorized to supervise the exercise of the relevant right.

#B

ART. 563

Prohibiting the right of a foreigner to be on the territory of Romania

(1) When an ancillary penalty of prohibiting the right of a foreigner to be on the territory of Romania is applied through a sentence of conviction to a penalty by imprisonment, a mention shall be made in the warrant for the enforcement of the penalty by imprisonment that, on the date when the convict is released, they shall be handed over to law enforcement bodies, which shall remove them from the territory of Romania.

(2) If an ancillary penalty does not accompany a penalty by imprisonment, this shall be communicated to law enforcement bodies, immediately after the sentence remains final.

(3) For the enforcement of a penalty consisting of a prohibition against a foreigner to be on the territory of Romania, law enforcement bodies may enter the domicile or residence of a person without their consent, as well as the premises of legal entities without the consent of their legal representative.

(4) If a person against whom an ancillary penalty consisting of a prohibition against a foreigner to be on the territory of Romania was applied is not found, law enforcement bodies shall record this in a report and shall take steps for putting out a wanted notice on that person and putting them on border checkpoint watchlist. A copy of such minutes shall be sent to the enforcement court.

#M2

ART. 564

Demotion in military rank

A penalty of demotion in military rank shall be enforced by the judge delegate in charge of enforcement, who shall send a copy of the enacting terms of the court sentence to the commander of the military unit in the records of which the convicted person is registered or to the county or regional military center at the convicted person's domicile.

#B

ART. 565

Publication of conviction sentences

A penalty consisting of the publication of a conviction sentence shall be enforced by sending an extract of it, in the form established by the court, to a local newspaper circulating under the territorial jurisdiction of the court having rendered the conviction sentence or to a nationwide newspaper, for publication, at the expense of the convicted person.

SECTION 3

Enforcement of safety measures

ART. 566

Compulsory submission to medical treatment

(1) A safety measure consisting of compulsory submission to medical treatment ordered through a final sentence shall be enforced by communicating a copy of the enacting terms and of the forensic medical examination report to the public health authority of the county on the territory of which the person against whom such measure was ordered resides. The public health authority shall communicate forthwith to the person against whom such measure of compulsory submission to medical treatment was ordered the health facility where they will follow the treatment.

(2) The enforcement court shall communicate to the person against whom a measure of compulsory submission to medical treatment was ordered that they are under an obligation to go forthwith to the medical facility where the treatment will be applied to them, by drawing their attention that, in case of failure to comply with the ordered measure, their medical admission shall be ordered.

(3) In situations where a compulsory submission to medical treatment accompanies an imprisonment or a life detention penalty or concerns a person in detention, the communication set by par. (1) shall be transmitted to the management of the detention facility.

ART. 567

Obligations related to medical treatment

(1) The medical facility to which the perpetrator was assigned for medical treatment is under an obligation to communicate to the court:

- a) whether the person compelled to treatment appeared to follow the treatment;
- b) whether the person compelled to treatment avoids the treatment after having appeared;
- c) whether, due to a worsening of the health condition of the person against whom a measure of compulsory submission to medical treatment was ordered, medical admission is necessary;
- d) whether, due to an improvement of the health condition of the person against whom a measure of compulsory submission to medical treatment was ordered, the medical treatment is no longer required.

(2) If a medical facility does not fall under the territorial jurisdiction of the court having ordered enforcement, the communication set under par.(1) items b) - d) shall be transmitted to the District Court under whose territorial jurisdiction that medical facility is located.

(3) The stipulations of par. (1) items b) - d) and of par.(2) shall apply accordingly also in the situation set by Art. 566 par.(3).

ART. 568

Replacement or termination of compulsory submission to medical treatment

(1) After having received the communication, the enforcement court or the court specified by Art. 567 par.(2) shall order medical admission, in the situations listed under Art. 567 par.(1) items a) and b), and the performance of a forensic medical examination in respect of the person against whom such safety measure was taken, in the situations listed under Art. 567 par.(1) items c) and d).

(2) In the situations listed under Art. 567 par.(1) items c) and d), a person compelled to undergo medical treatment has the right to request to be examined by a specialist physician appointed by them, whose conclusions shall be submitted to the court specified by par. (1).

(3) If a person compelled to undergo medical treatment refuses to come in for examination for the performance of the examination, the provisions of Art. 184 par. (4) shall apply.

(4) After receiving the forensic medical examination report and the conclusions of the specialist physician specified by par. (2), the court, in public session, shall hear the submissions of the prosecutor, of the person against whom such safety measure was taken and of their counsel, as well as those of the expert and the physician appointed by them, when it deems necessary, and shall order either termination of the measure of compulsory submission to medical treatment or medical admission.

(5) If a person against whom such safety measure was taken does not have a counsel, a court appointed counsel shall be provided to them.

(6) A copy of the final sentence of the court specified by Art. 567 par.(2) shall be communicated to the enforcement court.

ART. 569

Medical admission

(1) A safety measure consisting of medical admission ordered through a final court decision shall be enforced by communicating a copy of the enacting terms and a copy of the forensic medical examination report to the public health authority of the county on the territory of which the person against whom such measure was ordered resides.

(2) The judge delegate in charge of enforcement working with the enforcement court shall communicate to the District Court under whose territorial jurisdiction the medical facility where the person was admitted is located, the date when admission took place, in order for the latter to include that person under supervision.

(3) After receiving the communication, the judge delegate in charge of enforcement of the District Court under whose territorial jurisdiction the medical facility is located shall verify on a regular basis, but no later than 12 months, whether such medical admission is still necessary. For this purpose, the judge delegate in charge of enforcement shall order the conducting of a forensic

medical examination in respect of the health condition of the person against whom such medical admission safety measure was ordered and, after receiving its results, shall notify the District Court under whose territorial jurisdiction the medical facility is located, in order for the latter to decide upon maintaining, replacing or terminating such measure.

ART. 570

Obligations related to medical admission

(1) The public health authority is under an obligation to ensure admission, by informing the enforcement court on this.

(2) In situations where a person against whom a medical admission measure refuses to submit to such admission, such measure shall be enforced with assistance from law enforcement bodies. For the enforcement of a medical admission measure, law enforcement bodies may enter the domicile or residence of a person without their consent, as well as the premises of legal entities without the consent of their legal representative.

(3) If a person against whom a medical admission measure was taken is not found, the public health authority shall notify law enforcement bodies, in order for them to take steps for putting out a wanted notice of the person and putting them on the border checkpoint watchlist. A copy of the notification sent to law enforcement bodies shall be sent to the enforcement court.

(4) If it deems that admission is no longer necessary, the medical facility with which the person was admitted is under an obligation to inform the District Court under whose territorial jurisdiction that medical facility is located.

ART. 571

Maintaining, replacement or termination of a medical admission measure

(1) The District Court, after receiving the notice specified by Art. 570 par.(4), shall order the conducting of a forensic medical examination.

(2) The court shall decide upon the notice specified at Art. 569 par.(3) or, on the notification set by Art. 570 par. (4) after hearing the submissions of the prosecutor, of the person against whom such admission measure is ordered, when it is possible to bring them in court, of their counsel, as well as of the expert having prepared the forensic medical examination, when it deems necessary, and shall order, as applicable, the maintaining of the medical admission, its termination or replacement by a compulsory submission to medical treatment measure.

(3) Termination or replacement of an admission measure may be requested also by the admitted person or by the prosecutor. In such case, the District Court shall order the conducting of a forensic medical examination. The provisions of Art. 568 par. (4) shall apply accordingly.

(4) If an admitted person does not have a counsel, a court appointed counsel shall be provided to them.

(5) A copy of the final court decision ordering the maintaining, replacement or termination of a medical admission shall be communicated to the enforcement court.

ART. 572

Temporary safety measures

(1) If a compulsory submission to medical treatment or a medical admission measure was taken temporarily during the criminal investigation or the trial, this shall be enforced by the Judge for Rights and Liberties or by the court having ordered such measure.

(2) The provisions of ART. 566 - 571 shall apply accordingly.

ART. 573

Prohibition of the right to hold a position, to practice a profession or to perform other activities

(1) A safety measure consisting of a prohibition to hold a position, to practice a profession or to perform other activities shall be enforced by communicating a copy of the court decision's enacting terms to the body authorized to implement such measures and to supervise their observance.

(2) This body has the duty to ensure enforcement of the ordered measure and to notify criminal investigation bodies if the person avoids execution of such safety measure.

(3) A person against whom the measure set by Art. 111 par.(1) of the Criminal Code was ordered may request the enforcement court to revoke such measure, under the terms of Art. 111 par.(2) of the Criminal Code.

(4) Applications shall be ruled on by summoning the person against whom such measure is ordered, after hearing the submissions of their counsel and of the prosecutor.

#M2

ART. 574

Enforcement of special confiscation and extended confiscation

A safety measure of special confiscation or extended confiscation, taken through a court decision, shall be enforced as follows:

a) seized assets shall be handed over to the authorized bodies, in order for them to take them over or sell them under the law;

b) if seized assets are in the custody of law enforcement bodies or of other institutions, the judge delegate in charge of enforcement shall send a copy of the court decision's enacting terms to the body with which these are kept. After receiving a copy of the court decision's enacting terms, seized assets shall be handed over to authorized bodies, in order for them to take them over or sell them under the law;

- c) when a seizure concerns money amounts that were not deposited with banking units, the judge delegate in charge of enforcement shall send a copy of the enacting terms of the court decision to tax bodies, in order for them to enforce seizure as per the provisions referring to budgetary receivables;
- d) when destruction of seized assets was ordered, these shall be destroyed in the presence of the judge delegate in charge of enforcement, and a report shall be prepared, which shall be submitted with the case file.

#B

SECTION 4

Enforcement of other orders

ART. 575

Warning

- (1) A warning shall be enforced forthwith, in the court session in which the decision was returned.
- (2) If a warning cannot be enforced immediately after return, it shall be enforced at the moment when the decision remains final, by communicating a copy of it to the person against whom this is applied.

ART. 576

Measures and obligations imposed by the court

- (1) The measures and obligations set forth under Art. 85 par.(1) and(2) of the Criminal Code, of the provisions of Arts. 87, 93, 95, Art. 101 par.(1) and(2) and of Art. 103 of the Criminal Code shall be enforced by sending a copy of the court sentence to the competent probation service.

#M2

- (2) In the case of the obligations listed under Art. 85 par.(2) items e) - j), Art. 93 par. (2) item d), and Art. 101 par. (2) lett. c) - g) of the Criminal Code, an extract from the enacting terms of the court sentence shall be sent to the body or authority having the competence to verify their observance.

#B

SECTION 5

Enforcement of judicial fines and of judicial fees advanced by the state

ART. 577

Judicial fines

- (1) Judicial fines shall be enforced by the judicial body having ordered them.
- (2) Enforcement shall be done by sending an extract of the court sentence's relevant enacting terms that refer to the application of a judicial fine to the body enforcing criminal fines under the law.
- (3) Judicial fines are enforced by the body mentioned at par. (2).

ART. 578

Judicial fees advances by the state

(1) The provision of a criminal sentence or of a prosecutorial order referring to an obligation to pay judicial fees advanced by the state shall be enforced by sending an extract of the court sentence's operational part that refer to the charging of judicial fees to the body enforcing criminal fines under the law.

(2) In the event that a person compelled to pay judicial fees to the state fails to submit the receipt proving their payment in full with the enforcement court or the prosecutors' office unit, within 3 months from the date when the court sentence or the prosecutorial order remains final, judicial fees shall be foreclosed by the body mentioned under par. (1).

SECTION 6

Enforcement of civil law provisions of court sentences

ART. 579

Restitution of assets and sale of assets remained unclaimed

(1) When a criminal sentence orders restitution of assets that are in the custody or at the disposal of the enforcement court, these shall be returned by the judge delegate in charge of enforcement, by sending the relevant assets to the entitled persons. For this purpose, the persons to whom assets are to be returned shall be notified.

(2) If the convened persons do not appear in order to receive the assets within 6 months after receiving such notice, these shall be transferred under the state's ownership. The judge delegate in charge of enforcement shall ascertain this through a court resolution and shall order the assets handover to the authorized bodies, in order for them to take them over or sell them as per the legal provisions.

(3) If assets could not be returned because the persons to whom these should have been returned are not known and nobody claimed them within 6 months from the date when the court sentence remained final, the stipulations of par. (2) shall apply accordingly.

(4) When restitution of assets was ordered by the prosecutor or by the criminal investigation body, this shall act as per the stipulations of par. (1) -(3).

(5) When a criminal sentence orders restitution of assets that are in the custody with criminal investigation bodies, such assets shall be returned by these after receiving an extract of the criminal sentence ordering the restitution of assets, by acting as per par.(1).

(6) If the convened persons do not appear in order to receive the assets within 6 months after receiving the notice, such assets shall be transferred under the state's ownership. The criminal investigation body shall record this in a report and shall act as per par.(2). The stipulations of par. (3) shall apply accordingly.

ART. 580

Documents acknowledged as being forged

(1) The provision of a criminal sentence declaring a document as being forged, in full or in part, shall be enforced by the judge delegate in charge of enforcement.

(2) When a document declared counterfeit was nullified entirely, a mention shall be done on this on each page, and in case of partial nullification, only on the pages containing the falsification.

(3) A document declared counterfeit shall remain with the case file.

(4) In the event that a mention needs to be made in the records of a public institution about a document declared counterfeit, a copy of the court sentence shall be sent to such institution.

(5) If, for any reason, a counterfeit document is not with the case file in original, the court shall send a copy of the court sentence to the public institutions holding a copy of it or holding the registration of mentions related to this.

(6) When it identifies the existence of a legitimate interest, the court may order the release of a copy, with the mentions specified under par.(2), of a counterfeit deed under private signature. Under the same terms, the court may order restitution of an official document partially forged.

ART. 581

Civil indemnifications and judicial fees

The provisions of a criminal sentence referring to civil indemnifications and judicial fees owed to the parties shall be enforced under the civil law.

CHAPTER III

Other provisions regarding enforcement

#M2

SECTION 1

Conviction in case of cancellation or revocation of a waiver of penalty enforcement or of a postponement of penalty enforcement

#M2

ART. 581¹

Cancellation of waiver of penalty enforcement

(1) Cancellation of a waiver of penalty enforcement is ordered, *ex officio* or based on a notification from the prosecutor, by the court deciding or having ruled on the offense causing cancellation in first instance.

(2) If it decides that the requirements set by Art. 83 par.(3) of the Criminal Code by are met, the court, by reversing the waiver of penalty enforcement, shall order the defendant's conviction for the offense in respect of which the penalty

enforcement had been waived, shall establish a penalty for it, and shall apply afterwards the provisions on the multiple offenses, repeat offense or intermediate plurality, as applicable.

(3) In setting the penalty for an offense in respect of which the waiver of the penalty enforcement is cancelled, the court shall consider exclusively the individualization criteria and the circumstances of the case in which the decision to waive the penalty enforcement was returned originally. The provisions of Art. 396 par. (10) shall apply accordingly.

#M2

ART. 582

Revocation or cancellation of a postponement of penalty enforcement

(1) On a revocation or cancellation of a postponement of penalty enforcement, the court deciding or having ruled on the offense that might trigger such revocation or cancellation in first instance shall decide *ex officio* or based on a notification from the prosecutor or the probation officer.

(2) If, until expiry of the term set by Art. 86 par. (4) lett. c) of the Criminal Code, a person in whose respect postponement of the penalty enforcement was ordered fails to comply with the civil obligations established by the sentence having ordered such postponement, the competent probation service shall notify the court having ruled on such postponement in first instance, for its revocation. Such notification may be submitted also by the prosecutor or by an interested party, until expiry of the supervision term.

(3) If it finds that the requirements set by Arts. 88 or 89 of the Criminal Code are met, the court, cancelling or, as applicable, revoking a postponement of the penalty enforcement, shall order the defendant's conviction and enforcement of the penalty established by the postponement court decision, by applying subsequently, the provisions on the multiple offenses, repeat offense or intermediate plurality, as the case may be.

#M2

SECTION 1¹

Changes in the enforcement of specific court decisions

#M2

ART. 583

Revocation or cancellation of suspension of penalty enforcement under supervision

(1) On a revocation or cancellation of a suspension of penalty enforcement under supervision set by Arts. 96 or 97 of the Criminal Code, the court deciding or having ruled on the offense that might cause such revocation or cancellation in first instance shall decide *ex officio* or based on a notification from the prosecutor or the probation officer.

(2) If, until expiry of the term set by Art. 93 par.(5) of the Criminal Code, a convict fails to comply with the civil obligations established by the conviction sentence, the competent probation service shall notify the court having decided suspension in first instance, for its revocation. Such notification may be submitted also by the prosecutor, the probation officer or by an interested party, until expiry of the supervision term.

#B

ART. 584

Replacement of a life detention sentence

(1) Replacement of life detention sentence by a penalty by imprisonment shall be ordered by the enforcement court, upon request by the prosecutor or the convicted person, and if the convicted person is in detention, by the court of territorial jurisdiction where the detention facility is located.

(2) A penalty replacement court decision, remained final, shall be enforced as per the provisions of Arts. 555 - 557.

ART. 585

Other penalty changes

#M2

(1) A penalty returned by the court may be changed if, upon enforcement of the sentence or during the penalty service, the existence of any of the following situations is established based on another final court decision:

- a) multiple offenses;
- b) repeat offense;
- c) intermediate plurality;
- d) acts falling within the content of the same offense.

#B

(2) The court having jurisdiction to decide on changing a penalty is the court having enforced the last sentence or, if the convicted person is in detention, the court corresponding to it under whose territorial jurisdiction the detention facility is located.

(3) The court may be seized *ex officio* or upon request by the prosecutor or by the convicted person.

(4) When receiving the application, the judicial panel's presiding judge shall order attachment of documents to the case file and the taking of all steps required for the case settlement.

ART. 586

Replacement of a penalty by fine by a penalty by imprisonment

(1) In the situation set by Art. 63 of the Criminal Code, the replacement of a penalty by fine by a penalty by imprisonment shall be ordered by the enforcement court.

(2) The court shall be notified *ex officio* or by the body enforcing the fine under the law.

(3) The convict shall be summoned for the settlement of such notification and if they do not have a counsel, the court shall appoint one *ex officio*.

(4) A convict deprived of freedom shall be brought to trial.

(5) A decision a penalty replacement, remained final, shall be enforced as per the provisions of Arts. 555 – 557. In situations where a penalty by fine accompanies a penalty by imprisonment, a new enforcement warrant shall be issued for the penalty resulted as per Art. 63 par. (2) of the Criminal Code.

(6) If a convicted person pays the fine during the case settlement, the notification shall be dismissed as unfounded.

ART. 587

Conditional release

(1) Conditional release is ordered by the District Court under whose territorial jurisdiction the detention facility is located, based on a request or proposal made as per the legal stipulations on the service of penalties.

(2) When the court finds that the requirements for granting conditional release are not met, through its dismissal decision, it shall set a term after the expiry of which such proposal or request may be renewed. Such term may not be longer than one year and starts running from the date when the court sentence remains final.

(3) A decision of the District Court may be appealed by a challenge with the Tribunal under whose territorial jurisdiction the detention facility is located, within 3 days of its communication. A challenge filed by the prosecutor shall suspend enforcement.

#M2

(4) A copy of the court sentence having remained final shall be communicated to the competent probation service, as well as to the police unit under whose territorial jurisdiction the released person resides.

#B

ART. 588

Cancellation and revocation of conditional release

#M2

(1) On the cancellation of a conditional release set forth by Art. 105 par. (1) of the Criminal Code, the court ruling or having ruled on the offense causing such cancellation in first instance shall decide upon *ex officio* or based on a notification from the prosecutor or the probation officer.

#B

(2) The court specified at par.(1) shall decide also on the revocation of a conditional release, in the situation set by Art. 104 par. (2) of the Criminal Code.

#M2

(3) The court set under Art. 587 par. (1) shall decide also on the revocation of a conditional release, in the situation set by Art. 104 par. (1) of the Criminal Code, upon notification by the probation service, as well as in situations where the court that tried the convict for another offense did not rule in this respect.

(4) The court before which the sentence remained final is under an obligation to communicate to the detention facility and the probation service, when the case, a copy of the enacting terms of the court decision ordering revocation of conditional release.

#B

SECTION 2

Postponement of enforcement of an imprisonment or a life detention penalty

ART. 589

Postponement situations

(1) Enforcement of an imprisonment or life detention penalty may postponed in the following situations:

#M2

a) when, based on a forensic medical examination, it is confirmed that the convicted person suffers from a disease that cannot be treated in the medical network of the National Administration of Penitentiaries, and which makes impossible the immediate enforcement of the penalty, if the specificity of such disease does not allow for its treatment by ensuring constant guard in the medical network of the Ministry of Health, and if the court decides that the enforcement postponement and the fact that the convict is set free is not a threat for the public order. In such case, the penalty enforcement shall be postponed for an unlimited time period;

#B

b) when a female convict is pregnant or has a child younger than one year. In such situations, the penalty enforcement shall be postponed until cessation of the reason having caused such postponement.

(2) In the situation set under par. (1) lett. a), postponement of a penalty enforcement may not be ordered if a convict caused the disease themselves, by refusing medical treatment, surgery, through self-aggression or through other harmful actions, or in the situation where they avoid undergoing a forensic medical examination.

(3) An application for postponement of enforcement of imprisonment or a life detention penalty may be filed by the prosecutor and by the convicted person.

(4) Such application can be withdrawn by the person having filed it.

(5) Court decisions ordering postponement of a penalty service are enforceable from the date of their return.

(6) During postponement of penalty enforcement, if another warrant for the enforcement of a penalty by imprisonment is issued in the name of the convict's person, this may not be enforced until expiry of the postponement term set by the court or, as applicable, until cessation of the reason causing postponement.

(7) A sentence through which the court rules on an application for the postponement of a penalty service may be appealed by a challenge with the hierarchically superior court, within 3 days of its communication.

ART. 590

Obligations of a convict in case of penalty enforcement postponement

(1) During a penalty enforcement postponement, a convict has to comply with the following obligations:

a) to exceed the set territorial limits solely under the terms established by the court;

b) to contact, within the term set by the court, the law enforcement bodies appointed by the court in the decision to postpone the imprisonment enforcement penalty, in order to be registered by and to establish the means for permanent communication with the supervision body, and to appear in court whenever they are summoned;

c) not to change their domicile without prior notification of the court having ordered the postponement;

d) not to hold, use or carry any category of weapons;

e) for the situation established by Art. 589 par.(1) item a), to go forthwith to the medical facility with which they are to undergo treatment, and for the situation established by Art. 589 par.(1) item b), to take care of the child younger than one year.

(2) During a penalty enforcement postponement, the court may require a convict to comply with one or more of the following obligations:

a) not to attend specific places or specific sports or cultural events or other public gatherings established by the court;

b) not to communicate with and not to get close to the victim or members of their family, the persons who committed the offense with them or other persons established by the court;

c) not to drive any vehicle or specific cars established by the court.

#M2

(3) *** Repealed

#B

ART. 591

The court of competent jurisdiction

(1) The court having jurisdiction to award a penalty enforcement postponement is the enforcement court.

(2) In the situation set by Art. 589 par. (1) lett. a), an application for the postponement of a penalty enforcement shall be filed with the judge delegate in charge of enforcement, accompanied by medical documents. The judge delegate in charge of enforcement shall verify the jurisdiction of the court and shall order, as applicable, by a court resolution, waiver of jurisdiction to settle the case or the conducting of a forensic medical examination. After receiving the forensic medical examination report, the case shall be ruled on by the enforcement court, according to the provisions of this Chapter.

#M2

(3) The enforcement court shall communicate the sentence whereby it awarded postponement of the penalty enforcement, on its return date, to the law enforcement bodies appointed by the penalty by imprisonment enforcement postponement decision, in order for them to register the person in their records, to the gendarmerie, to the police unit under whose territorial jurisdiction the convicted person resides, to the bodies authorized to issue passports, to border bodies, as well as to other institutions, in order to ensure compliance the imposed obligations. Authorized bodies shall refuse the issuance of a passport or, as applicable, shall seize the passport temporarily during such postponement term.

#B

(4) In case of violation in ill-faith of the obligations established under Art. 590, the enforcement court shall revoke postponement and shall order the enforcement of a custodial penalty. Law enforcement bodies appointed by the court in the sentence in charge of supervising the person in whose respect postponement of the penalty enforcement was ordered shall verify the observance of the obligations by the convicted person a regular basis, and shall prepare a monthly report to the enforcement court in this sense.

(5) If they identify violations of the obligations established under Art. 590, law enforcement bodies shall notify the enforcement court forthwith.

(6) The enforcement court shall keep track of the postponements granted and, upon expiry of their term, shall take steps for the issuance of an enforcement warrant, and if such warrant was issued, shall take steps for its implementation. If a postponement term was not set, the judge delegate in charge of enforcement of the enforcement court is under an obligation to notify the enforcement court, in order for it to verify the subsistence of the grounds for postponement, and when it is found that these have ceased, to take steps for the issuance of an enforcement warrant or for its implementation.

SECTION 3

Interruption of an imprisonment or a life detention penalty service

ART. 592

Interruption situations

#M2

(1) Service of imprisonment or life detention penalties can be interrupted in the situations and under the terms set by Art. 589, upon request by the persons listed under par.(3) of the same article, and in the situation set by Art. 589 par.(1) item a), also upon request by the penitentiary management.

#B

(2) Art. 590 and Art. 591 par.(2) -(5) shall apply accordingly.

(3) Challenges filed by the prosecutor shall suspend execution.

ART. 593

The court of competent jurisdiction

(1) The court having jurisdiction to rule on interruption of a penalty service is the court under whose territorial jurisdiction the detention facility is located, which has a corresponding rank to the enforcement court.

(2) An application for the extension of an interruption granted previously shall be ruled on by the court having ordered such interruption of a penalty service.

(3) A sentence through which the court decides upon applications for the interruption of a penalty service may be appealed by a challenge with the hierarchically superior court, within 3 days of their communication.

ART. 594

Record of interruptions of penalty services

(1) The court having ordered an interruption of a penalty service shall communicate forthwith such measure to the enforcement court, the detention facility and to law enforcement bodies.

(2) The enforcement court and the management of the detention facility shall keep track of the interruptions granted. If upon expiry of the interruption term, a person convicted to a penalty by imprisonment does not report at the detention facility, the management shall send forthwith a copy of the enforcement warrant to law enforcement bodies, for enforcement purposes. The term remaining to be served out of the penalty duration shall be mentioned on the copy of the enforcement warrant.

(3) The management of the detention facility shall communicate to the enforcement court the date on which the penalty service was resumed.

(4) The time while service was interrupted shall not be considered in calculating the penalty service.

(5) Additional penalties are executed also during an interruption of the execution of an imprisonment or of a life detention penalty.

SECTION 4

Removal or modification of a penalty

ART. 595

Adoption of a new criminal law

(1) When, after the moment when a conviction sentence or a sentence through which an educational measure was applied remains final, a new law which no longer criminalizes the act in respect of which the conviction was returned, or a law that provides for a penalty or educational measure milder than the one that is being served or is to be served intervenes, the court shall take steps for the implementing, as applicable, of the provisions of Arts. 4 and 6 of the Criminal Code.

(2) The stipulations of par. (1) shall be applied by the enforcement court *ex officio* or upon request by the prosecutor or by the convicted person, and if the convicted person is in the process of executing the penalty or an educational measure, by the court of a corresponding rank under whose territorial jurisdiction the detention facility or, as applicable, the educational or detention center is located.

ART. 596

Amnesty and pardon

(1) Amnesty and pardon, when they occur after a court sentence remains final, are enforced by the enforcement judge delegate of the enforcement court, and if the convicted person is in the process of executing the penalty, by the judge delegate in charge of enforcement of the court of a corresponding rank under whose territorial jurisdiction the detention facility is located.

(2) The judge shall decide by an enforceable court resolution, returned in chambers, with the participation of the prosecutor.

(3) Court resolutions rendered as per par.(2), can be challenged by the prosecutor within 3 days of their return. Such challenge shall suspend execution.

CHAPTER IV

Joint provisions

ART. 597

Procedure in the enforcement court

(1) When the settlement of the situations regulated by this Title is assigned to the jurisdiction of the enforcement court, the judicial panel's presiding judge shall order summoning of the interested parties and, in the situations established by Art. 90, shall take steps for the assignment of a court appointed counsel. In ruling on cases of interruption of execution of an imprisonment or life detention penalty, the management of the penitentiary in which the convict serves their penalty shall be also summoned.

(2) A convict who is in detention or is interned in an educational center shall be brought to trial.

(3) Participation of the prosecutor is mandatory.

(4) After hearing the submissions of the prosecutor and of the parties, the court shall rule by a sentence.

(5) The provisions contained in Title III of the special part regarding trial that do not run counter to the provisions of this Chapter shall apply accordingly.

(6) The stipulations of par. (1) - (5) shall apply also in a situation where the settlement of any of the situations regulated by this title is assigned under the jurisdiction of the court under whose territorial jurisdiction the detention facility is located. In such case, the decision shall be communicated to the enforcement court.

(7) Sentences returned in first instance in the enforcement domain according to this Title may be appealed by a challenge with the hierarchically superior court, within 3 days of their communication.

(8) Challenges filed against first instance sentences shall be decided in a public hearing session, by summoning the convicted persons. A convict who is in detention or interned in an educational center shall be brought to trial. Participation of the prosecutor is mandatory. The decision of the court settling such challenge is final. The stipulations of par. (5) shall apply accordingly.

ART. 598

Challenges against enforcement

(1) Challenges against enforcement of criminal sentences may be filed in the following situations:

- a) when a sentence that was not final was enforced;
- b) when enforcement concerns a person other than the person mentioned in the conviction sentence;
- c) when ambiguities occur in respect of the sentence enforcement or when obstacles to enforcement occur;
- d) when amnesty, statute of limitations, pardon or any other cause for extinguishing or reducing the penalty is raised.

(2) In the situations listed under par.(1) items a), b) and d), challenges shall be filed, as applicable, with the court specified by Art. 597 par. (1) or (6), while in the situation set under par.(1) lett. c), with the court having returned the sentence that is being enforced. If an ambiguity concerns a stipulation in a decision returned in appeal or in appeal for review, the jurisdiction shall rest upon, as applicable, the appellate court or the High Court of Review and Justice.

ART. 599

Settlement of challenges filed against enforcement

(1) The procedure for the settlement of challenges filed against enforcement is the one specified by Art. 597.

(2) In the situation set under Art. 598 par. (1) lett. d), if the data and situations on the existence of which a challenge settlement depends do not result from the

sentence to be enforced, the court having jurisdiction to decide upon the challenge shall ascertain them.

(3) Such applications may be withdrawn by the convicted person or by the prosecutor, when these are filed by the latter.

(4) After the return of a final decision as a result of sustaining a challenge filed against enforcement, a new enforcement shall be prepared, according to the procedure specified by this Title.

#M2

(5) Subsequent applications for challenges against enforcement are inadmissible if they concern the same person, the same legal ground, the same reasons and the same defenses.

#B

ART. 600

Challenges filed against enforcement of civil law provisions

(1) Challenges filed against enforcement of civil law provisions of a sentence shall be filed, in the situations listed under Art. 598 par. (1) letters a) and b), with the enforcement court specified at Art. 597, and in the situation set under ART. 598 par. (1) letter c), with the court having rendered the sentence that is being enforced. The provisions of Art. 598 par. (2), the second indent, shall apply accordingly.

(2) The provisions of Art. 597 par. (1) - (5) shall apply accordingly.

(3) Challenges against enforcement documents shall be ruled on by a civil court, based on the civil law.

ART. 601

Challenges filed against judicial fines

(1) Challenges filed against enforcement of judicial fines shall be ruled on by the court having enforced such fines.

(2) The provisions of Art. 597 par. (1) -(5) shall apply accordingly.

TITLE VI

Final provisions

ART. 602

Terms explained in the Criminal Code

The terms or expressions the meaning of which is specifically explained in the Criminal Code shall have the same meaning also in the Criminal Procedure Code.

ART. 603

Coming into force

(1) This Code shall come into force on the date set by the law for its implementation.

(2) Within 12 months from the date of publication of this Code in Part I of the Official Gazette of Romania, the Government shall submit the draft law for implementing the Criminal Procedure Code to the Parliament, for approval.

#CIN

NOTES:

1. We quote below the provisions of Art. IV of Law no. 63/2012 (#M1).

#M1

“ART. IV

Whenever special laws, the Criminal Code or the Criminal Procedure Code make reference to Art. 112 of Law no. 286/2009 on the Criminal Code, such reference shall be deemed as made to Arts. 112 and 112¹, and whenever special laws, the Criminal Code or the Criminal Procedure Code make reference to confiscation as a safety measure, such reference shall be deemed as also made to extended confiscation.”

#CIN

2. We quote below the provisions of Arts. 3 - 24 of Law no. 255/2013 (#M2), as subsequently amended.

#M2

“ART. 3

The new law shall apply from the date of coming into effect of all cases pending on the dockets of judicial bodies, with the exceptions set by this law.”

#M2

“ART. 4

(1) Process acts performed prior to the coming into force of the Criminal Procedure Code, in compliance with the legal provisions in force on the date of their performance, shall remain valid, with the exceptions set by this law.

(2) The nullity of any acts or works performed prior to the coming into force of the new law may be invoked only under the terms of the Criminal Procedure Code.

(3) In cases pending trial on the date when the new law comes into force, the violation of legal provisions referring to the mandatory presence of the accused or defendant or their mandatory assistance by a defense counsel during the criminal investigation may be invoked only until the commencement of court debates.”

#M2

“ART. 5

(1) Cases being subject to the criminal investigation the date when the new law comes into force shall remain under the jurisdiction of the criminal investigation bodies legally notified, and shall be ruled on according to this, except for cases

falling under the jurisdiction of the military prosecutors' offices and of military Sections of the prosecutors' offices of competent jurisdiction.

(2) In the cases listed under par. (1), the court shall be seized according to the jurisdiction rules of the new law.

(3) In ruling on cases and upon proposals, challenges, complaints or any other applications in which the criminal investigation was conducted by the National Anticorruption Directorate under the old law, as well as upon cases that remained under its jurisdiction under the terms of par. (1), prosecutors of the National Anticorruption Directorate shall participate.”

#M2

“ART. 6

(1) Cases pending trial in first instance on the date when the new law comes into force, in which judicial examination was not initiated, shall be ruled on by the court of competent jurisdiction under the new law, according to the rules set by the same law.

(2) In the situation set under par. (1), the court on the docket of which the case is pending shall send it to the Preliminary Chamber Judge, in order for them to act according to Arts. 342 - 348 of the Criminal Procedure Code, or, as applicable, shall waive it in favor of the court of competent jurisdiction.”

#M2

“ART. 7

Cases pending trial in first instance, in which judicial examination was initiated prior to the coming into force of the new law, shall remain under the jurisdiction of the same court, and the trial shall be conducted under the new law.”

#M2

“ART. 8

Decisions returned in first instance after the new law comes into force are subject to the avenues of appeal, terms and conditions for their filing established by the new law.”

#M2

“ART. 9

(1) Sentences subject to ordinary avenues of appeal under the old law, in respect of which the term for filing an ordinary avenue of appeal did not expire on the date when the new law comes into force, are subject to appeal. Such appeal shall be ruled on by the court of competent jurisdiction under the new law, according to the rules set by the same law.

(2) Applications for appeal on law filed against sentences listed under par. (1) prior to the coming into force of the new law shall be deemed appeal applications.

(3) In the situation set under par. (1), the term for filing an appeal shall be calculated according to Art. 363 of the 1968 Criminal Procedure Code.

(4) Court decisions returned in appeals settled according to par. (1) are final, according to the terms of Art. 552 of the Criminal Procedure Code.

(5) Sentences ordering, under the old law, restitution to the prosecutor of cases in respect of which the term for filing an appeal on law had not expired on the date when the new law comes into force are subject to appeal by a challenge, according to Art. 347 par.(1) of the Criminal Procedure Code.

(6) The challenge set by par. (5) shall be ruled on by the Preliminary Chamber Judge of the court hierarchically superior to the one upon which would rest, under the new law, the jurisdiction to decide upon the case in first instance or, as applicable, by the panel of competent jurisdiction of the High Court of Review and Justice.

(7) Applications for appeal on law filed against sentences listed under par. (5) prior to the coming into force of the new law shall be deemed challenges.

(8) The term for filing challenges set under par.(5) shall be calculated according to Art. 332 par. 4 of the 1968 Criminal Procedure Code.”

#M2

“ART. 10

(1) Appeals pending trial on the date when the Criminal Procedure Code comes into force shall be ruled on by the same court, as per the provisions of the new law referring to appeals.

(2) Appeals on law pending in court on the date when the Criminal Procedure Code comes into force, filed against court decisions in respect of which the old law does not provide for appeals, shall be ruled on by the same court, as per the provisions of the new law referring to appeals.

(3) Court decisions returned in appeals settled as per par.(1) and(2) are final, under the terms of Art. 552 par. (1) of the Criminal Procedure Code.

(4) Appeals on law pending trial on the date when the Criminal Procedure Code comes into force, filed against sentences whereby cases were returned to the prosecutor, shall be ruled on as per the provisions of the new law referring to challenges by the Preliminary Chamber Judge of the court hierarchically superior to the one upon which would rest the jurisdiction to decide upon the case on the merits or, as applicable, by the panel of competent jurisdiction of the High Court of Review and Justice.”

#M2

“ART. 11

(1) Court decisions returned in appeal prior to the coming into force of the Criminal Procedure Code in respect of which the term for filing an ordinary avenue of appeal set by the previous law had not expired on the date when the new law comes into force are subject to appeal on law for review.

(2) In the situations listed under par.(1), the 30-day term for filing a appeal on law for review runs as follows:

a) from the date when the Criminal Procedure Code comes into force, for the prosecutor and for the parties in whose respect the previous law did not set the obligation to communicate the appeal decision, as well as for the parties

to whom the sentence was communicated prior to the coming into force of the Criminal Procedure Code;

b) from their communication date, for the parties to whom the sentence was communicated after the date when the Criminal Procedure Code came into force.

(3) Applications for appeal on law filed against sentences listed under par.(1) prior to the coming into force of the new law shall be deemed applications for appeal for review.

(4) The settlement of appeals on law in cassation is subject to the provisions of the Criminal Procedure Code.

(5) Court decisions specified by par.(1) shall become final on the date when the Criminal Procedure Code comes into force.”

#M2

“ART. 12

(1) Appeals on law under judicial examination the date when the new law comes into force, filed against court decisions that were subject to appeal under the old law, shall remain under the jurisdiction of the same court and shall be ruled on as per the provisions of the old law referring to appeal on law.

(2) As an exception to the provisions of Art. 552 par.(1) of the Criminal Procedure Code, in the situation set under par.(1), sentences returned by appeal courts shall remain final on the date when the appeal on law is ruled on, if this was dismissed or if it was sustained and the trial ended before the court of appeal on law.

(3) Decisions rendered in appeals on law settled as per par. (1) may not be appealed by a appeal on law for review.”

#M2

“ART. 13

Court decisions remained final prior to the coming into force of the new law may not be appealed by a appeal on law for review under the terms of the new law.”

#M2

“ART. 14

(1) Retrial of a case by the court whose decision was reversed or by the court of competent jurisdiction, ordered after the coming into force of the Criminal Procedure Code, shall take place according to the new law.

(2) In cases where retrial was ordered prior to the coming into force of the Criminal Procedure Code, the provisions of Arts. 5-10 shall apply accordingly.”

#M2

“ART. 15

(1) Complaints filed against decisions by the prosecutor to drop charges, pending on the dockets of the courts on the date when the new law comes into force, shall continue to be examined by the courts of competent jurisdiction under the old law, according to the rules set by the same law.

(2) In the situations listed under par. (1), the court admitting a complaint and retaining a case for examination under ART. 278¹ par.(8) item c) of the 1968 Criminal Procedure Code shall apply accordingly the provisions of Art. 341 par. (7) item 2 of the Criminal Procedure Code referring to evidence and criminal investigation acts. Court resolutions are subject to a challenge, under the terms of the new law.

(3) Decisions to drop charges in respect of which the term for filing complaints with the court did not expire on the date when the new law comes into force may be appealed by complaints filed with the Preliminary Chamber Judge, under the terms Art. 340 of the Criminal Procedure Code. Such complaints shall be ruled on under the new law.”

#M2

“ART. 16

(1) Preventive measures under enforcement on the date when the new law comes into force shall continue and be maintained during the time interval for which they were ordered, under the terms established by the old law. Upon expiry of the time interval, preventive measures may be extended or, as applicable, maintained, revoked or replaced by another preventive measure under the terms of the new law.

(2) Upon expiry of the term of a preventive measure prohibiting a person from leaving the locality or the country that is under enforcement on the date when the new law comes into force, any of the preventive measures established by the new law may be ordered against a defendant.

(3) In cases pending trial on the date when the new law comes into force, a preventive measure prohibiting a person from leaving the locality or the country, which is under enforcement, shall be maintained until the hearing term set in the case, when the court may order any of the preventive measures established by the new law against a defendant.”

#M2

“ART. 17

(1) Proposals, applications or any other cases regarding the taking, extension, revocation, replacement or termination of preventive measures, during the criminal investigation, being under settlement in first instance on the date when the new law comes into force, shall be ruled on by the Judge for Rights and Liberties of competent jurisdiction under the new law, according to the rules set by the same law.

(2) Appeals on law under judicial examination the date when the new law comes into force, filed against court resolutions rendered during the criminal investigation in relation to preventive measures, shall remain under the jurisdiction of the same court and shall be ruled on according to the rules set by the old law. If the court admits an appeal on law and reverses a court resolution, it shall proceed to the reexamination of the case according to the new law, and may take any of the preventive measures set by it.”

#M2

“ART. 18

Appeals on law under judicial examination the date when the new law comes into force, filed against court resolutions ordering, during the trial, the taking, extension, revocation, replacement or termination of preventive measures, shall remain under the jurisdiction of the same court and shall be ruled on according to the rules set by the old law. If the court sustains an appeal on law and reverses a court resolution, it shall proceed to the reexamination of the case according to the new law, and may take any of the preventive measures set by it.”

#M2

“ART. 19

In situations where, during criminal proceedings, it is found that the provisions of Art. 18¹ of the 1968 Criminal Code, as a more favorable criminal law, are applicable to an act committed prior to the coming into force of the Criminal Code, the prosecutor shall order dismissal of the case, and the court shall order acquittal under the terms of the Criminal Procedure Code.”

#M2

“ART. 20

(1) As of the date of this law coming into force, the Bucharest Military Tribunal and the Military Prosecutors’ Office attached to Bucharest Military Tribunal shall be dissolved.

(2) The positions held and the personnel of the Bucharest Military Tribunal and of the Military Prosecutors’ Office attached to Bucharest Military Tribunal shall be transferred to the Bucharest Territorial Military Tribunal or, as applicable, to the Military Prosecutors’ Office attached to Bucharest Territorial Military Tribunal, and vacancies may be transferred, as needed, also to other military courts or prosecutors’ offices. The persons holding management positions with the dissolved court or prosecutors’ office shall be transferred to service positions with the Bucharest Territorial Military Tribunal or, as applicable, with the Military Prosecutors’ Office attached to Bucharest Territorial Military Tribunal.

(3) The premises and assets of the Bucharest Military Tribunal and of the Military Prosecutors’ Office attached to Bucharest Military Tribunal shall be taken over based on redistribution by the Bucharest Territorial Military Tribunal, and by the Military Prosecutors’ Office attached to Bucharest Territorial Military Tribunal.

(4) On the date of dissolution of the Bucharest Military Tribunal, the Bucharest Territorial Military Tribunal shall change its name into the Bucharest Military Tribunal, and the Military Prosecutors’ Office attached to Bucharest Territorial Military Tribunal shall change its name into the Military Prosecutors’ Office attached to Bucharest Military Tribunal.

(5) By applying the stipulations of par. (1) - (4), the military Tribunals of Bucharest, Cluj, Iași and Timișoara shall become equivalent in rank as Tribunals.

(6) The personnel of the military Tribunals of Bucharest, Cluj, Iași and Timișoara having a professional rank of District Court shall acquire, as of the date of this law coming into force, a professional rank of Tribunal, as well as the related rights and obligations. The management positions of the military Tribunals of Cluj, Iași and Timișoara shall be filled under the terms set by Art. 48 of Law no. 303/2004 on the Status of Judges and Prosecutors, as republished and as subsequently amended and supplemented.

(7) The personnel of the military prosecutors' offices under the military Tribunals of Bucharest, Cluj, Iași and Timișoara having a professional rank of prosecutors' office attached to a District Court shall acquire, as of the date of this law coming into force, a professional rank of prosecutors' office attached to a Tribunal, as well as the related rights and obligations. The management positions of the military prosecutors' offices under the military Tribunals of Cluj, Iași and Timișoara shall be filled under the terms set by Art. 49 of Law no. 303/2004, as republished, and subsequently amended and supplemented.

(8) The new job title and personnel lists for the Bucharest Military Tribunal and the Military Prosecutors' Office attached to Bucharest Military Tribunal shall be approved by a joint order of the Minister of Justice and the Minister of National Defense, with the assent of the Higher Council of Magistrates."

#M2

“ART. 21

(1) Cases pending on the dockets of Bucharest Military Tribunal, which shall be dissolved, shall be administratively taken over, within 3 days after the date of this Law coming into force, by the Bucharest Territorial Military Tribunal, renamed as per Art. 20 par.(4), which shall continue their settlement.

(2) Cases under settlement with the Military Prosecutors' Office attached to the Bucharest Military Tribunal, which shall be dissolved, shall be administratively taken over, within 3 days after the date of this law coming into force, by the Military Prosecutors' Office attached to the Bucharest Territorial Military Tribunal, renamed as per Art. 20 par.(4), which shall continue their settlement.”

#M2

“ART. 22

Whenever other legal regulations, except for Law no. 286/2009 on the Criminal Code, as subsequently amended and supplemented, Law no. 135/2010 on the Criminal Procedure Code, Law no. 254/2013 on the Service of Penalties and Custodial Measures Ordered by Judicial Bodies during Criminal Proceedings, Law no. 253/2013 on the Service of Penalties, Educational Measures and of Other Non-Custodial Measures Ordered by Judicial Bodies during Criminal Proceedings, and Law no. 252/2013 on the Organization and Operation of the Probation System, make reference to preventive arrest measures, such reference shall be deemed as made also to house arrest measures.”

#M3

“ART. 23*)

(1) Applications, challenges and notifications filed within 6 months as from the date of coming into force of Law no. 286/2009, as subsequently amended and supplemented, concerning the application of Arts. 4 and 6 of this law in case of court sentences remained final prior to its coming into force, shall be ruled on according to the procedure set by this article, which shall be complemented by the provisions of the Criminal Procedure Code.

(2) Applications, challenges and notifications regarding persons serving custodial penalties and educational measures shall be ruled on in emergency procedure by the court of a level corresponding to the enforcement court under whose territorial jurisdiction the detention facility or, as applicable, the educational center or the reeducation center is located. The provisions of this paragraph shall apply also to applications, challenges and notifications regarding persons whose penalty or educational measure service was postponed or interrupted.

(3) In the situations listed under par.(2), if, according to the Criminal Procedure Code, the jurisdiction rests with several courts of different levels, the jurisdiction to rule on the case regarding all the enforcement incidents related to the same person shall rest upon the hierarchically superior court.

(4) The court notified in relation to the situations listed under par. (2) shall examine and rule, *ex officio*, in respect of the same person, on any aspects required for the case settlement.

(5) The committees created under Government Decision no. 836/2013 on the Creation and Responsibilities of Commissions for Assessing the Scope of Application of the More Favorable Criminal Law in Case of Persons Serving Custodial Penalties and Educational Measures from the Perspective of the New Criminal and Criminal Procedure Rules shall notify the court of competent jurisdiction in the situations where at least one of their members believes that the provisions of Art. 4 or of Art. 6 of Law no. 286/2009, as subsequently amended and supplemented, are applicable.

(6) In situations where they believe that penalty enforcement is to be terminated in February 2014, the committees shall notify the court of competent jurisdiction according to this article, at least 15 days prior to the coming into force of the Criminal Procedure Code.

(7) Applications, challenges and notifications regarding persons that are not detained shall be ruled on by the enforcement court.

(8) In all cases listed under par. (1), the procedure shall be conducted without the participation of the prosecutor, the convict, to whom the hearing term and the possibility to file written submission is communicated, and without the participation of the convict's counsel. The operational part of the court sentence is communicated to the prosecutor and to the convict on its return date.

(9) Sentences may be appealed by a challenge with the hierarchically superior court, within 3 days of their communication.

(10) Challenges are ruled on by a panel composed of one judge, with the prosecutor's participation and by summoning the convict, in public session.

(11) Sentences ascertaining the applicability of Art. 4 or of Art. 6 of the Criminal Code and ordering the release of a convict are enforceable. A challenge shall not suspend enforcement and shall be ruled on within 3 days."

#CIN

*) Also Arts. 1-3 of Government Emergency Order no. 116/2013 (#M3), which are quoted under endnote 3 from the end of the updated text.

#M2

"ART. 24

The criminal procedure provisions of the special laws shall be supplemented by those of the Criminal Procedure Code."

#CIN

3. We quote below the provisions of Arts. 1-3 of Government Emergency Order no. 116/2013 (#M3).

#M3

"ART. 1

The measures regulated by this emergency order are complementary to those set by Law no. 187/2012 on Implementing Law no. 286/2009 on the Criminal Code, as well as to those set by Law no. 255/2013 on Implementing Law no. 135/2010 on the Criminal Procedure Code and on Amending and Supplementing Legal Rules Containing Criminal Procedure Stipulations."

#M3

"ART. 2

For the examination of cases, the filing of challenges *ex officio* and their settlement on an emergency basis in the situations listed under Art. 23 of Law no. 255/2013 may be delegated to the courts under whose territorial jurisdiction detention facilities or educational or reeducation centers are located and to the prosecutors' offices attached to these, for a term of maximum 6 months, to judges and prosecutors of neighboring District Courts, Tribunals and Courts of Appeals, and to the prosecutors' offices attached to these."

#M3

"ART. 3

Applications and challenges in the area of enforcement of custodial penalties, assigned by law under the jurisdiction of District Courts under whose territorial jurisdiction detention facilities are located, shall be ruled on by the 4th District Court of Bucharest, if they concern persons detained in the București Jilava Penitentiary or in the București Jilava Penitentiary Hospital, and by the 5th District Court of Bucharest, if they concern persons detained in the București Rahova Penitentiary or in the București Rahova Penitentiary Hospital."

#B