Code of Criminal Procedure*

Act of 6 June 1997

Part I

GENERAL PROVISIONS

Article 1. Criminal proceedings in cases subject to the jurisdiction of the Courts shall be conducted pursuant to the provisions of this Code.

Article 2. § 1. The purpose of this Code is to establish rules which will secure that:

(1) the perpetrator of a criminal offence shall be detected and called to penal responsibility, and that no innocent person shall be so called,

(2) by a correct application of measures provided for by criminal law, and by the disclosure of the circumstances which favoured the commission of the offence, the tasks of criminal procedure shall be fulfilled not only in combating the offences, but also in preventing them as well as in consolidating the rule of law and the principles of community life.

(3) legally protected interests of the injured party shall be secured, and

(4) determination of the case shall be achieved within a reasonable time. § 2. The

basis for any kind of determination shall be the established true fact situation.

Article 3. Within the scope laid down in the legislation, criminal proceedings shall be conducted with the participation of a representative of the community.

Article 4. Agencies in charge of criminal proceedings shall be obligated to inquire into, and duly consider the circumstances both in favour and to the prejudice of the accused.

Article 5. § 1. The accused shall be presumed innocent until his guilt has been proven under the provisions of this Code.

§ 2. Unresolvable doubts shall not be resolved to the prejudice of the accused.

Article 6. The accused shall have the right to conduct his own defence or to avail himself of the aid of defence counsel; the accused should be advised of this right.

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Article 7. The agencies responsible for the proceedings shall make a decision on the basis of their own conviction, which shall be founded upon evidence taken and appraised at their own discretion, with due consideration to the principles of sound reasoning and personal experience.

Article 8. § 1. The criminal court shall, at its own discretion, determine the factual and legal matters and shall not be bound by determinations of another court or agency.

§ 2. However, the valid determinations of a court, establishing new rights or relationships, shall be binding.

Article 9. § 1. The agencies conducting the trial shall conduct proceedings and undertake actions unless the law makes them provisional, upon a motion from a specified person, institution, or agency, or upon permission of an authority.

§ 2. The parties and other directly interested persons may file motions for also performing these actions which the agency may or be obligated to undertake.

Article 10. § 1. The agency responsible for prosecuting offences shall have the duty to institute and conduct the preparatory proceedings, and the public prosecutor shall have also the obligation to bring and support charges, with respect to an offence prosecuted.

§ 2. Except for cases described in domestic law or international law, no-one may be discharged from liability for a committed offence.

Article 11. § 1. The proceedings in a case of misdemeanour, carrying a penalty of deprivation of liberty for up to 5 years, may be discontinued if imposing the penalty on the perpetrator would be obviously inexpedient in light of a penalty validly decided for another offence, and as long as the interest of the injured is not prejudiced.

§ 2. If the penalty for other offence has not been validly decided, the proceedings may be suspended. The suspended proceedings should be discontinued or re-opened no later than 3 months from the date at which the decision for the other offence referred to in § 1 became valid and final.

Article 12. § 1. In cases arising out of offence prosecuted on complaint, proceedings shall be instituted in the event that such a complaint has been filed; such proceedings shall be thenceforth conducted . The prosecuting agency shall advise the person entitled to file a complaint of this right.

§ 2. In the event that a complaint has been only filed against certain perpetrators of an offence, the public prosecutor shall be obligated to prosecute the co-perpetrators, instigators, accomplices, and other persons whose offence is closely linked with that of the perpetrator indicated in the complaint. The person filling such complaint shall be notified thereof. This provisions shall not apply to the next of kin of the complainant.

§ 3. The complaint may be withdrawn in the preparatory proceedings with the consent of the state prosecutor, and in the court proceedings, with the consent of the court, before the commencement of the first-instance hearing, unless the offence involved is that described in Article 197 of the Penal Code. The filing of the motion for the second time shall not be admitted.

Article 13. The prosecutor shall obtain the permission of an authority to prosecute, if such permission is required by law to institute proceedings.

Article 14. § 1. The court proceedings shall be instituted upon the motion of the duly authorized prosecutor or other authorized entity.

§ 2. The court shall not be bound by the public prosecutor's withdrawal of the accusation.

Article 15. § 1. The Police and other agencies involved in criminal proceedings shall implement the instructions of the court and the state prosecutor, and shall conduct their inquiries , under the supervision of the state prosecutor, within the scope prescribed in law. the inquiry. In addition the Police shall conduct the investigation entrusted to them by the state prosecutor, either in whole or within a specified scope, as well as particular actions of the inquiry or investigation.

§ 2. All state, local government and community institutions shall aid and assist, within the scope of their activities, the agencies conducting criminal proceedings.

Article 16. § 1. If the agency conducting the proceedings is under obligation to advise the parties to the proceedings of their rights and duties, and fails to do so or misinstructs them, this shall not result in any adverse consequences during the course of the trial to the participant of the proceedings or other persons concerned.

§ 2. In addition, the agency conducting the proceedings shall, if necessary, inform the parties to the proceedings of their rights and duties, even in cases when this not explicitly stipulated by law. If the agency fails to provide such advice, and in light of the circumstances this was deemed indispensable, or if the agency misinstructs the parties, the provisions of § 1 shall be applied accordingly.

Article 17. Criminal proceedings shall not be instituted, or, if previously instituted, shall be discontinued, when:

(1) the act has not been committed, or there have not been sufficient grounds to suspect that it has been committed,

(2) the act does not possess the qualities of a prohibited act, or when it is acknowledged by law that the perpetrator has not committed an offence,

(3) the act constitutes an insignificant social danger,

(4) it has been established by law that the perpetrator is not subject to penalty,

(5) the accused is deceased,

(6) the prescribed statute of limitations has lapsed, or

(7) criminal proceedings concerning the same act committed by the same person has been validly concluded or, if previously instituted, is still pending,

(8) the perpetrator is not subject to the jurisdiction of the Polish criminal courts,

(9) there is no complaint from an entitled prosecutor,

(10) there is no permission required for prosecuting the act, or no motion to prosecute from a person so entitled, unless otherwise provided by law,

(11) other circumstances precluding such proceedings occur.

§ 2 Until a motion is filed or permission from an authority is obtained which has been prescribed by law as a prerequisite to prosecution, the agencies conducting the trial shall conduct only actions not amenable to delay, in order to secure traces or material evidence, and actions aimed at clarifying whether the motion is to be filed or permission obtained.

§ 3 The impossibility of blaming a perpetrator of an act shall not preclude the proceedings regarding the application of precautionary measures.

Article 18. § 1. If the act only constitutes a contravention, the state prosecutor shall, upon refusal to institute proceedings or a discontinuance thereof, refer the case to the Police in order to file a motion to impose a penalty by an appropriate agency dealing with contraventions. The state prosecutor may file such a motion at his own discretion.

§ 2. Upon refusal to institute proceedings or a discontinuance thereof the court or the state prosecutor, if they find that the act under examination has been a disciplinary delinquency or has transgressed against professional duties or the principles of community life, may, considering in particular the negligible social consequences of the act, refer the case to another agency having jurisdiction to hear cases of this type.

Article 19.§ 1. If, in the course of the proceedings, a serious transgression against the activities of a state or local government agency or a community institution comes to light, and particularly when this transgression promotes the commission of offences, the court, or the state prosecutor in the preparatory proceedings, shall inform the supervisory agency of such an organisational unit of this transgression and, if necessary, inform the relevant controlling agency. The Police shall notify the state prosecutor about the transgression discovered.

§ 2 Upon transmitting the information on the transgression, the court or the state prosecutor may, within certain time-limit, request explanations and advice on measures undertaken in order to prevent such future transgressions.

§ 3 If explanations are not provided within the time prescribed, a fine not exceeding the lowest monthly salary, may be imposed on the head of the agency obligated to provide these explanations.

§ 4 The order to impose a penalty shall be subject to interlocutory appeal.

Article 20. § 1. In the event of an flagrant dereliction of procedural duty by the defence counsel or attorney, the court, or in the preparatory proceedings the state prosecutor shall so inform the Bar Council (*Rada Adwokacka*) or other competent body.

§ 2. In the event of a flagrant dereliction of procedural duty by public prosecutor or a person conducting the inquiry, the court shall inform an immediate superior of the person who transgressed. Such a right shall also be vested with the state prosecutor with regard to the Police and other agencies of inquiry.

Article 21. § 1. When official proceedings have been concluded against persons employed in state, local government and community institutions, school pupils, students of schools and colleges, as well as against soldiers, their respective superiors will be notified immediately.

§ 2. The state prosecutor shall also inform about the proceedings instituted against public officials, and on instituting proceedings against other persons referred to in § 1, if important public interest so requires.

Article 22. § 1. If an impediment arises which prevents the conduct of proceedings for a lengthy period and, in particular, if the accused cannot be arrested or cannot participate in the proceedings because of mental disease or other serious illness, the proceedings shall be suspended until such impediment is removed.

§ 2 The order suspending the proceedings shall be subject to interlocutory appeal.

§ 3 While the proceedings are suspended, necessary measures shall be taken to secure material evidence against loss or distortion.

Article 23. In the case of an offence committed to the detriment of a juvenile, or in co-operation with a juvenile, or in circumstances which may be indicative of demoralisation of a juvenile or of a demoralising influence over a juvenile, the court, and in the preparatory proceedings the state prosecutor, shall inform the family court with the purpose of considering measures prescribed in the provisions on the proceedings in juvenile cases and in the Family and Custodianship Code.

PART II

THE COURT

Chapter I

The jurisdiction and composition of the court

Article 24.§ 1. The Regional Court shall adjudicate in the first instance all cases except those referred by law to the jurisdiction of another court.

§ 2. The Regional Court shall also hear appeals in the cases defined in law.

Article 25.§ 1. The Voivodship Court shall adjudicate in the first instance the following offences:

(1)felonies enumerated in the Penal Code and in special acts,

(2)misdemeanours specified in Chapters XVI and XVII and in Articles 140, 141, 148 § 4, Articles 149, 150 § 1, Articles 150_154, 156 § 1 and 3, Article 158 § 2 and 3, Article 166 § 1, Article 173 § 3, Article 185 § 2, Article 197 § 3, Articles 223, 252 and in Article 253 § 2 of the Penal Code, and

(3)misdemeanours which pursuant to some particular regulation lie within the jurisdiction of the Voivodship Court.

§ 2. The Voivodship Court shall also hear the appeals against decisions and rulings issued in the first instance by the Regional Court as well as other matters referred to it by law.

Article 26.The Appellate Court shall hear appeals from decisions and rulings issued in the first instance in the Voivodship Court as well as other matters referred to it by law.

Article 27.The Supreme Court shall hear the cassations and appeals as well as other matters in cases indicated in law.

Article 28.§ 1. At the main trial the court shall sit in a panel consisting of one judge and two lay judges, unless otherwise provided by law.

§ 2 The court in the first instance may decide to hear the case in a panel consisting of three judges because of the special complexity of the case.

§ 3 For hearing cases involving offences for which the law provides for the punishment of 25 years in prison or life imprisonment, the court shall sit in a panel consisting of two judges and three lay judges.

Article 29.§ 1. At the appellate and cassation trial the court shall sit in a panel consisting of three judges, unless otherwise provided by law.

§ 2. An appeal and cassation against the decision adjudicating the penalty of 25 years or life imprisonment shall be heard by a panel of five judges unless otherwise provided by law.

Article 30.§ 1. At the session of the Regional Court, decisions shall be issued by one judge only, whereas the Regional, Appellate or the Supreme Courts shall sit in a panel of three judges.

§ 2. At the session hearing of the appeal, the court shall sit in a panel of three judges unless otherwise provided by law.

Article 31. § 1. Territorial jurisdiction shall be vested in the court for the district in which the offence has been committed.

§ 2 If the offence has been committed on board a Polish vessel or aircraft, and § 1 is not applicable, territorial jurisdiction shall be vested in the court for the district in which the home port of the vessel or aircraft is located.

§ 3 If the offence has been committed in more than one court district, jurisdiction shall be vested in the court which first instituted the preparatory proceedings.

Article 32.§ 1. If the place of the commission of the offence cannot be established, jurisdiction shall be vested in the court for the district in which:

(1) the offence has been discovered,

(2) the accused has been apprehended, or

(3) the accused was domiciled or temporarily resided prior to the commission of the offence,

depending on which of these courts first instituted preparatory proceedings.

§ 2 If the offence was committed abroad, the provision of § 1 shall be applied accordingly.

§ 3 When the territorial jurisdiction of the court cannot be established pursuant to the preceding provisions, the case shall be heard by the court having jurisdiction over Śródmieście (“City Centre”) District of the Warsaw-Central municipality.

Article 33. § 1. If the same person is accused of more than one offence falling within the jurisdiction of different courts of the same level, jurisdiction shall be vested in the court which first instituted preparatory proceedings.

§ 2. If such cases fall within the jurisdiction of courts of different levels, they shall be

heard jointly by the higher court.

Article 34. § 1. The court having jurisdiction over the perpetrators of an offence shall also have jurisdiction over accomplices, instigators and other persons whose offences are closely related to that of the perpetrator, if the proceedings in their respective cases are simultaneously pending.

§ 2 The cases of the persons listed in § 1 should be joined in a common proceeding; the provisions of Article 33 shall be applied accordingly.

§ 3 In the event that circumstances occur which render such common proceeding impracticable as regards the cases specified in § § 1 and 2, a separate hearing may be instituted for particular persons or acts. Such cases thus identified shall be heard by a court having jurisdiction, according to general rules.

Article 35. § 1. The court shall examine its jurisdiction ; if it finds that the case does not fall within its jurisdiction, it shall refer the same to a court of competent jurisdiction or to some other agency.

§ 2 If at the main trial, it is found by the court that it has no territorial jurisdiction over the case, or that the case falls under the jurisdiction of a court of a lower level, it may refer the case to another court only when it becomes necessary to adjourn the trial.

§ 3 The order on the jurisdiction of the court shall be subject to interlocutory appeal.

Article 36.A court of a level higher than the court having jurisdiction over the case, may refer the same to another court of the same level, if the majority of persons who must be summoned to the trial reside in the neighbourhood of the latter court, far from the court having jurisdiction over the case.

Article 37. The Supreme Court may, upon the motion of the court having jurisdiction over the case, refer the case to be heard by another court of the same level if this better serves the administration of justice.

Article 38.§ 1. Any controversy between courts of the same level shall be finally resolved by the court higher than the one which has been the first to enter the controversy.

§ 2. During the controversy, each such court shall take on measures not amenable to delay.

Article 39.If a military court refers the case to a civilian court or refuses to accept a case referred to it by a civilian court, the case shall be heard by the latter.

Chapter 2

Disqualification of judges

Article 40.§ 1. A judge shall be disqualified by law from participation in a case if:

(1)the case concerns him directly,

(2)he is the spouse of a party to the proceedings, of the injured person, of defence counsel, of the attorney, of the legal representative, of the statutory agent of the injured person, or if he lives in cohabitation with one of these persons.

(3)he is related to any such person by blood or marriage, directly or collaterally, down to a relation between the children of the sibling of those listed under (2), or else related to any such person by adoption, custody or guardianship,

(4)he was an eye-witness to the act from which the pending case arises, or has appeared as a witness or expert in the same case,

(5)he has participated in the case as public prosecutor, defence counsel, attorney, legal representative or as the statutory agent of a party to the proceedings, or has conducted preparatory proceedings in the case,

(6)he has participated in a lower court in the issuance of a decision subject to appellate measure, or has himself issued a ruling subject to such measure,

(7)he has participated in the issuance of a decision subsequently reversed, or which has been declared invalid,

(8)he has participated in the issuance of a ruling on conditional discontinuance of the proceedings, or

(9)he has participated in the issuance of a decision subsequently opposed.

§ 2 The grounds for disqualification shall continue to be valid, even if the ties of marriage, cohabitation, adoption, guardianship or custody upon which they had been founded, have been dissolved.

§ 3 A judge who has participated in the issuance of a decision in a case included in a motion for renewal, or subject to an appeal under cassation procedure, cannot decide on such motion or on such appeal.

Article 41. § 1. A judge shall be disqualified if there are circumstances of such nature that his impartiality in the given case might give rise to reasonable doubts.

§ 2. A motion for the disqualification of a judge, filed pursuant to § 1 after the judicial examination has been commenced, shall not be heard, save for cases in which the grounds for disqualification have arisen or did not become known to the party concerned until after the commencement of the examination.

Article 42.§ 1. A disqualification shall take place upon the judge's own motion, or upon the motion of a party to the proceedings.

§ 2 Upon discovery by a judge of grounds for his disqualification pursuant to Article 40, he shall disqualify himself, by a written statement to be filed in the record of the case; and another judge shall be substituted in his place.

§ 3 A judge against whom a motion for disqualification has been filed pursuant to the provisions of Article 41, may file an appropriate written statement in the record of the case, and shall cease to participate in the case. He shall, however, be under the obligation to take on measures which are not amenable to delay.

§ 4 Save for the case described in § 2 the decision on disqualification shall be made by the court before which the proceedings are pending; the judge concerned shall not participate in the panel which is to pass the decision on this disqualification. If no such panel can be formed, the decision on disqualification shall be made by a higher court.

Article 43.If the disqualification of judges renders the hearing of the case by the given court impossible, the higher court shall refer the case to be heard by another court of equal level with the former.

Article 44. The provisions of this Code shall be applied accordingly to lay judges.

PART III

Parties to the proceedings, defence counsel, attorneys of the injured persons, and the social representative.

Chapter 3

The public prosecutor

Article 45. § 1. The public prosecutor before every type of court shall be the state prosecutor.

§ 2. Another public agency may also be the public prosecutor pursuant to special provisions of the law which frame the scope of the activities in this capacity.

Article 46. In cases arising out of indictable offences, the participation of the state prosecutor in the trial is mandatory, unless otherwise provided by law.

Article 47. § 1. Article 40 § 1, subsections (1) through (6) and § 2, as well as Articles 41 and 42 shall be applied accordingly to the state prosecutor, other persons conducting preparatory proceedings, and to other public prosecutors.

Article 48. § 1. The disqualification of the person conducting or supervising the preparatory proceedings or of the state prosecutor shall be determined by the public prosecutor supervising the proceedings, or a direct superior.

§ 2. Any actions performed by a person subject to disqualification before such disqualification has occurred, shall not be invalidated by the same, but an evidentiary action should be repeated when practicable if so requested by a party.

Chapter 4

The injured person

Article 49. § 1. The injured is a natural or legal person whose property or rights have been directly violated or threatened by an offence.

§ 2 A public, local government or social institution may also be treated as the injured person even though it has no status of legal person.

§ 3 The Social Security Agency shall also be regarded as an injured person to the extent of the indemnity paid by it to the injured person as a result of the injury caused by the offence, or that which it is obligated to cover.

§ 4 In cases arising out of offences which have inflicted damage upon the property of public, local government or a social institution and in which the injured institution is not acting, the rights of the injured person may be exercised by those agencies of state control which, within the scope of their activities, have brought the offence to light or have applied for the institution of proceedings.

Article 50. In the court proceedings, the rights of the injured person referred to in Articles 53 and 62 may not be exercised by the person who is the accused in the same case, except for cases provided for in Articles 497 and 498 § 3.

Article 51. § 1. All actions pertaining to the proceedings on behalf of an injured person who is not a natural person, shall be conducted by an agency authorised to act in this manner.

§ 2. If the injured person is a minor or is incapacitated either totally or partially, his rights shall be exercised by his legal representative or by one who has custody of the injured person.

Article 52. If the injured person dies, his rights may be exercised by his closest relatives or, when they are either absent or not discovered, by a state prosecutor.

Chapter 5

The subsidiary prosecutor

Article 53. In cases of indictable offences, the injured person may participate in the judicial proceedings as a party thereto, by assuming the role of subsidiary prosecutor, alongside the public prosecutor of instead of him.

Article 54. § 1. If the indictment has been filed by the public prosecutor, the injured person may, before the commencement of the judicial examination in the main trial, file a statement in writing on his intention to act as subsidiary prosecutor.

§ 2. The public prosecutor's withdrawal of the indictment shall not deprive a subsidiary prosecutor of his rights.

Article 55. § 1. In the event that the state prosecutor again decided on the refusal to institute proceedings, or on the discontinuation of the proceedings, in the case referred to in Article 330 § 2, the injured may, within one month of the date of the service of notification about such decision, file an indictment in the court. A copy should be supplied for each of the accused and one copy for the state prosecutor. The provision of Article 488 § 2 shall apply accordingly. The provisions of Article 339 § 3 subsection 4 and Article 397 shall not apply.

§ 2. The indictment filed by the injured shall be prepared and signed by a barrister, in compliance with conditions specified in Articles 332 and 333 § 1; if the injured party is a public, local government or social institution, the indictment may also be prepared by a legal counsel.

§ 3 Others injured by the same act may join in the proceedings before the commencement of the judicial examination in the main trial.

§ 4 The public prosecutor may also participate in the proceedings instituted by an indictment filed by the subsidiary prosecutor.

Article 56. § 1. The court may limit the number of subsidiary prosecutors participating in the proceedings if this safeguards the proper course of the proceedings. The court shall decide that a subsidiary prosecutor may not participate in the proceedings when the agreed number of subsidiary prosecutors specified by the court is already participating in the proceedings.

§ 2. The court shall decide that a subsidiary prosecutor may also not participate in the proceedings if it finds that such a prosecutor is an unauthorised person or his bill of

indictment or a statement on his intention to act as subsidiary prosecutor, was submitted after the prescribed time-limit.

§ 3. The order issued by the court under § 1, and also the order issued by the court under § 2 if it concerns the subsidiary prosecutor as specified in Article 54 or Article 55 §3, shall not be subject to interlocutory appeal.

Article 57. §1. In the event that the subsidiary prosecutor waives his rights he shall not be allowed to re-enter the proceedings.

§ 2. In a case where the public prosecutor does not participate, the court notifies the state prosecutor of the withdrawal of the indictment by the subsidiary prosecutor. Failure to file an indictment by the state prosecutor, within 14 days of receiving such notification will result in the discontinuance of the proceedings.

Article 58. §1. The death of the subsidiary prosecutor shall not interrupt the proceedings; the closest relatives of the injured may intervene in the proceedings as subsidiary prosecutors at any of its consecutive stages.

§ 2. In the event of the death of the subsidiary prosecutor who alone supported his bill of indictment, Article 61 shall apply accordingly.

Chapter 6

The private prosecutor

Article 59. § 1. The injured person may bring an indictment as a private prosecutor, or support an indictment with respect to a privately prosecuted offence.

§ 2. Any other person injured by the same act may only join the proceedings, prior to the commencement of the judicial examination at the trial.

Article 60. § 1. In the case of offences prosecuted by private accusation, the state prosecutor shall institute proceedings, or intervene in proceedings previously instituted, if the public interest so requires.

§ 2 In such cases the proceedings shall be conducted , and the injured person who has brought a private accusation shall be granted the rights of a subsidiary prosecutor. The provisions of Articles 54, 55 § 3 and Article 54 shall be applied to an injured person who did not previously bring such an indictment.

§ 3 If the state prosecutor who has previously joined in the proceedings, withdraws his indictment, the injured person shall be restored to the rights of a private prosecutor in any further proceedings.

§ 4. The injured person who has not brought an indictment, may within a final time-limit of 14 days from the day on which he receives notification of the state prosecutor's withdrawal, submit an indictment or a statement to the effect that he supports and maintains the indictment as a private on. If he fails to make such a statement, the court shall discontinue the proceedings.

Article 61. § 1. In the case of the death of the private prosecutor the proceedings shall be suspended, and the closest relatives may assume the rights of the deceased.

§ 2. If within the final time-limit of three months from the day of the death of the private prosecutor, an authorised person fails to assume the rights of the deceased, the court shall discontinue the proceedings.

Chapter 7

The civil plaintiff

Article 62. The injured person may, until the commencement of the judicial examination at the main trial, file a civil complaint against the accused in order to litigate, within the framework of the criminal proceedings, his property claims directly resulting from the offence.

Article 63. § 1. In the event of the death of the injured person, a civil complaint with property claims directly resulting from the offence, may be filed against the accused by the closest relatives within the time-limit prescribed in Article 62.

§ 2. In the event of the death of the private plaintiff, the closest relatives may assume the rights of the deceased. If they fail to do so, this shall not impede the course of the proceedings and in issuing its decision concluding the proceedings, the court shall leave the civil complaint unheard.

Article 64. The state prosecutor may, within the time-limit prescribed in Article 62, file a civil complaint on behalf of the injured or of a person named in Article 63 § 1, or support the complaint filed by the injured person or such other person, if the public interest so requires.

Article 65. § 1. Before instituting a judicial examination, the court shall reject a civil complaint if:

(1) the civil complaint is inadmissible by reason of some special provision,

(2) the claim has no direct connection with the charges included in the indictment,

(3) the civil complaint has been filed by an unauthorised person,

(4) the same claim is the object of another proceedings or a valid and final decision has been issued with respect thereto, or

(5) there is an obligatory joint participation, on the side of defendants, of a public, local government or social institution, or of a person who is not participating as the accused.

§ 2 If the civil complaint is in proper form, and the circumstances set forth in § 1 do not occur, the court shall issue a decision on the admission of the civil complaint.

§ 3 The court shall leave the private complaint unheard, even if previously admitted, if after the commencement of the judicial examination, any of the circumstances listed in § 1, comes to light.

§ 4 The refusal of the court to admit a civil complaint, or the fact that it has been left unheard pursuant to § 3, shall not be subject to interlocutory appeal.

Article 66. The civil plaintiff may submit evidence in support of only those circumstances upon which his claim in civil proceedings is founded.

Article 67. § 1. If the court has refused to admit a civil complaint or has left in unheard, the civil plaintiff may litigate his claim in civil proceedings.

§ 2. If within the final time-limit of thirty days from the day of the refusal by the court to admit a civil complaint or to hear it, the civil plaintiff moves to refer his complaint to the appropriate court having jurisdiction over civil cases, the day on which the claim has been filed in criminal proceedings shall be deemed as the day of the filing of the civil complaint.

Article 68. If the proceedings pending in a criminal court are suspended, the civil plaintiff may require his civil complaint to be referred to the appropriate court having jurisdiction over civil cases.

Article 69. § 1. If the civil complaint has been filed in the course of the preparatory proceedings, the agency conducting the proceedings shall file the civil complaint in the record of the case, and the court shall issue an order on the admission of the civil complaint after the indictment has been filed. In such cases, the day on which the claim is filed shall be considered as the date on which the civil complaint has been filed.

§ 2 If, simultaneously with the civil complaint, a motion is made requesting security for the claim, the decision in this matter shall be rendered by the state prosecutor.

§ 3 The order on giving security for the claim shall be subject to interlocutory appeal.

§ 4 In the event that the preparatory proceedings are discontinued or suspended, the injured person may, within a final time-limit of 30 days from the date on which the order is delivered, demand that the case be referred to the appropriate court having jurisdiction

over civil cases. If, within the prescribed time-limit, the injured fails to do so, the security shall be annulled, and the civil complaint previously filed shall be without legal effect.

Article 70. In the event that a question concerning a civil complaint is not regulated by the present Code, the provisions of the Code of Civil Procedure shall be applied accordingly.

Chapter 8

The accused

Article 71. § 1. A person shall be considered a suspect if the order has been made about presenting the charges to the person, or the charges have been presented to the person directly (without the order) in relation to interrogating him as a suspect.

§ 2 A person against whom an indictment has been filed, and also a person with respect to whom the state prosecutor conditionally discontinued proceedings, shall be considered an accused.

§ 3 Whenever the term "accused" is used generally in the present Code, such provisions shall apply to the suspect as well.

Article 72. When the accused does not have a command of the Polish language, the order on the presentation of charges, the indictment or a decision subject to review, or a decision concluding the proceedings shall be delivered to the accused with a translation. If the accused consents, the decision concluding the proceedings may only be announced to him, providing it is not subject to review.

Article 73. § 1. The accused while under preliminary detention may communicate with his defence counsel without other persons present, or by mail.

§ 2 In preparatory proceedings the state prosecutor who issues his permission for such communications may, where particularly justified, demand that he or a person authorised by him shall be present at such meeting.

§ 3 The state prosecutor may also stipulate that the correspondence of the accused with his defence counsel be controlled.

§ 4 The stipulations referred to in § 2 and 3 may not continued or effected after the lapse of 14 days after the date of temporary detention.

Article 74. § 1. The accused is under no obligation to prove his innocence or obligation to submit evidence in his disfavour.

§ 2. The accused shall, however, be under the obligation to submit:

(1) to an external examination of his body and to other examinations not involving any invasion of bodily integrity; in particular, the fingerprints of the accused may be taken; he may be photographed and presented to other persons, in order to establish his identity,

2) to psychological and psychiatric examinations and to examinations involving certain tests to be conducted upon his body, except surgical procedures, provided that they are effected by a person on the health-service staff, according to medical directions and do not constitute a challenge to the health of the accused. If such examinations are indispensable; in particular, the accused shall be under an obligation, in conformity with the above conditions, to submit blood and excretory samples.

§ 3 The actions referred to in § 2 subsection 1 may be also performed in respect to the suspect, and with the suspect's consent, and in conformity with the conditions referred to in § 2 subsection 2, blood or excretory samples may also be taken.

§ 4 The Minister of Justice in consultation with the Minister of Health and Social Welfare, shall issue an ordinance setting forth the detailed conditions and methods to be used, when the accused or the suspect is submitted to medical examination.

Article 75. § 1. An accused who is not detained, is obligated to appear whenever summoned while the criminal proceedings are in process, and to advise the agency conducting the proceedings of any change of residence or sojourn exceeding 7 days. The accused is to be so informed at his first hearing.

§ 2. If the accused fails to appear without justification, he may be brought under duress.

Article 76. If the accused is either a minor or incompetent, his legal representative or the person in whose custody he is, may undertake to act on his favour in the proceedings and, in particular, to seek review, submit motions and appoint a defence counsel.

Article 77. The accused may not have more than three defence counsel at any one time.

Article 78. § 1. An accused who has not retained defence counsel, may demand that defence counsel be appointed to him , if he can duly prove that he is unable to pay the defence costs without prejudice to his and his family's necessary support and maintenance.

§ 2. The court may withdraw an appointment of a counsel if it comes to light, that the circumstances leading to the appointment did not exist.

Article 79. § 1. In criminal proceedings the accused must have defence counsel if:

(1) he is minor,

(2) he is death, dumb, or blind,

(3) there is good reason to doubt his sanity,

(4) he has no command of the Polish language.

§ 2 The accused must have a defence counsel, when the court deems that necessary because of circumstances impeding the defence.

§ 3 In the cases described in § 1 and 2, the participation of defence counsel in the trial is mandatory, as well as in those sessions where the presence of the accused is mandatory.

§ 4 If, in the course of proceedings, the expert psychiatrists find that there is no reason to doubt the sanity of the accused, he must, nevertheless, have a defence counsel until the valid conclusion of the proceedings.

Article 80. The accused must have defence counsel in proceedings before a Voivodship Court as a court of first instance if he is accused of felony or deprived of his liberty. In such a case the participation of defence counsel at the main trial is mandatory; it shall be also mandatory at the appellate and cassation hearing, if the president of the court finds it necessary.

Article 81. If the accused in cases specified in Articles 78 § § 1 and 2, Article 79 § 1 and 2, and Article 80, has no defence counsel of his own choice, the president of the court having jurisdiction shall appoint a defence counsel.

Chapter 9

Defence counsel and attorneys

Article 82. Only a person entitled to defend cases pursuant to the System of the Bar Act may be engaged as defence counsel.

Article 83. § 1. The accused himself shall retain the defence counsel; or, before an accused deprived of liberty retains a defence counsel, one may be retained by another person of which the accused shall be promptly informed.

§ 2. Power of attorney authorising the defence counsel may be given in writing or by a declaration filed with the record of the agency conducting the criminal proceedings.

Article 84. § 1. The retention of defence counsel or the appointment of counsel shall relate to the entire course of proceedings, including all actions taken after the decision has come into force, unless such a retention or appointment was restricted.

§ 2. When defence counsel is appointed , he shall be under the obligation to act in the proceedings until such time as they are validly concluded. If, however, such action must be taken outside the place of business or personal residence of the defence counsel

appointed , then the president of the court before which such action is to be taken, and, in preparatory proceedings, the President of the Regional Court for the place in which the actions are to be taken, shall appoint on the motion of the acting defence counsel, another defence counsel from amongst the local bar.

§ 3. A defence counsel appointed in the cassation proceedings or in proceedings for instituting trial, shall prepare and sign the application for cassation or for instituting trial, or inform the court in writing that he had not found grounds for cassation or for submitting an application for instituting a trial.

Article 85. Defence counsel may defend more than one accused if their respective interests do not conflict.

Article 86. § 1. Defence counsel may act in the proceedings only in furtherance of the interests of the accused.

§ 2. The participation of defence counsel in the proceedings does not preclude the personal participation of the accused therein.

Article 87. § 1. A party other than the accused may retain an attorney.

§ 2 A person not being a party to the proceedings may retain an attorney if the interests of the person so require.

§ 3 The court, and the state prosecutor in the preparatory proceedings, may refuse to allow the attorney referred to in § 2 to participate in the proceedings if he deems that the interests of the person not being a party to the proceedings do not require this.

Article 88. § 1. Articles 77, 78, 82-84 and 86 § 2 shall be accordingly applied to the attorney of the injured person.

§ 2 The attorney of a public, local government or community institution may also be the legal advisor or another employee of such an institution or of the agency in control thereof.

§ 3 In matters regarding a claim for property damage, the attorney of an artificial person other than those referred to in § 2, an organisational unit not having legal personality, or of a natural person pursuing an economic activity, may also be its legal counsel.

Article 89. Matters pertaining to the attorney of the injured person, and not regulated by the provision of this Code, shall accordingly be resolved by the appropriate application of provisions governing civil procedure.

Chapter 10

Community representative

Article 90. § 1. In judicial proceedings, prior to the commencement of the judicial examinations the right to participate in the proceedings may be petitioned by a representative of a community organisation, if there is a need to defend a community ??*social??*interests within the statutory purposes of such an organisation, especially in matters pertaining to the protection of human rights and freedoms.

§ 2 In their petition on this matter the social organisation shall designate the person who is to represent such an organisation, and the representative should file his power of attorney in writing.

§ 3 The court shall admit a representative of a social organisation if it finds that his participation in court proceedings will be in the interests of justice.

Article 91. The representative of a social organisation who has been admitted to participate in court proceedings, may participate in the trial, make statements and submit motions in writing.

PART IV

PROCEDURAL ACTIONS

Chapter 11

Decisions, rulings and instructions

Article 92. § 1. A decision may be based only on the whole set of circumstances and facts disclosed in the course of the proceedings and relevant to the determination of the case.

Article 93. § 1. Unless law requires the issuance of a judgement, the court shall issue an order.

§ 2 In matters which do not require the issuance of an order the president of the court, the president of a department of the court or a duly authorised judge shall issue a ruling.

§ 3 In a preparatory proceedings, orders and rulings shall be issued by a state prosecutor; in cases provided by law, by the court; and during an inquiry, also by other authorised agencies.

§ 4 In cases provided by law, the court and the state prosecutor shall issue directives to the Police or other agencies.

Article 94. § 1. An order should include:

(1) the designation of an agency and a person(s) issuing the order,

(2) the date of the order,

(3) an indication of the case subject matter to which the order pertains,

(4) the decision and legal grounds,

(5) the reason for the order, unless the law excuses from the stipulation of the

reason. § 2. The provision of § 1 applies accordingly to rulings.

Article 95. The court shall render a decision at the trial when so required by law; in other cases, at a session of the court. Decisions rendered in session may also be rendered at trial.

Article 96. § 1. Unless otherwise provided by law, the state prosecutor shall participate in a session of the court, or file motions in writing. In a case of lesser importance the state prosecutor may provide his statement in another manner, which is then entered in the minutes.

§ 2. Other parties and persons who are not parties, if this is of significant to their defence, may file their motions in writing, and, in cases provided by law, shall have the right or obligation to participate in a session of the court.

Article 97. If, before an order is issued in session, the necessity arises to verify the fact situation, the court shall do so on its own or shall appoint, for this purpose, a judge from the adjudicative panel in a given case, or shall summon a court of competent territorial jurisdiction to take the necessary measures.

Article 98. § 1. The reason for the order shall be made in writing together with the order itself.

§ 2 In a complex case, or for other important causes, giving reasons may be postponed for a period not exceeding 7 days.

§ 3 Reasons are not required for the admission of evidence, or the consideration of an unopposed motion, unless the decision is subject to review.

Article 99. § 1. The manner and form of announcing a judgement are determined by special regulations.

§ 2. A ruling shall require reasons thereof in writing, if it is subject to review.

Article 100. § 1. A decision or a ruling made at trial shall be announced orally.

§ 2 A decision or a ruling made elsewhere than at trial should be delivered to the state prosecutor and to the party or person not being a party but who are entitled to seek review, if they have not participated in the session or were absent when the announcement was made. In other cases the parties should be informed of the content of the decision or ruling.

§ 3 A judgement rendered in session and an order with reason, in the case referred to in Article 98 § 2, shall be delivered to the parties.

§ 4 Unless the duty to set forth reasons concurrently has been excused by law, the decision shall be delivered or announced together with the reasons thereof; in the case referred to in Article 98 § 2 after the order has been announced, the main reasons thereof are announced orally.

§ 5 If the case has been heard in closed session because of the substantial interests of the State, instead of reasons a notice will be served to the effects that the reasons have been actually set forth.

§ 6 After the announcement or at the time of the delivery of the decision the parties to the proceedings should be informed of their right to seek review, of the time-limit within which this can be done, and the means of review, or that the decision is not subject thereto.

Article 101. § 1. A decision is invalid by virtue of the law if:

(1) the accused was not subject to the jurisdiction of Polish criminal courts,

(2) an unauthorised person, or a person disqualified under Article 40 § 1 subsections 1 through 3 or 6 and § 2 and 3 participated in rendering the decision,

(3) if the decision was rendered in spite of the fact that the criminal proceedings regarding the same act of the same person had already been validly concluded,

(4) a penalty or penal measures imposed are not known to law,

(5) the decision was rendered which violated the principle of majority voting, or it was not signed by any person participating in rendering the decision,

(6) the court decided in a panel not known to law,

(7) the decision contains a contradiction preventing its execution,

(8) there was another infringement of law, of at least the same seriousness.

§ 2. A decision rendered by the court in a case of contravention, despite a lack of grounds for examining it by the court, shall not be invalidated for this reason.

Article 102. § 1. Each agency of the proceedings shall be obligated to present the reason which rendered the decision invalid to the court competent to declare its invalidity.

§ 2 The invalidity by virtue of the law shall be declared on a session convened upon an initiative of an agency of the proceedings, or upon a motion from a party, by an appellate court with a panel of three judges. The invalidity of the decision by an appellate court or the decision by the Supreme Court is decided by the Supreme Court. The Supreme Court shall decide the issue of the invalidity its judgement with a panel of seven judges.

§ 3 In declaring the invalidity of a decision, the court, if necessary, should refer the case as appropriate or render other appropriate decision.

§ 4 The decision on invalidity shall be subject to interlocutory appeal, unless it was rendered by the Supreme Court.

§ 5 The parties, defence counsel and attorneys shall have the right to participate in the session.

Article 103. § 1. In the event of considering the question of invalidity, the court shall stay the execution of a decision. In other cases the court may stay the execution.

§ 2. If the invalidity have been decided solely as a result of an appeal lodged in favour of the accused, in any further proceedings the decision rendered may not go against him, when compared with the invalid decision. This does not apply in the case referred to in Article 101 subsection 4.

Article 104. If the invalid decision has already been reversed, a declaration of invalidity is not made. But in the event of referring the case for re-examination, the agency which the case has been referred to is obligated to take into consideration the reason for its invalidity and, to this extent, it is bound by the guidance as to further proceedings issued by the agency which reversed the decision.

Article 105. § 1. Manifest errors in the writing, calculation or designation of time-limits in a decision or ruling and/or in the reason therefor may be corrected at any time.

§ 2 Such correction shall be effected by the agency committing such an error. If the proceedings are pending before an appellate instance, it may correct the decision rendered in the first instance.

§ 3 A decision or its reasons shall be corrected by the issuance of an order, a ruling shall be corrected by the issuance of a second ruling.

§ 4. The order or ruling effecting such correction issued in the first instance shall be subject to interlocutory appeal.

Article 106. In the course of proceedings, the provisions of Article 100 § 2, 4-6 shall be applied accordingly.

`Article 107. § 1. A court which has decided on claims for property damage, upon the request of an authorised person, shall attach an execution clause to a decision subject to execution.

§ 2. A decision on claims for property damage shall also be considered as an obligation imposed by the court to make amends for harm caused, if the decision could be enforced by execution in accordance with the provision of the Code of Civil Procedure.

Chapter 12

Deliberation and voting

Article 108. § 1. The deliberation and voting on the decision shall be conducted in closed session, and the waiving of the secrecy of such matters shall not be allowed.

§ 2. During both deliberation and voting on the case, the only person who may be present in addition to the panel, is the court clerk, unless the presiding judge considers his attendance to be unnecessary.

Article 109. § 1. The deliberation and voting shall be conducted by the presiding judge; should any doubts be expressed as to the order of the deliberation and/or voting and the methods by which they are conducted, they shall be resolved by the panel in a given case.

§ 2. At the conclusion of deliberations the presiding judge shall take the vote, commencing with the youngest member of the panel, from the lay judges in order of their age, to the judges in order of their rank, giving his own vote last. The reporting judge, if he is not the presiding judge, shall be the first to vote.

Article 110. The deliberation and voting on the judgement shall be conducted separately as to the guilt and to the legal classification of the act, the penalty, the penal measures and remaining matters.

Article 111. § 1. Decisions shall be rendered by majority vote.

§ 2. If the opinions of the panel so differ that none commands a majority, the opinion least favouring the accused shall be coupled with that most like it, until a majority has been achieved.

Article 112. A judge who has voted "not guilty", may refrain from voting on the further questions; the vote of such judge shall then be coupled with the vote most favourable to the accused.

Article 113. The decision shall be signed by each member of the panel in a given case, including each member who voted otherwise.

Article 114. § 1. Each member of the panel in a given case shall be authorised, when signing the decision, to express his dissenting opinion, stating which part and direction of the judgement he questions.

§ 2 A dissenting opinion may also relate to the reasons for the decision; this shall be indicated when the reasons for the decision are signed.

§ 3 If there is no requirement by law to provide reasons for the decision at the time of rendering the decision, in the event that a dissenting opinion is expressed, reason for the judgement shall be issued within 7 days of the date of rendering the decision. The dissenter shall present reasons for his opinion in writing within the following 7 days, although this obligation shall not apply to a lay judge.

Article 115. § 1. The reasons for the decision shall be signed by persons rendering the decision, including each person who voted otherwise.

§ 2 In the cases examined in a panel of one judge and two lay judges, the reasons shall be signed only by the presiding judge, unless a dissenting opinion is expressed.

§ 3 If the signature of the presiding judge or any other member of the panel in a given case cannot be obtained, one of those who signed, notes the fact in the reason for the decision, indicating its cause.

Chapter 13

The order of the procedural actions of the parties

Article 116. Unless otherwise provided by law, the parties may file motions and other statements in writing or submit them orally for the record.

Article 117. § 1. A person authorised to participate in a procedural action shall be notified of the time and place thereof, unless otherwise provided by law.

§ 2. Unless otherwise provided by law, such action shall not be taken if the authorised person fails to appear, if there is no evidence that he has been notified, and if there is good reason to suppose that such a failure to appear was due to a natural disaster or other extraordinary circumstances, and also if such a person duly justified the failure to appear and requested that no procedural action be taken in his absence.

§ 3 If the absentee is a party to the proceedings, a defence counsel or an attorney of the injured party whose appearance is mandatory, the procedural action shall not be taken, unless otherwise provided by law.

§ 4 The Minister of Justice and the Minister of Health and Social Welfare shall determine by ordinance, the conditions under which failure to appear on the part of the accused, witnesses and other parties to the proceedings by reason of illness may be excused, and the procedure thereof.

Article 118. § 1. The significance of a procedural action shall be evaluated pursuant to the contents of the statement filed therein.

§ 2 The erroneous designation of a procedural action and, in particular, of the means of review shall not deprive such action of its legal significance.

§ 3 A writ relating to a matter belonging to the competence of the court, the state prosecutor, the Police or other agency of inquiry shall be referred to the relevant agency.

Article 119. § 1. A procedural writ should include:

(1)the identity of the agency to which it is addressed and the case to which it relates,

(2)the identity of the person filing such a writ,

(3)the contents of the motion or statement, with reasons thereof, if required, and

(4)the signature of the person filing such a writ.

§ 2. If a person cannot sign his name, another person authorised by him shall sign for him, indicating the reason for doing so.

Article 120. § 1. If the writ fails to comply with the formal requirements set forth in Article 119 or in special provisions, and the defect is of a nature which renders the further proceeding of such writ impossible, or if such a defect consists in a failure to pay the costs required to submit the authorisation to carry on the procedural action, the person who has submitted such a writ shall be summoned to correct the defect within seven days.

§ 2. If the defect is corrected within the prescribed time-limit, the writ will take effect from the day on which it has been filed. If the defect is not corrected within the prescribed time-limit, the writ shall be considered to be without effect, and the person summoned should be so instructed with the delivery of the summons.

Article 121. If a person participating in a procedural action has refused or could not sign, the reason for the missing signature should be noted.

Chapter 14

Time limits

Article 122. § 1. A procedural action effected after the final time-limit has lapsed shall be without legal effect.

§ 2. The time-limits for means of review shall be final, as shall also be time-limits recognised as such by law.

Article 123. § 1. The day from which the time-limit is being calculated shall not be included in this calculation.

§ 2 If the time-limit is prescribed in weeks, months, or years, the time-limit shall lapse on the day of the week or month corresponding to the commencement of such a time-limit; if the given month has no such day, then the time-limit will lapse on the last day of such a month.

§ 3 If the time-limit occurs on a day recognised by law as a legal holiday, the relevant action may be taken the next day.

Article 124. The time-limit shall be tolled if, before it has lapsed, the writ had been dispatched in a Polish post office, at a Polish consular office, or delivered by a soldier to the headquarters of a military unit, or, by a person deprived of liberty to the administration of a penal institution, or by a crew member of a Polish sea-going vessel to her captain.

Article 125. A writ filed mistakenly prior to the lapse of the time-limit with a court or state prosecutor lacking jurisdiction in the matter, shall be treated as one properly filed.

Article 126. § 1. If the final time-limit has lapsed for reasons beyond the control of the party, the party may, within seven days from the day on which the disability has been removed or expired, submit a petition to have the time-limit reinstated, at the same time effecting the action which was to have been effected within the previously applicable time-limit; the same provision shall apply to persons who are not parties to the proceedings.

§ 2 A decision on the reinstatement of time-limits shall be issued by the agency before whom the relevant action was to have been effected.

§ 3 A refusal to reinstate the time-limit shall be subject to interlocutory appeal.

Article 127. A motion requesting the reinstatement of the time-limit shall not stop the execution of the decision, but the agency with which it has been filed or an agency appointed to hear the review may stay the execution of the decision; a refusal to stay shall not require reasons thereof.

Service of documents

Article 128. § 1. Decision and rulings shall be served in the form of certified copies, if service thereof is required by law.

§ 2. All documents addressed to the parties of the proceedings shall be served in a manner calculated to render their contents inaccessible to unauthorised persons.

Article 129. § 1. The summons shall designate the agency serving the documents, and the addressee shall be informed as to the case, the capacity and the place and time for his appearance and whether it is mandatory. He shall also be warned of the consequences of a failure to appear.

§ 2 The provision of § 1 shall be applied to notices accordingly.

§ 3 If the time-limit for effecting a procedural action runs from the day of service, the addressee should be informed thereof.

Article 130. The documents shall be served against a receipt. The recipient of a document shall confirm the receipt and the date of delivery by clearly signing his name on a receipt of service in which the person serving the document shall set forth the manner in which service has been effected, signing a statement to that effect.

Article 131. § 1. For summons, notices and other documents, whose date of service activates the time-limits, shall be served to the addressee by mail or by personal delivery by an official of the agency effecting the service, or if necessary by the Police.

§ 2. If, in a given case, the number of the injured found is such that serving upon them the individual notices of their rights would constitute a major impediment to the conduct of proceedings, such injured shall be notified through an announcement in the press, radio or television.

Article 132. § 1. Documents shall be served personally upon the addressee.

§ 2. If the addressee is temporarily absent from his place of residence, a document shall be served upon an adult member of the household of the addressee and, if no such person can be found, upon the house administrator, janitor or village bailiff, if such person agrees to deliver the document to the addressee.

Article 133. § 1. If service cannot be effected as prescribed in Article 132, the document dispatched by mail shall be left with the nearest post office and the document served in a different manner shall be left with the nearest unit of the Police, or with the appropriate office of the lowest level of local government..

§ 2 The person serving the court document shall notify the addressee that it has been left elsewhere as prescribed in § 1, by affixing a prominent notice to the door of the addressee's apartment, setting forth where and when the document has been left and stating that it should be collected within seven days. The same procedure shall be followed when the document is delivered to a house administrator, janitor or village bailiff.

§ 3 Document may also be left with a person authorised to receive mail at the place of the addressee's permanent employment.

Article 134. § 1. Documents addressed to soldiers, officials of the Police, Office of State Protection, Border Guards, and the Prison Service, may be delivered to the addressees through their superiors. Summons addressed to soldiers in active service shall be dispatched to the commander of the military unit in which such a soldier is serving, to be delivered to him; and a ruling shall be issued obligating him to appear in accordance with the summons.

§ 2 Addressees deprived of their liberty, shall have the document served through the administration of the penal institution.

§ 3 A document addressed to other than a natural person or to defence counsel or to an attorney for the injured person shall be served at the addressee's place of employment upon an employee of the same.

Article 135. The state prosecutor shall be notified of trials and sessions of the court by service of a list of cases to be heard on a given day.

Article 136. § 1. If an addressee declines to accept the document, or refuses or is unable to sign the receipt, the person serving the document shall make an appropriate notation on the receipt; and service shall then be considered to have been effected.

§ 2. A document refused by the addressee shall be returned to the agency effecting service.

Article 137. In cases not amenable to delay summons may be served by telephone, or in any other manner appropriate to the circumstances, documenting in the files of the case a copy of any communications sent, signed by the person who sent it.

Article 138. A party residing abroad shall be obligated to designate an addressee for the service of documents in Poland. If he fails to do so, a document sent to his last known address in Poland, or, failing this, filed with the record of the case, shall be deemed to have been served.

Article 139. § 1. If a party to the proceedings has changed his place of residence and has failed to notify the agency before which the proceedings are pending of his new address,

or if he has not resided under a designated address, a document dispatched to the address last designated by such a party shall be considered to have been served.

§ 2 In judicial proceedings section 1 shall apply to documents sent to the accused only after the indictment bill has been served upon him.

§ 3 Section 1 shall not be applicable to documents sent for the first time after the proceedings have been validly concluded and to an accused the proceedings against whom have been discontinued, or with respect to whom a judgement of acquittal has been rendered, unless such an accused has previously been notified that an appeal of the prosecutor has been accepted for hearing.

Article 140. Decisions, rulings, notices and copies of documents which are required by law to be served upon the parties, should be also served upon the defence counsel, attorneys, and on the legal representatives unless otherwise provided by law.

Article 141. The Minister of Justice in consultation with the Minister of Posts and Telecommunications shall issue an ordinance on the particular regulation and the method of serving court documents by post.

Article 142. Service made not in accordance with the provisions of this Chapter shall nevertheless be considered to be effected, if the addressee of the document acknowledged his actual receipt thereof.

Chapter 16

The record

Article 143. § 1. A record in writing shall be required:

1) of information received orally with respect to an offence, of a notice of an offence or of its withdrawal,

2) of the examination of the accused, witnesses, guardians and experts,

3) of an inspection,

4) of an autopsy of a corpse, or disinterment (exhumation) of a corpse,

5) of the conduct of experiments, confrontations, and identifications,

6) of searches made of persons, premises and material objects, and seizure of material objects,

7) of the opening of a letter or a parcel, or playing (or viewing) recorded material,

8) of the presentation to the suspect of materials collected in the course of preparatory proceedings,

9) of the deposit of bail

10) of the conduct of the court session carried out under Article 339, and

11) of the conduct of the trial.

§ 2. A record shall be made of other procedural actions if so required by a particular provisions, or if the person conducting the action finds it necessary. In other cases an official note shall suffice.

Article 144. § 1. The record of the trial shall be written down by a legal trainee or a clerk. The record may be also written down by an assistant judge provided that he is not a member of the panel in the case.

§ 2 In addition to the persons listed in § 1, the record may also be written down by a person appointed to act as recording clerk, by the person conducting the procedural action, or personally by the latter.

§ 3 A person thus appointed who is not on the staff of the agency conducting the proceedings, shall give a pledge which shall read as follows: "I solemnly promise to discharge thoroughly and scrupulously the duties of a recording clerk which have been entrusted to me."

Article 145. § 1. In addition to the writing down of a record, a shorthand report of the procedural action may also be made, which shall be transcribed into plain writing by the stenographer, with a note on the system used; the shorthand original shall be appended.

§ 2. Article 144 § 1 shall be applied accordingly.

Article 146. § 1. Recording clerks and stenographers shall be subject to disqualification for the same reasons as judges.

§ 2. Disqualification shall be decided upon by the courts during trials or sessions and, in the other cases, by the person conducting the recorded action.

Article 147. § 1. In addition, the conduct of actions recorded may be transcribed by means of equipment recording pictures or sound, and the persons participating in the action should be so warned before such equipment is activated.

§ 2. When technical considerations do not impede, the testimony of a witness or expert shall be recorded by means of sound recording equipment when

1) there is a danger that taking the testimony from the person might not be possible later in the proceedings;

2) testimony is obtained under the process described in Article 396;

§ 3 The sound recording and its transcription shall be appended to the records;

§ 4 The party has the right to obtain one copy of the sound or picture recording at his expense. This provision shall not apply to the testimonies taken during a closed session or during the preparatory proceedings.

§ 5 .The Minister of Justice shall issue an ordinance designating the types of equipment and technical devices serving to record pictures or sound for procedural purposes, as well as the methods for securing the same, and for preserving, playing (viewing), and copying thereof.

Article 148. § 1. The record should include:

1) the designation of the action taken, the time and the place of the conduct thereof and the identity of the persons participating in the same,

2) the conduct of the procedural action and the statements and motions made by participants,

3) orders and rulings issued in the course of the procedural action and, when an order or ruling has been separately made, a note of its issuance,

4) if required, a statement of other circumstances concerning the conduct of the procedural actions.

§ 2. Explanations of the accused, testimony, statements, motions and reports of specified actions by the agency conducting the proceedings, shall be recorded with the highest possible degree of accuracy, and persons participating in the action shall be entitled to request that any matter pertaining to their rights and interests should be included in the record with complete accuracy.

Article 149. § 1. The record of the trial and session of the court shall be signed without delay by the presiding judge and the recording clerk.

§ 2 The shorthand report and its transcription has to be signed by the stenographer and, in addition, by the judge presiding at the trial or by the person conducting the procedural action.

§ 3 If the presiding judge cannot sign the record, it shall be signed on his behalf by a member of the decision-making panel, who shall make reference to the cause for the failure of the presiding judge to sign.

Article 150. § 1. Records, except for the records of a trial or session of the court, have to be signed by the persons participating in the procedural action. Before signing, such a record must be read aloud and mention should be made thereof.

§ 2. A person participating in a procedural action may, at the time he signs the record, raise objection to its contents. Such an objection should be inserted in the record together with a statement by the person conducting the procedural action recorded.

Article 151. Deletions from, and corrections and additions to the record shall be separately mentioned, and these adjustments shall be signed by the person signing the record.

Article 152. Parties and persons having a legal interest in the matter, may submit a motion requesting to have the record of a trial or session of the court corrected, specifying the inaccuracies and omissions.

Article 153. § 1. The presiding judge upon hearing the recording clerk may grant the motion and issue a ruling correcting the record; otherwise, the question of correcting the record shall be resolved following a hearing of the recording clerk, by the panel of the court which has heard the case.

§ 2 If the same panel cannot be reassembled, no such order shall be made; the members of the panel and the recording clerk shall file in the record of the case, a statement as to whether the motion is well founded.

§ 3 If the motion is granted, a suitable note shall be inserted in the record as corrected, which shall be signed by the presiding judge and the recording clerk.

§ 4 A motion requesting correction of the records of a trial or session of the court, shall be left unheard if it has been filed after the record of the case has been dispatched to a higher court.

Article 154. Correction of manifest errors in writing or calculation in the record may occur on motion or at any time; Article 153 shall be applied accordingly.

Article 155. § 1. The parties shall be notified of the contents of any correction; the person who has filed the motion for correction shall be notified of the denial of such motion.

§ 2. A motion requesting correction shall be filed in the record of the case, irrespective of the outcome.

Chapter 17

Inspection of files and making copies

Article 156. § 1. Parties as well as their defence counsels, attorneys, legal representatives and statutory agents may be permitted to examine the files pertaining to the case and to copy them. These records may also be made accessible to other persons with the consent of the president of the court.

§ 2 Upon a motion from the accused or his defence counsel, photocopies of the documents of the case shall be provided at their expense.

§ 3 The president of the court may on justifiable grounds, order certified copies to be made from the files of the case.

§ 4 If there is a danger of revealing a state secret, inspection of files, making certified copies and photocopies shall be done under conditions imposed by the president of the court or the court. Certified copies shall not be released unless provided otherwise by law.

§ 5 Unless provided otherwise by law, permission by the person conducting the preparatory proceedings shall be required for the inspection of files of the preparatory proceedings in progress,, making copies and photocopies of the same by parties, defence counsels, legal representatives and statutory agents, and for the issuance of certified copies. With the permission of the state prosecutor, access to files in the pending preparatory proceedings could be given to other persons.

Article 157. § 1. If the accused so moves, he shall be given one certified copy for each decision free of charge. The copies are issued together with the reasons therefor if the same have been made.

§ 2 In cases heard in closed session due to some significant State interests, the accused may be given only one copy of the decision concluding the relevant proceedings in this given instance, without the reasons therefor.

§ 3 The party may not be refused permission to copy a record of procedural action in which it participated or had the right to participate, as well as a document obtained from such party or prepared with the participation of the same.

Article 158. § 1. The state prosecutor may inspect the files of the case at each of its consecutive stages and require them to be sent to him for that purpose unless this were to impede the course of the proceedings, or to limit the access to files by other parties to the proceedings, particularly, the accused and his defence counsel.

§ 2. In the case of files sent to the state prosecutor he shall be under obligation to provide access thereto for the party, defence counsel or legal representative.

Article 159. The refusal to provide access to files in the preparatory proceedings shall be subject to interlocutory appeal.

Chapter 18

Reconstruction of lost or damaged files

Article 160. § 1. When the files of a pending case are lost or damaged totally or in part, the proceedings shall be conducted by the court, before which the case was last heard.

§ 2 The Supreme Court shall conduct such proceedings only to the extent of the reconstruction of the files of that court.

§ 3 If the files of a case validly concluded are lost or destroyed, the proceedings shall be conducted by the court before which they were pending in the first instance or another court specified in law.

§ 4 The files of preparatory proceedings shall be reconstructed by the state prosecutor who shall apply the provisions of this Chapter accordingly.

Article 161. If the record of a case validly concluded has been lost or damaged, the reconstruction shall include any parts necessary to execute the decision, to re-open the proceedings, to conduct proceedings under cassation procedure, and/or to promote other just interests of the parties.

Article 162. The president of the court shall call upon the parties to submit, within a designated time-limit, motions as to the manner in which the files of the case may be reconstructed and to submit the documents necessary for the reconstruction.

Article 163. § 1. The president the court shall summon those person in possession of the necessary documents to submit them to the court and, if necessary, order their compulsory surrender; Articles 217 through 236 shall be applied accordingly.

§ 2. After certified copies of the documents have been made, the documents shall be returned to the person who has submitted them or from whom they have been taken.

Article 164. In order to reconstruct the files, the court shall conduct proceedings, including evidence-taking proceedings as deemed necessary by the court. In particular, the court shall take into account entries in criminal records, registers of documents and other official books, sound or visual recordings, notes of recording clerks, judges, lay judges, state prosecutors and lawyers who have participated in the proceedings. The court may also hear as witnesses any participants of the proceedings whose files have been lost or destroyed or any other persons who may have knowledge regarding the contents of the files.

Article 165. § 1. The order on the reconstruction of the record of the case shall determine its scope or declare the impossibility of reconstruction.

§ 2. Such order shall be subject to interlocutory appeal.

Article 166. If the record of a case not validly concluded cannot be reconstructed or has been reconstructed only in part, the procedural actions shall be repeated to an extent necessary for the continuation of the proceedings.

Part V

EVIDENCE

Chapter 19

General provisions

Article 167. Evidence shall be taken upon a motion of the parties or.

Article 168. Facts commonly known shall not require proof; nor shall facts known , although the attention of the parties should be directed to these facts. It shall not exclude evidence to the contrary.

Article 169. § 1. An evidentiary motion shall identify the evidence and indicate what facts are to be proven. The manner of proving may also be indicated.

§ 2. An evidentiary motion may aim at the revealing of proper evidence or at its evaluation.

Article 170. § 1. An evidentiary motion shall be denied when:

1) the taking of such evidence is inadmissible,

2) the fact to be proven is either irrelevant to the resolution of the case, or has already been proven consistently with the allegations of the moving party, or

3) the evidence would be irrelevant to the establishment of the fact in question, or

4) it is impossible to take the evidence.

§ 2 An evidentiary motion cannot be denied by reason of previous evidence having been contradictory to the fact which the moving party now intends to prove.

§ 3 The denial of evidentiary motion shall be in the form of an order of the court.

§ 4. The denial of an evidentiary motion does not preclude later admission of evidence, even though no new circumstances have been disclosed.

Article 171. § 1. The examined person shall be granted the opportunity to express himself freely within the framework designated by the purpose of the action in question, and only afterward may he be examined in order to complete, elucidate, or verify the statement presented.

§ 2. Apart from the agency which conducts the examination, the parties, defence counsel, legal representatives and experts also have the right to examine. Questions are presented directly to the person under examination unless otherwise ordered by the agency.

§ 3. Questions suggesting an answer to the examined person shall not be allowed.

§ 4. It shall be inadmissible:

1) to influence the statement of the examined person through coercion or unlawful threat,

2) to apply hypnosis or chemical or technical means affecting the psychological processes of the examined person or aimed at influencing unconscious reactions of his organism in connection with the examination.

§ 5. The agency which conducts examination shall dismiss questions specified in § 3 as well as any questions which it finds irrelevant.

§ 6. Explanations of the accused, testimony or statements given or made under conditions precluding the possibility of free expressions, or obtained against the prohibitions specified in § 4, cannot constitute proof.

Article 172. The examined persons may be submitted to a confrontation in order to clarify contradictions. The confrontation is not allowed in the case specified under Article 184.

Article 173. § 1. The examined person may be shown another person, his picture or a material object to identify. The presentation shall be conducted in a way precluding suggestion.

§ 2 When necessary, the presentation of another person may be also be conducted in the manner precluding identification of the examined person, by the person identified.

§ 3 During the presentation the person presented for identification should be in a group comprising at least four persons.

§ 4 the Minister of Justice in consultation with the Minister of Internal Affairs and Administration will issue an ordinance setting forth the technical condition for conducting the presentation.

Article 174. The contents of documents and notes shall not be substituted as evidence for the explanations of the accused or for the testimony of witnesses.

Chapter 20

Explanations of the accused

Article 175. § 1. The accused is entitled to make statements. He may nevertheless, without giving reasons for so doing, refuse to answer particular questions or refuse to give explanations. He should be advised of this right.

§ 2. The accused present at evidentiary procedural actions is entitled to provide explanations regarding each piece of evidence.

Article 176. In the course of proceedings the accused shall be given the opportunity to provide explanations in writing, upon his request or that of his defence counsel. In such a case, the person who conducts the examination shall undertake means to prevent the accused from communicating with other persons during writing the explanations.

§ 2 The person who conducts the hearing may, for important reasons, refuse to permit the accused to provide explanations in writing.

§ 3 At the hearing, the court may exceptionally permit the accuse to provide explanations in writing. The provision of the second sentence of § 1 shall apply accordingly.

§ 4 The explanations of the accused, signed by him, with the date of submission indicated shall become annexes to the record. The explanations given this way at the first-instance hearing shall be read in court.

Chapter 21

WITNESSES

Article 177. § 1. Any person summoned as a witness is obligated to appear and testify.

§ 2. A witness who cannot comply with a summons by reason of illness, serious disability or any other insurmountable obstacle, may be heard at his place of stay.

Article 178. The following persons may not be examined in the capacity of witnesses:

1) defence counsel on facts communicated to him while he was giving legal advice or conducting the case, or

2) a priest on facts communicated to him in confession.

Article 179. § 1. Persons obligated to preserve a State secret may be examined as to the circumstances to which this obligation extends only if released from the obligation to preserve such secret by an authorised superior agency.

§ 2 Such a release may be refused only if the giving of evidence might result in serious damage to the State's interests.

§ 3 The court or the state prosecutor may apply to the appropriate State central administration agency requesting that a witness be released from the obligation to preserve a secret.

Article 180. § 1. Persons obligated to preserve an official secret, or secrets connected with their profession or office may refuse to testify as to the facts to which this obligation extends, unless they have been released by the court or the state prosecutor from the obligation to preserve such a secret.

§ 2 Persons obligated to preserve secrets such as lawyers, physicians or journalists, may be examined as to the facts covered by these secrets, only when it is necessary for the benefit of the administration of justice, and the facts cannot be established on the basis of other evidence. The court shall decide on examination or permission for examination. This order of the court shall be subject to interlocutory appeal.

§ 3 Releasing a journalist from the obligation to preserve a secret may not permit data to be released, enabling identification of the author of press enunciation, letter to the editor or other material of the same nature, as well as identification of persons imparting information published or passed to be published, if these persons reserved the right to keep the data secret.

§ 4 The provision of § 3 shall not apply, if the information regards the offence referred to in Article 240 § 1 of the Penal Code.

§ 5 The refusal of a journalist to disclose the data referred to in § 3, shall not exempt him from liability for an offence he committed by publishing information.

Article 181. § 1. In the cases described in Articles 179 and 180, such persons shall be examined at the trial in closed session.

§ 2. The Minister of Justice shall issue an ordinance setting forth the manner in which the record of testimony concerning circumstances, to which the obligation of preserving State, official and professional secrets extends, shall be kept.

Article 182. § 1. The next of kin of the accused may refuse to testify.

§ 2. The right to refuse to testify shall not expire, even though the marital or adoptive relationship has been dissolved.

Article 183. § 1. A witness may decline to answer a question, if such an answer might expose the witness himself or his next of kin to liability for an offence or a contravention.

§ 2. A witness may demand to be examined at the trial in closed session, if the contents of his testimony may expose him or his next of kin to disgrace.

Article 184. § 1. If there is a justified concern for safety of life, health, freedom or loss of property of considerable dimension regarding the witness or his next of kin, the court, and in the preparatory proceedings -- the state prosecutor, may issue an order classifying as secret the personal data of such witness.

§ 2 In the event that the order referred to in § 1 has been issued, the personal data of the witness shall be known exclusively to the court, the state prosecutor and, when necessary, to a police official who conducts the proceedings. Records of testimonies of the witness may be made available to the accused or his defence counsel only in the manner preventing identification of the witness.

§ 3 The witness shall be examined by the state prosecutor and by the court which may direct a judge from its composition to do so -- at a place and in a manner ensuring secrecy as to the identity of the witness.

§ 4 Examining the witness with the participation of the accused or the defence counsel may only be carried out under such conditions which prevent disclosure of the witness' identity.

§ 5 The court order on the matter of keeping the identity of the witness secret shall be subject to interlocutory appeal within three days. An interlocutory appeal against the order of the state prosecutor shall be decided by the court having jurisdiction over the case. The proceedings regarding the interlocutory appeal are kept secret. In the event that the interlocutory appeal has been granted, the record of the examination of the witness shall be destroyed and the note of it made in the file of the case.

§ 6 The Minister of Justice shall issue an ordinance setting forth:

1) the technical conditions for the examination of a witness whose personal data shall be kept secret,

2) the methods for making, preserving and providing access to records of testimonies including information about a witness whose personal data is kept secret, as well as an admissible method of referring to such testimonies in court decisions and pleadings.

Article 185. A person having a particularly close relationship to the accused may be exempted from the obligation to give testimony, if such a person applies for such an exemption.

Article 186. § 1. If a person entitled to refuse to give testimony or exempted pursuant to Article 185, declares his wish and intention to avail himself of this right no later than the commencement of his testimony at the trial before a court of the first instance, any testimony previously given by him cannot be used as evidence, or reproduced.

§ 2. The record on the examination of bodily injuries, prepared in criminal proceedings, shall be made public at the trial, even if the person examined has refused to furnish explanation or to give testimony, or has been exempted from so doing pursuant to Article 182 or 185.

Article 187. § 1. The pledge of the witness may be given only to the court or to a designated judge.

§ 2 The pledge shall be given by the witness before he commences to testify.

§ 3 The obligation to have a pledge given by the witness may be waived, if the parties present do not object.

Article 188. § 1. The witness shall give his pledge by repeating after the judge the following words: " Being fully aware of the significance of my words and of my responsibility before the law I solemnly promise to state the truth and not to conceal anything known to me."

§ 2 When a pledge is taken, all persons present including the judges, shall stand.

§ 3 Dumb and deaf persons shall give their pledge by signing text.

§ 4 A witness who has already given his pledge in the case, shall be reminded of his prior pledge upon any new examination by the court, unless the court finds it necessary to receive a second pledge.

Article 189. A pledge shall not be accepted:

1) from persons under the age of 17,

2)if there is good reason to suspect that the witness, by reason of mental disorder, does not understand the true significance of the pledge,

3) if the witness is suspected of the offence constituting the object of the proceedings or closely connected with act which is the object of proceedings, or if he has been duly sentenced for this offence, or

4) if the witness has been validly sentenced for giving false testimony or making false accusation.

Article 190. § 1. Before commencing the examination the court shall inform the witness of the penal liability for giving a false testimony.

§ 2. In the course of proceedings the witness shall sign a statement to the effect that he has been informed of this penal liability.

Article 191. § 1. The examination shall begin by the witness being asked his name and surname, age, place of residence, his criminal record for giving false testimony, and whether he is related, and how, to the parties.

§ 2 The witness should be warned of the contents of Article 182, and also of Articles 183 and 185, if any facts foreseen by these provision, are disclosed.

§ 3 If there is a justified concern for the possible use of violence or unlawful threat against a witness or his next of kin, in connection with his actions, he may restrict details regarding his place of residence to the exclusive knowledge of the state prosecutor or the court. The pleadings shall be then served at the institution where the witness is employed or at other address indicated by the witness.

Article 192. § 1. If the penal liability of the act committed depends on the health of the injured person, the latter shall not refuse examination of his body or medical examination, provided no surgical operation or observation at a health institution is involved.

§ 2. If there is any doubt as to the witness's mental condition, his intellectual development, or ability to perceive or recollect the things perceived, the court or the state prosecutor may rule that such a witness be examined with the aid of a medical expert or a psychiatrist and that witness cannot refuse this.

§ 3. Provisions of § 1 and 2 shall not apply to persons who have refused to testify or have been exempted from this obligation, pursuant to Article 182 § 1 and 2 or Article 185.

§ 4. If necessary for purposes of taking evidence, a consenting witness may be submitted to an examination of his body and to medical or psychological examination.

Chapter 22

Experts, interpreters and specialists

Article 193. § 1. If the determination of material facts having an essential bearing upon the resolution of the case requires some special knowledge, the court shall consult an expert or experts.

§ 2. A scientific or a specialised institution may also be called to give their opinion.

§ 3. In the event that experts of various specialized fields have been appointed, the agency conducting the trial which appointed the experts shall decide whether they should carry out their research jointly and submit one opinion or separate opinions.

Article 194. A decision on the taking of this type of evidence shall be issued in the form of an order which should designate:

1) name(s) and surname(s) and specialties of the expert or experts, and in the case of opinions given by institutions, when necessary, the specialties and qualifications of persons who should take part in preparing the expert opinion,

2) the object and scope, and, when necessary, a list of specific questions

3) the time-limit for filing the expert opinion.

Article 195. In addition to the permanent court experts, any person generally recognised to have sufficient knowledge in a particular field, shall be obligated to act as an expert.

Article 196. § 1. The following persons cannot be appointed to act as experts: persons listed in Articles 178, 182 and 185, persons to whom the grounds for disqualification enumerated in Article 40 § 1 subsections (1),(2),(3) and (5) are applicable, persons summoned to appear in the capacity of witnesses in the case, and persons who witness the act in question.

§ 2 If any reason for disqualification of an expert referred to in § 1 comes to light, the expert opinion provided by him shall not be regarded as evidence, and another expert shall be appointed in his place.

§ 3 If any fact which might cast doubt upon the appointed expert's reliability or impartiality is disclosed, another expert shall be appointed.

Article 197. § 1. The expert shall give a pledge which reads as follows: "Being fully aware of the significance of my statement and of my responsibility before the law, I solemnly promise to perform the duties entrusted to me impartially and according to my conscience."

§ 2 A court expert shall make reference to his prior pledge when he has been appointed in such a capacity.

§ 3 Articles 177, 179-181, 187, 188 § 2 and 4, Article 190 and Article 191 § 2 and 3 shall be applied to experts accordingly.

Article 198. § 1. If necessary, the expert will be shown the court files pertaining to the case and summoned to participate in the taking of evidence.

§ 2 The agency conducting the trial may reserve the right to be present at conducting of some or all the studies by the expert provided, that the attendance shall not adversely influence the result thereof.

§ 3 When necessary, the agency conducting the trial may amend the scope or the list of questions, and put additional questions.

Article 199. Statements of the accused, regarding the alleged act, made to an expert or to a physician providing medical aid may not be regarded as evidence.

Article 200. § 1. Depending on the instruction from the agency conducting the trial, the expert shall state his opinion orally or in writing.

§ 2. The opinion should include:

1) the expert's name and surname, scientific degree, specialty and post held in the profession,

2) the names and surnames and the remaining data of persons who have participated in preparing it, with an indication of the actions carried out by each of the persons,

3) in the case of opinions from institutions -- the full name and place of the institution,

4) the dates of the studies and the date of issuance of the opinion,

5) the report of actions carried out, and findings and conclusions drawn therefrom,

6) the signatures of all the experts who have participated in its preparation.

§ 3. Persons participating in the preparation of the opinion may be summoned, if necessary, to appear in the capacity of experts, and persons who have participated only in the tests -- in the capacity of witnesses.

Article 201. If the opinion issued is incomplete or unclear, contains a contradiction in itself, or opinions on the same matter are contradictory, the same experts may be recalled, or other experts may be appointed.

Article 202. § 1. At least two expert psychiatrists shall be appointed by the court, and in the preparatory proceedings by the state prosecutor, to deliver an opinion on the mental state of the accused.

§ 2 Upon a motion from the psychiatrists, expert or experts of other specialties are appointed to participate in preparing an opinion.

§ 3 The experts may not be relatives by marriage or by any other ties which might cast doubt upon their independence,

§ 4 The opinion of the psychiatrists should include statements on both the accountability at the time of committing an act, and also the state of mental health and the capacity to participate in the proceedings, and, when necessary, on the circumstances referred to in Article 93 of the Penal Code.

Article 203. § 1. If the experts motion about such a necessity, psychiatric examination of the accused may be combined with observation conducted at a health establishment.

§ 2 Such an examination shall be decided by the court or state prosecutor specifying the place for such an observation. In the preparatory proceedings, the court shall decide upon a motion from the state prosecutor.

§ 3 Observation at a medical establishment should not be for a period exceeding six weeks; if, however, the authorities of the establishment so motion, the court may extend this time-limit for a period necessary for the completion of the observation. The experts shall immediately notify the court of the completion of the observation.

§ 4 The orders contemplated by § § 2 and 3 shall be subject to interlocutory appeal.

Article 204. § 1. An interpreter shall be summoned whenever it is necessary to examine:

1) a deaf or dumb person, with whom attempts at communicating with in writing have not sufficed,

2) a person without a command of Polish.

§ 2 An interpreter shall also be summoned whenever it is necessary, to translate into Polish a document written in a foreign language, or to translate a Polish document into a foreign language.

§ 3 Provisions relating to court experts shall be applied to interpreters accordingly.

Article 205. § 1. Whenever the conducting of inspections, experiments, expert appraisals, seizure of material objects or searching requires technical actions, such as taking measurements, calculations, photographs, or preserving traces, specialists may be called on to participate.

§ 2 A specialist who is not an official of the agency which conducts the trial, prior to commencing the action may be required to give a pledge which reads as follows: "Being fully aware of the significance of my actions and of my responsibility before the law, I solemnly promise to perform the duties entrusted to me impartially and according to my conscience."

§ 3 The record of the action conducted with the participation of specialists should specify the names and surnames, specialties, places of employment and posts held, as well as the type and scope of actions carried out by each of the persons.

Article 206. § 1. Provisions relating to court experts shall be applied to specialists accordingly, except Articles 194, 197, 200 and 202.

§ 2. Specialists may be summoned, if necessary, to appear in the capacity of witnesses.

Chapter 23

View and bodily examination. Autopsy. Experiment during the proceedings

Article 207. § 1. If necessary, a place, person, or material object shall be submitted to view (or bodily examination in the case of a person).

§ 2. If during testing, a material object might be damaged or destroyed, all efforts should be made to preserve at least part of such an object intact and, if this not feasible, it should be preserved in some other manner.

Article 208. A view or bodily examination which may offend the modesty of the person examined, should be conducted by a person of the same sex, unless this involves some special difficulties; a person of the opposite sex may be present during the examination only in exigent circumstances.

Article 209. § 1. If it in suspected that death has been caused by criminal means, an examination of the corpse and an autopsy shall be ordered.

§ 2 An examination of the corpse shall be conducted by a state prosecutor, and, in court proceedings -- the court, with the participation of a physician who is whenever possible a specialist in forensic medicine. In cases not amenable to delay, the examination is done by the Police with an obligation to notify the state prosecutor without delay.

§ 3 The examination of the corpse shall be done at the place of its discovery. Before the arrival of an expert, a state prosecutor or the court, the corpse may be moved or relocated only in exigent circumstances.

§ 4 An autopsy should be made by an expert with the state prosecutor or the court present. In court proceedings, the provisions of Article 396 § 1 and 4 shall apply accordingly.

§ 5 If necessary, a physician who has recently treated the deceased may be summoned to be present at the examination of the corpse and the autopsy, in addition to the court expert. The expert shall then prepare an opinion about the examination and autopsy in accordance with the requirements of Article 200 § 2.

Article 210. In order to conduct an examination of the corpse or an autopsy, a disinterment (exhumation) may be ordered by the state prosecutor or the court.

Article 211. In order to verify circumstances of essential relevance to the case, an experiment during the proceedings may be undertaken as an experiment, or the course of events under examination may be reconstructed in whole or in part.

Article 212. In the course of an examination or an experiment, obtaining testimonies and other evidentiary actions may be conducted.

Chapter 24

Inquiry within the community and investigating the person of the accused

Article 213. § 1. The following data concerning the accused should be established in the course of the proceedings: identity, age, family and financial status, educational status, profession, employment and his sources of income.

§ 2 If the suspect has been previously validly sentenced, a copy or an excerpt from the judgement with its statement of reason if the latter was recorded, shall be appended to the files of the case, as well as the data on the serving of the sentence. If, however, this should prove insufficient, particularly for establishing whether the offence was committed under the conditions specified in Article 40 of the Penal Code, the records of previous cases and the opinions (testimonials) issued by correctional, educational and penal establishments in which he was committed, shall be appended.

§ 3 The Minister shall issue an ordinance determining the mode of registering the persons listed in § 2 as well as the method for collecting the data mentioned in this provision, and the agencies obligated to carry out these actions.

Article 214. § 1. The court, and in the course of the preparatory proceedings -- the state prosecutor or the Police, shall order the conducting of the community inquiry about the accused, by a professional court probation officer.

§ 2. The conducting of the inquiry in the community is compulsory:

1) for the accused who, at the time of committing a crime was younger than 21 years of age,

2) if there are justified doubts as to the accountability of the accused;

3) in a case on an intentional offence against life,

§ 3. The result of the inquiry within the community should include:

1) the name and surname of the probation officer who has conducted the inquiry,

2) the name and surname of the accused,

3) a brief account of the life of the accused up until the present and detailed information about the community where he lives, particularly his family, school or occupational environment,

4) the probation\ officer's own findings and conclusions.

§ 4 The data of persons who provided information during the inquiry within the community shall be disclosed by the probation officer only if so demanded by the court, and in the preparatory proceedings -- by the state prosecutor.

§ 5 Persons who provided information during the inquiry within the community may, when necessary, be examined in the capacity of witnesses.

§ 6 Whenever necessary, the Police shall be obligated to assist the probation officer in the conducting the inquiry with in the community.

§ 7 The Minister of Justice shall issue an ordinance setting forth the regulation, covering the actions by the court probation officer in conducting the inquiry within the community, and the specimen form for such an inquiry.

§ 8 Provisions on the disqualification of judges apply accordingly to a curator appointed to conduct the inquiry within the community. This matter is decided by the court, and in the preparatory proceedings -- by the state prosecutor.

Article 215. Whenever necessary, the court, and in the preparatory proceedings -- the state prosecutor, may order an examination of the accused by expert psychologists or physicians, in accordance with the rules stipulated in Article 74.

Article 216. Persons that conducted the inquiry may, when necessary, be examined in the capacity of witnesses.

Chapter 25

Seizure of objects and searches

Article 217. § 1. Objects which may serve as evidence, or be subject to seizure in order to secure penalties regarding property, penal measures involving property or claims to redress damage, should be surrendered when so required by the court, the state prosecutor, and in cases not amenable to delay, by the Police or other authorised agency.

§ 2 A person holding the objects subject to surrender shall be called upon to release them voluntarily, but in the event of refusal, the seizure may be effected.

§ 3 If the surrender is demanded by an agency other than the state prosecutor, it shall produce to the holder of the objects liable to surrender, an order of the court or of the state prosecutor or, if it has not been possible to obtain the order prior to seizure, a

warrant from the chief of unit, or an official identity card. The agency should then apply without delay, to the court or the state prosecutor for approval of the seizure of the objects. The holder shall be served, within 7 days of the seizure of the objects, an order of the court or the state prosecutor authorising the action.

§ 4 A psychiatric dossier shall be surrendered only to the court or the state prosecutor.

Article 218. § 1. Offices, institutions and entities operating in post and telecommunications fields, customs houses, and transportation institutions and companies, shall be obligated to surrender to the court or state prosecutor upon demand included in their order, any correspondence or transmissions significant to the pending proceedings. Only the court and a state prosecutor shall be entitled to inspect them or to order their inspection.

§ 2. The announcement of the order referred to in § 1, may be adjourned for a prescribed period, necessary to promote the proper conduct of the case.

§ 4. Correspondence and transmissions irrelevant to the criminal proceedings should be returned to the appropriate offices, institutions or companies as set forth in § 1, without delay.

Article 219. § 1. A search may be made of premises and other places in order to detect or detain a person or to ensure his compulsory appearance, as well locate objects which might serve as evidence in criminal proceedings, if there is good reason to suppose that the suspected person or the objects sought are to be located there.

§ 2. A search of a person, his clothing and objects at hand, may also be carried out in order to find the objects referred to in § 1, under the conditions set forth in the provision.

Article 220. § 1. A search may be conducted by the state prosecutor, or, a with warrant issued by the court or state prosecutor, by the Police, and, also in cases specified in law, by another agency.

§ 2. The person on whose premises the search is to be conducted should be presented with a warrant issued by a court or state prosecutor.

§ 3. If the court's or state prosecutor's warrant cannot be issued, Article 217 § 3 shall apply accordingly in cases not amenable to delay.

Article 221. § 1. Searches of occupied premises shall be conducted at night only in cases not amenable to delay; "night" shall be the period from 9 p.m. to 6 a.m.

§ 2 A search commenced by day may be continued into the night.

§ 3 A night search may be conducted on premises that are at the time open to the public, or used for the storage of goods.

Article 222. § 1. If a search is to be made of the premises or a closed place of a State or local government agency, the head of such an institution or his deputy, or the relevant agency of control shall be notified and permitted to be present at the search.

§ 2. A search of military premises shall be conducted only in the presence of the commanding officer or a person designated by him.

Article 223. Searches of person and clothing are to be conducted, as far as possible, by a person of the same sex as the person searched.

Article 224. § 1. A person on whose premises the search is to be conducted, shall be notified before the commencement of the search of its objective and summoned to surrender the objects sought.

§ 2 A person referred to in § 1 has the right to be present at the search, in addition to the person designated for that purpose by the person conducting the search. Furthermore, the search may be attended by a person designated, by the occupant of the premises searched, provided that this will not seriously obstruct the search, or render it impossible.

§ 3 In the event that the search is made in the absence of the owner of the premises, at least one adult member of the household or neighbour shall be called in to attend the search.

Article 225. § 1. If the head of a State or local government institution subject to search or the person from whom objects have been seized, or whose premises are searched, declares that a writing or other document surrendered or discovered during the search, contains information relating to State, official, professional or other secrets protected by law, or that this information is of a personal nature, those conducting the search shall immediately transmit such writing or other document without prior reading, to the state prosecutor or the court, in a sealed container.

§ 2 The procedure described in § 1 shall not apply to writings and other documents relating to official, professional or other secrets protected by law if they are in the possession of a person suspected of an offence, nor to writings and other document of a personal nature of which such person is an owner, author or addressee.

§ 3 If a defence counsel or other person of whom surrendering objects is demanded, or whose premises are searched, declares that writings or other documents discovered in the course of a search, relate to facts connected with the performance of the function of the defence counsel, the agency conducting the actions shall leave these documents with such person, without ascertaining their contents or appearance. When the declaration of a person not being a defence counsel gives rise to doubts, the agency conducting the actions shall transmit the documents, in accordance with the requirements set forth in § 1 to the court. Having acquainted itself with the documents, the court shall return them all or in part, in accordance with requirements set forth in § 1, to the person from whom they were taken, or issue an order for their seizure for the purposes of the proceedings.

Article 226. In matters regarding the using of documents containing State, official or professional secrets as evidence in criminal proceedings, the prohibitions and limitations set forth in Articles 178-181 shall apply accordingly.

Article 227. Searching or seizing objects shall be conducted in accordance with the objective of the action, with moderation and respect for the dignity of the persons to whom the action relates, and without unnecessary damage or hardship.

Article 228. § 1. Material objects surrendered or discovered during a search, after being viewed and recorded, shall be seized or deposited with a trustworthy person who shall be notified of his duty to present them whenever so required, by the agency conducting the proceedings.

§ 2 Similar action should be taken concerning objects discovered during a search which may constitute evidence of some other offence, or are subject to forfeiture, or the possession of which is prohibited by law.

§ 3 Persons concerned shall be given without delay a receipt specifying the objects seized, and the identity of the persons performing the seizure;

Article 229. The record of objects seized or of the search should include, apart from the requirements set forth in Article 148, the designation of the case with which the objects seized or the search have been connected, and should specify the precise time of the beginning and the end of the action, detailed list of the objects seized and, when needed, their description, and also an indication of the warrant of the court or state prosecutor. If the warrant has not been issued before the action, the record shall contain a note advising a person in whose premises the action has been conducted, that an order regarding the approval of action will be served.

Article 230. § 1. If the seizure of objects or search was without a prior warrant issued by the court or state prosecutor, and no order approving the action has been issued, the objects seized shall be returned to the authorised person.

Article § 2. Material objects, as soon as they are deemed unnecessary for the purposes of the criminal proceedings shall be returned to the authorised person. If there is a dispute as to the right of the possession of the objects, and no grounds for immediate solution can be found, the interested parties will be referred to the process under civil law.

§ 3. The objects, possession of which is prohibited should be transmitted to the appropriate bureau or institution.

Article 231. § 1. If the person to whom a given material object seized should be released cannot be ascertained, such an object shall be deposited with the court or with a trustworthy person until the right to the possession thereof has been clarified. Provisions on the escheat of deposits and unclaimed objects shall be applied accordingly.

§ 2. Material objects of artistic or historic value shall be deposited with an appropriate institution.

Article 232. § 1. Material objects which are perishable or the storage of which would entail unreasonable expense or excessive hardship or would significantly impair the value of the object, may be sold without an auction, by means of an appropriate trading unit. The provisions applicable to sales resulting from the execution against chattels should be applied.

§ 2 The proceeds of such a sale shall be deposited with the court.

§ 3 All persons concerned including the accused should be notified, if possible, of the time and circumstances of such a sale.

Article 233. When depositing Polish or foreign currency, the depositing agency shall indicate the nature of the deposit and the manner in which it should be disposed.

Article 234. Dispositions of the material object after it has been seized or secured shall be without effect on the State Treasury.

Article 235. During the court proceedings, the determinations and actions shall be undertaken by the court, or in the preparatory proceedings -- by the state prosecutor, unless provided otherwise by law.

Article 236. Orders regarding search and seizure shall be subject to interlocutory appeal by a person whose rights have been violated.

Chapter 26

Surveillance and recording conversations

Article 237. § 1. After the proceedings have started, the court, upon a motion from the state prosecutor may order surveillance and recording of the content of telephone conversations, in order to detect and obtain evidence for the pending proceedings or to prevent a new offence from being committed.

§ 2 In cases not amenable to delay, the surveillance and recording of conversations may be ordered by the state prosecutor who is, however, obligated to obtain an approval for the order from the court within 5 days.

§ 3 The surveillance and recording of the content of telephone conversations is allowed only when proceedings are pending or a justified concern exists, about the possibility of a new offence being committed regarding:

1) homicide,

2) causing a danger to the public or causing a catastrophe,

3) trade in humans or white slavery,

4) the abduction of a person,

5) the demanding of a ransom,

6) the highjacking of an aircraft or a ship,

7) robbery or robbery with violence,

8) the attempt against the sovereignty or independence of the State,

9) the attempt against the constitutional order of the State or on its supreme agencies, or against a unit of the Armed Forces of the Republic of Poland,

10) spying or disclosing a State secret,

11) amassing weapons, explosives or radioactive materials,

12) the forging of money,

13) the drug trafficking,

14) organised crime group,

15) property of significant value,

16) the use of violence or unlawful threats in connection with criminal proceedings.

§ 4 Surveillance and recording of the contents of telephone conversations shall be permitted with regard to a suspected person, the accused, and with regard to the injured person or other person whom the accused may contact or who might be connected with the perpetrator or with a threatening offence.

§ 5 Offices, institutions and entities operating in the post and telecommunications fields shall be obligated, to facilitate the execution of an order from the court or state prosecutor, regarding the surveillance of telephone conversations, and to ensure that the conducting such a surveillance is registered.

§ 6 Only the court and a state prosecutor shall be entitled to play the recordings, and in cases not amenable to delay, the Police with the approval of the court or state prosecutor.

§ 7 Only the court shall have the right to acquaint itself with the register of telephone conversation surveillance, and in the course of proceedings -- the state prosecutor.

Article 238. § 1. The surveillance and recording telephone conversations may be conducted for a period not exceeding 3 months, with a possibility to extend, in particularly justified cases, for a period not exceeding a further 3 months.

§ 2 The surveillance should be ended without delay after the reasons listed in Article 237 § 1 through 3 have ceased to exist, and no later, than with the expiration of the period for which it was introduced.

§ 3 After the surveillance has been completed, the court orders the destruction of the recordings when they have no relevance to the criminal proceedings; the destruction of the recordings shall also take place when the court has not approved the order by the state prosecutor referred to in Article 237 § 2.

Article 239. The announcement of the order to conduct surveillance and recording of telephone conversations to the person concerned, may be adjourned for a period necessary to promote the proper conduct of the case but not beyond the valid conclusion of the case.

Article 240. Orders for surveillance and recording of telephone conversations shall be subject to interlocutory appeal. The appeal against the order of the state prosecutor is considered by the court.

Article 241. The provisions of this chapter shall apply respectively to surveillance and recording by technical means, of the content of information transmissions other than telephone conversations.

Article 242. The Minister of Justice in consultation with the Ministers: of Posts and Telecommunications, of National Defence, and the Minister of Internal Affairs and Administration shall issue an ordinance setting forth the method for the technical preparation of the telecommunication network and the method for making, registering, storing and destroying recordings of the taped telephone conversations.

Part VI

Coercive measures

Chapter 27

Arrest

Article 243. Any one has the right to apprehend a person caught in the act of committing an offence, or seized in a pursuit undertaken directly following the commission of an offence, if it is feared that such person may go into hiding or if his identity cannot be established.

§ 2. The apprehended person should be surrendered to the Police without delay.

Article 244. § 1. The Police shall be authorised to arrest a suspected person if there is good reason to suppose that he has committed an offence, and it is feared that such a person may go into hiding or destroy the evidence of his offence or if his identity could not be established.

§ 2 The arrested person shall be informed immediately about the reasons for his arrest and his rights and his explanations shall be heard.

§ 3 A record of the arrest shall be made in which the following should be included: the name, surname and position of the person conducting the action, the name and surname of the arrested person, and in the event that identity of the arrested person could not be established, a description of the said person, and the day, hour, place and reason for the arrest, and act for which he is suspected. The statements by the arrested person should also be recorded and the fact noted that he has been reminded of his rights. The copy of the record shall be served on the arrested person.

§ 4.. As soon as possible after the arrest of the suspected person, the measures necessary for the collection of essential information should be taken; and, in the event that the grounds referred to in Article 258 § 1 through 3 occur, a motion to the state prosecutor should be made, requesting him to obtain a preliminary detention order from the court.

Article 245. § 1. The arrested person, upon his demand, shall be given the opportunity to contact a lawyer by any means available, and also to talk directly with the latter. The person who made the arrest may reserve the right to be present when such a conversation takes place.

§ 2. The provisions of Article 261 § 1 and 3 shall apply accordingly, but the notification shall be effected upon the demand from the arrested person.

Article 246. § 1. The arrested person shall have the right to lodge an interlocutory appeal with the court. In this appeal the arrested person may request an examination of the grounds and legality of his arrest and the correctness thereof.

§ 2 The interlocutory appeal shall be immediately referred to the district court having jurisdiction for the place of arrest, which shall examine the matter immediately.

§ 3 In the event that the arrest has been found to be unjustified or illegal, the court shall rule the immediate release of the arrested person.

§ 4 In the case of finding lack of justification or illegality of the arrest or serious irregularities in the conduct thereof, the court shall notify the state prosecutor and the agency in control of the agency which made the arrest.

§ 5. A joinder of interlocutory appeals against arrest and preliminary detention may be examined together.

Article 247. § 1. The court or the state prosecutor may issue a ruling providing for the arrest and compulsory appearance of a suspected person. A search may be ordered for this purpose. Articles 220 through 222 and 224 shall be applied accordingly.

§ 2 The provisions of Article 246 shall apply accordingly to the arrest referred to in § 1, but the arrest ruled by the court shall not be subject to interlocutory appeal.

§ 3 The rulings regarding the arrest and compulsory appearance of a soldier in active service shall be carried out by the appropriate military authorities.

Article 248. § 1. The arrested person should be released without delay after the reasons for his arrest have ceased to exist, and also when he has not been handed over to the court, within 48 hours of his arrest by an authorised agency, together with a motion to apply preliminary detention; he shall also be released upon an order from the court or state prosecutor.

§ 2 If, within forty-eight hours of the handing over the arrested person to the court ″ a copy of the order for his preliminary detention has not been served on him, he shall be released.

§ 3 Re-arresting the suspected person on the grounds based on the same facts and evidence shall be inadmissible.

Chapter 28

Preventive measures

Article 249. Preventive measures may be applied in order to secure the proper conduct of the proceedings, and exceptionally, to prevent a new serious offence from being committed by the accused. It may be applied only if the evidence collected indicates a high probability that he has committed an offence.

§ 2 In the preparatory proceedings, preventive measures may only be applied to a person for whom an order on the presentation of charges has been issued.

§ 3 Before a preventive measure is applied, the court or the state prosecutor applying the measure shall examine the accused, unless it is not possible due to the latter being in hiding or abroad. The defence counsel retained should be admitted to be present if he has appeared; although notifying the defence counsel of the date of examination is not obligatory, unless requested by the accused provided that it does not render the action difficult.

§ 4 Preventive measures may continue until the commencement of serving the sentence. This provision shall only apply to the preliminary detention in the event of sentencing to the deprivation of liberty.

§ 5 Defence counsel shall be notified of the date of the court session, regarding the extension of the preliminary detention and examining the interlocutory appeal against the application or extension of this preventive measure. A failure to appear by a defence counsel who has been properly notified of the date shall not prevent the examination of the case

Article 250. § 1. Preliminary detention may only occur on the basis of an order from the court.

§ 2 Preliminary detention shall be applied in the course of proceedings, upon a motion from the state prosecutor, by the district court in the district where proceedings are pending, and in cases not amenable to delay, by another district court. After an indictment has been filed, a preliminary detention shall be applied by the court before which the proceedings are pending.

§ 3 The state prosecutor, sending the motion referred to in § 1 together with the files of the case, shall, at the same time, order the suspect to be brought to court.

§ 4 Other preventive measures shall be applied by the court and, also in the course of proceedings by the state prosecutor.

Article 251. § 1. The order on the application of a preventive measure shall contain the name of the person, the act imputed, its legal qualification, and the legal basis for the application of such a measure.

§ 2 The order of preliminary detention should set forth the duration of the preliminary detention and designate the time-limit of the detention.

§ 3 The justification for the order on the application of a preventive measure, shall present evidence demonstrating that the accused committed an offence, and refer to the facts indicating the existence of grounds necessitating the application of a preventive measure. In the case of the preliminary detention it should be further explained why applying other preventive measures has been regarded as insufficient.

Article 252. § 1. The order on preventive measures shall be subject to interlocutory appeal pursuant to general provisions, except in the case referred to in § 2.

§ 2 An order of the state prosecutor for a preventive measure shall be subject to interlocutory appeal to the district court before which the proceedings are pending.

§ 3 An interlocutory appeal from an order on preventive measure shall be examined without delay.

Article 253. A preventive measure shall immediately be revoked or amended if its basis has therefor ceased to exist, or new circumstances arise which justify the revoking, or its amendment.

§ 2. The preventive measure applied by the court may also be, in the course of proceedings, revoked or amended to a milder measure by the state prosecutor.

Article 254. The accused may at any time move to have a preventive measure revoked or amended; such a motion shall be resolved by the state prosecutor not later than three days after filing; or, if the indictment has already been filed, by the court before which the case is pending. The order of the court deciding on the motion shall not be subject to the interlocutory appeal, and in the event that interlocutory appeal has been filed against the order of the the state prosecutor, the provision of Article 252 § 2 shall not apply.

Article 255. The fact that the proceedings have been suspended, shall not restrict a decision on preventive measures.

Article 256. The court, and in the preparatory proceedings -- also the state prosecutor, shall supervise the arrest and the proper execution of preventive measures.

Article 257. § 1. Preliminary detention shall not be applied if another preventive measure is sufficient.

§ 2. In applying temporary detention the court may reserve that the measure will be amended when an agreed bail is posted with the court within the prescribed time-limit.

Article 258. § 1. Preliminary detention may occur if:

1) there is good reason to fear that the accused may take flight or go into hiding, particularly if he has no permanent residence in this country or when his identity cannot be established or

2) there is good reason to fear that the accused would induce other persons to give false testimony or attempt to obstruct the criminal proceedings in some other manner.

§ 2 If the accused has been charged with a crime or with a misdemeanour carrying the statutory maximum penalty of deprivation of liberty of a minimum of 8 years, or if the court of the first instance sentenced him to a penalty of deprivation of liberty of no less than 3 years, the need to apply the preliminary detention in order to secure the proper conduct of proceedings may be justified by the severe penalty threatening the accused.

§ 3 Preliminary detention may also occur, in exceptional cases when there is good reason to fear that the accused charged with a crime or an intentional misdemeanour would commit an offence against life, health or public safety, particularly if he threatened to commit such an offence.

§ 4. Provisions of § 1 through 3 shall apply accordingly to the remaining preventive measures.

Article 259. If there are no special reasons to the contrary, preliminary detention should be waived, particularly if depriving the accused of his liberty:

1) might seriously jeopardise the life or health of the accused, or

2) would entail an excessive burden on the accused or his next of kin.

§ 2 Preliminary detention shall not be applied when the facts of the case permit presumption that the court will sentence the accused to the penalty of deprivation of liberty with conditional suspension of its execution, or to a milder penalty, or that the term of preliminary detention would exceed the expected sentence of deprivation of liberty without a conditional suspension.

§ 3 Preliminary detention cannot be imposed, if the offence carries the penalty of deprivation of liberty not exceeding one year.

§ 4 The restrictions referred to in § 2 and 3 shall not apply if the accused has remained in hiding, persistently failed to appear when summoned or when his identity cannot not be established.

Article 260. If the state of health of the accused so requires, preliminary detention may only assume the form of committing the accused to a suitable medical establishment.

Article 261. § 1. The court shall be obligated to promptly notify the next of kin of the accused, that preliminary detention has been imposed; this may be a person indicated by the accused..

§ 2. On a motion of the accused, another person may be notified, instead of, or in addition to the person indicated in § 1.

§ 3. The court shall be obligated to promptly notify the employers or the school or higher educational establishment, or, in the case of a soldier his commanding officer, of the imposition of preliminary detention.

Article 262. § 1. A court which imposes preliminary detention shall be obligated to:

1) notify the guardianship court, if it is necessary to ensure the custody of the children of the detainee,

2) notify the social welfare authority, if care is needed for a disabled or ailing person who formerly was under the care of the detainee, and

3) take all measures necessary to protect the property and residence of the detainee.

§ 2. The detainee should be informed of the measures taken and rulings issued.

Article 263. § 1. In the course of proceedings, the court applying preliminary detention shall designate a period not exceeding three months.

§ 2. If in view of the special circumstances of the case, the preparatory proceedings cannot be completed within the time-limit specified in § 1, preliminary detention while the investigation is pending may be extended on a motion from the state prosecutor, if necessary:

1) by the court having jurisdiction over the case for up to six months,

2) by a court of a higher level than that having jurisdiction over the case for an additional prescribed period, necessary for the completion of the preparatory proceedings, which may not, however, exceed twelve months.

§ 3. The combined period for applying preliminary preceding the first sentence by the court of the first instance may not exceed two years.

§ 4. The extension of applying preliminary detention over the periods specified in § 2 and 3, may be made only by the Supreme Court on a motion from the court before which the case is pending, and in the course of proceedings on a motion from the Attorney General. This can be done if deemed necessary in connection with a suspension of criminal proceedings, prolonged psychiatric observation of the accused, prolonged preparation of an opinion of an expert, conducting evidentiary action in a particularly intricate case or conducting them abroad, intentional protraction of proceedings by the accused, and also other important obstacles whose removal has not been possible.

§ 5. A motion for the extension of preliminary detention should be filed, at the same time as the files of the case are referred to the court of jurisdiction, and not later than 14 days prior to the expiry of the time-limit so far prescribed for the application of the measure.

Article 264. § 1. In the event that the accused is acquitted; or the proceedings are discontinued or conditionally discontinued; or the imposition of the penalty is conditionally suspended; or the imposition of a penalty of deprivation of liberty corresponding at most to the period of preliminary detention, or a shorter term of deprivation of liberty, or if the court refrains from imposing a penalty, the discharge of the detainee shall be ordered without delay, unless he has been detained in connection with some other criminal case.

§ 2. In the event that the accused detainee is sentenced to a penalty other than that specified in § 1, the court, after hearing the parties present, shall issue an order regarding the further application of the preliminary detention.

§ 3. If the proceedings have been discontinued by reason of the insanity of the accused, preliminary detention may be maintained until the valid conclusion of the proceedings on the matter of a preventive measure.

Article 265. The term of preliminary detention shall be computed from the day of arrest.

Article 266. § 1. Bail stated in monetary terms, in the form of cash, securities, a bond, or a mortgage may be deposited by the accused or another person.

§ 2. The amount, kind and conditions of the bail, and particularly the time-limit for depositing, shall be specified in the order, with due regard to the financial circumstances of the accused and the person posting bail, the gravity of the damage caused and the character of the act committed.

Article 267. A person posting bail shall be notified on each occasion that the accused is summoned to appear. Articles 138 and 139 § 1 shall be applied accordingly to a person posting bail for the accused.

Article 268. § 1. The property and obligations which constitute bail shall be subject to forfeiture or collection if the accused takes flight or goes into hiding. If the course of the criminal proceedings is otherwise hindered, such property may be subject to forfeiture or collection pursuant to an appropriate decision.

§ 2. The person posting bail should be notified of the content of § 1 hereof and of Article 629.

Article 269. § 1. The property or sum of money constituting bail which has been forfeited or collected, shall be transferred or paid in to the State Treasury; the injured person shall then have priority in satisfying his claims resulting from the offence, if damages cannot be redressed by other means.

§ 2 If bail ceases to be necessary, the property constituting the same and the sum of money pledged shall be released; if, however, the accused is sentenced to a deprivation of liberty, bail shall be withdrawn only after he has begun serving his sentence. If the accused fails to appear to serve his sentence, Article 268 § 1 shall be applied.

§ 3 The withdrawal of bail shall become effective only with the acceptance of other bail, the imposition of another preventive measure, or the waiver of the relevant preventive measure.

§ 4 The provisions of § 2 and 3 shall not apply to the withdrawal of bail and to the return of the security, if the order on forfeiture of bail or on the collection of the sum pledged, has been issued.

Article 270. § 1. The forfeiture of the property constituting bail or the collection of the sum pledged shall be ordered by the court before which the proceedings are pending; or

in the preparatory proceedings, by the court having jurisdiction over the case, on the motion of the state prosecutor.

§ 2 The accused and the person posting bail shall have the right to participate in the court session or to file written statements. An accused deprived of liberty shall be brought to such session if the president of the court or the court itself consider it necessary.

§ 3 The order described in § 1 shall be subject to interlocutory appeal.

Article 271. § 1. A guaranty may be given by the managers of the plant, office, school or higher education establishment of which the accused is an employee or student, or by a community organisation of which he is member, on the motion of such persons. Such a guaranty shall state that the accused will appear whenever summoned and will not obstruct the course of the proceedings; if the accused is a soldier, such guaranty may be taken from the relevant collective of soldiers, declared through its commanding officer.

§ 2 The collective or social organisation concerned shall append to the motion requesting that guaranty be accepted, an excerpt from the minutes of such a body stating the decision or resolution on furnishing guaranty.

§ 3 The motion requesting that guaranty be accepted should indicate the person who will undertake the duties of the guaranty-provider. Such a person shall make a statement to the effect that he accepts such duties.

Article 272. A guaranty to the effect that the accused will appear whenever summoned and that he will not obstruct the course of the proceedings, may also be accepted from any trustworthy person.

Article 273. § 1. When a guaranty is accepted, the guaranty-provider should be notified of the contents of the charge against the accused, of his duties resulting from the giving of this guaranty and the possible effects in the event of his failure to discharge the same.

§ 2. The guaranty-provider shall be obligated to inform the court or state prosecutor immediately, if it should come to his knowledge that the accused is trying to avoid his duty to appear when summoned or to obstruct the course of the proceedings in some other way.

Article 274. If despite the guaranty the accused fails to appear when summoned or obstructs the proceedings in some other manner, the agency which has imposed the preventive measure shall so notify the guaranty-provider. In addition, the agency may notify his immediate superior as well as the community organisation of which he is a member, and the agency in control of the plant, office, or community organisation which had given the guaranty, if it is ascertained that a dereliction of the duties arising from the giving of the guaranty has occurred. Before sending such notice, the guaranty-provider should be summoned to give an explanation.

Article 275. § 1. As a preventive measure, the accused may be committed to the surveillance of the Police and, if the accused is a soldier, to the surveillance of the soldier's commanding officer.

§ 2. A person under surveillance shall be obligated to comply with the conditions set forth in the order of the court or state prosecutor. These obligations may consists in the prohibition of absenting himself from a designated area of residence, in his having to report to the agency under the surveillance of which he remains in specified time intervals, and to inform such an agency of any intention to absent himself and the time of his return, as well as other limitations on his freedom of movement necessary to assist the surveillance.

Article 276. As a preventive measure, the accused may be suspended from his official function or performance of his profession or be ordered to refrain from a specific type of activity or from driving specific types of vehicles.

Article 277. § 1. If there is good reason to fear of his taking flight, a prohibition preventing the accused from leaving the country may be applied as a preventive measure, which may be combined with seizing his passport or other documents enabling him to cross the border, or with a prohibition to issue such a document.

§ 2. Until the order on matters referred to in § 1 is issued, the agency conducting proceedings may retain a document but for a period not exceeding 7 days. The relevant provisions of Chapter 25 shall apply to the seizing of documents.

Chapter 29

Searching for the accused and the wanted notice

Article 278. If the place of stay of the accused is unknown, a search for him shall be ordered. Article 247 shall be applied accordingly.

Article 279. § 1. If the accused with respect to whom an order for preliminary detention has been issued, has gone into hiding, the court or the state prosecutor may issue the order for search in the form of a wanted notice.

§ 2. If no prior order for preliminary detention has been issued, such an order may be issued at any time, whether or not the suspect has been examined.

Article 280. § 1. A wanted notice shall include:

1) the name of the court or the state prosecutor who has issued the order for search in the form of a wanted notice,

2) information about the person which may be useful in the search, and, in particular, personal data, description, special physical features (signalment), place of stay and employment. If possible, a photograph should be attached,

3) information on the charge against the accused and on the order for his preliminary detention or on the judgement, if already issued,

4) a call to all persons who might know of the place of stay of the wanted person, to notify the nearest unit of the Police, state prosecutor or court, and

5) a warning of the penal responsibility for hiding the wanted person or for aiding him in his flight.

§ 2 A wanted notice may specify a reward for the capture of the fugitive and for contributing towards the same, and may contain assurances that the secrecy of informants shall be preserved.

§ 3 A wanted notice shall be disseminated, according to need, by distribution, posting and/or publication, in particular through newspapers, radio and television.

Chapter 30

Safe conduct

Article 281. If an accused sojourning abroad declares his readiness to appear in court or before the state prosecutor, on the designated day if permitted to remain at liberty, the Voivodship Court having territorial jurisdiction may issue a safe conduct to the accused.

Article 282. A safe conduct shall grant the accused the right to remain at liberty until such time as the proceedings have been validly concluded, provided that the accused:

1) appears at the time designated by the court, and in the preparatory proceedings also at the time designated by the state prosecutor,

2) does not leave his chosen place of stay in this country unless permitted to do so by the court, and

3) does not induce witnesses to give false testimony or explanations, or attempt in any other manner to obstruct the criminal proceedings.

§ 3. In the event that the accused does not appear when summoned or violates other conditions specified in § 1, the Voivodship Court having territorial jurisdiction shall decide to revoke the safe conduct.

Article 283. § 1. The issuance of a safe conduct may be conditional on the posting of bail.

§ 2. If a safe conduct is revoked as a result of the conditions set forth in Article 282 § 1 having been violated, bail shall be subject to forfeiture or collection. This is decided by the court specified in Article 282 § 2.

Article 284. § 1. The orders provided for in this Chapter are issued by a panel composed of a single judge.

§ 2. The orders of the court issued under the procedure provided for in Article 282 § 2 and Article 283 § 2 shall be subject to interlocutory appeal.

Chapter 31

Disciplinary penalties

Article 285 § 1. A witness, expert or interpreter who without justification fails to appear when summoned by the agency conducting the proceedings, or without this agency's permission departs from the place in which the proceedings are being conducted before they have been concluded, may be fined a sum not exceeding the minimum monthly wage.

§ 2. In the event that circumstances described in § 1 occur, a ruling may also be issued requiring the compulsory appearance of the witness. The compulsory appearance of experts, interpreters or specialists may be required only in exceptional cases. In cases involving soldiers, Article 247 § 3 shall be applied.

Article 286. A fine previously imposed shall be revoked if the person fined is able to account for his failure to appear or for an unauthorised departure. Such a justification may be submitted within one week from the date of service of the order imposing such a fine.

Article 287. § 1. Article 852 § 1 shall be applied accordingly to a person who without justification evades giving testimony, discharging the duties of an expert, interpreter or specialist, giving a pledge, surrendering a material object when so required, discharging the duties of a guaranty-provider, or any other duties imposed on him in the course of the proceedings.

§ 2 If a witness persists in evading the giving of testimony, or an expert, interpreter or specialist persists in evading his respective duties, or if the person involved persists in refusing to surrender a material object when required, recourse may be had, in addition to the imposition of a fine, to detention for a term not exceeding thirty days.

§ 3 The detention shall be revoked if the detainee fulfils his duty, or when the preparatory proceedings, or proceedings in the given court have been concluded.

§ 4 Provisions of § § 1 and 2 shall not apply to the parties, defence counsel and attorneys for the injured person and, as regards fines for failure to surrender material objects also to persons who may be excused from giving testimony.

Article 288. § 1. In the event that a soldier in active service violates the duties set forth in Article 285 § 1 and Article 287, the court or the state prosecutor shall notify the commanding officer of the military unit in which the soldier is serving, requesting the former to impose a disciplinary penalty upon such a soldier.

§ 2. The provisions of § 1 shall be applied, even though the soldier had been previously sentenced to a disciplinary penalty for a violation he committed before entering military service, although the penalty has not yet been executed.

Article 289. § 1. Any person who by a failure to discharge the duties enumerated in Article 285 § 1 and Article 287 § 1 has incurred extra costs, may be charged with them; it is permissible to charge such costs jointly to more than one person. A soldier in active service or serving as a candidate for professional military service shall be exempted from payment.

§ 2. If the disciplinary penalty is revoked, the duty of paying the costs of the proceedings shall also be revoked.

Article 290. § 1. Orders prescribed in the present Chapter shall be issued by the court or, in the course of preparatory proceedings, also by the state prosecutor. The detention referred to in Article 287 § 2, in the course of preparatory proceedings, shall be applied by the district court where proceedings are pending, on a motion from the state prosecutor.

§ 2 Orders and rulings prescribed in this Chapter shall be subject to interlocutory appeal.

§ 3 The filling of an interlocutory appeal shall stay the execution of an order for detention.

Chapter 32

Security on property

Article 291. § 1. In the event of the commission of an offence subject to a fine or forfeiture of material objects, or to imposition of the obligation to redress damage or to pay supplementary payment to the injured or for a public purpose; these penalties may be secured by levying on the property of the accused.

§ 2. If an offence is committed against property, or if it causes damage to property, the claims for the reparation of damages may be secured on the property of the accused.

Article 292. § 1. Security shall be obtained as provided for in the Code of Civil Procedure.

§ 2. The securing of the impending penalty of the forfeiture of material objects shall consist in the seizure of movables, liabilities and other property rights, and in the prohibition of selling and encumbering the real estate. This prohibition shall be published in the land and mortgage register or, in its absence, in the set of documents filed. If necessary, the court may provide for the administration of the real estate and/or of the firm owned by the accused.

Article 293. § 1. The order securing claims shall be issued by the court or, in the course of preparatory proceedings, by the state prosecutor. Such an order shall determine the scope of the security and the manner of securing.

§ 2. The order on security shall be subject to interlocutory appeal. The interlocutory appeal against an order from the state prosecutor is examined by the district court where the proceedings are pending.

Article 294. § 1. The security shall be cancelled if no valid and final decision is issued imposing a fine, forfeiture of material objects, supplementary payment to the injured or for a public purpose or obligation to redress damage, or when the accused is not sentenced to pay the claims for reparation of damages, and where no suit for those claims has been filed within three months from the day on which the decision has become valid and final.

§ 2. If such a suit is brought within the time-limit indicated in § 1 the security remains valid, unless the civil court decides otherwise in civil proceedings.

Article 295. § 1. In an event that an offence described in Article 291 is committed, the Police may effect a provisional seizure of the movables of the suspected person, if there are grounds to fear that he might conceal them. The provisional seizure shall require approval by an order from the state prosecutor issued within 5 days of such a seizure.

§ 2 Provisions of Articles 217 through 235 shall be applied accordingly.

§ 3 A provisional seizure cannot be applied to material objects not subject to execution.

§ 4 A provisional seizure shall be cancelled if the state prosecutor has not issued an approval or if within fourteen days of the day on which it was effected, an order on the securing of claims has not been issued.

Article 296. Provision of Article 295 shall be applied accordingly to the agencies of financial control and inspection, if the offence has been discovered by these agencies.

Part VII

PREPARATORY PROCEEDINGS

Chapter 33

General provisions

Article 297. § 1. The objectives of preparatory proceedings are as follows:

1) to establish whether a prohibited act has been committed and whether it constitutes an offence,

2) to detect the perpetrator and, if necessary, to effect his capture,

3) to collect data, as provided in Articles 213 and 214.

4) to elucidate the circumstances of the case, including the extent of the damage,

5) to collect, secure and record evidence to the extent required.

§ 2. In the preparatory proceedings attempts shall also be made to elucidate circumstances favourable to the commission of the act.

Article 298 § 1. The preparatory proceedings shall be conducted by the state prosecutors, and, within the scope provided by law, the Police. In the cases provided for in law, other agencies shall have the powers of the Police.

§ 2. Actions in the preparatory proceedings provided in law shall be conducted by the court.

Article 299. § 1. In the course of preparatory proceedings the injured and the suspect are parties thereto.

§ 2 In the cases provided for in law, persons other than the parties shall also have specified rights.

§ 3 In court actions in the course of preparatory proceedings, the state prosecutor shall have the rights of a party.

Article 300. Prior to first examination, a suspect shall be advised of his rights: to give or refuse to provide explanations, or to answer questions, to submit motions for actions in inquiry or investigation, to use the assistance of a defence counsel, as well as of the right specified in Article 301 and on the duties and obligations specified in Articles 74, 75, 138 and 139. These instructions shall be given to the suspect in writing who should should confirm receipt with his signature.

Article 301. On a motion from the suspect he shall be examined in presence of a retained counsel. The absence of the counsel shall not prevent the examination from being conducted.

Article 302. § 1. Persons who are not parties to the preparatory proceedings shall have the right to lodge an interlocutory appeal against the orders and rulings which violate their rights.

§ 2. Parties and persons who are not parties may bring an interlocutory appeal against actions other than those which violate their rights.

Chapter 34

Instituting investigation or inquiry

Article 303. If there is good reason to suspect that an offence has been committed, an order on instituting an investigation or inquiry shall be issued, either or upon receiving a notice of an offence, describing the act in question and setting forth its legal classification.

Article 304. § 1. Whoever learns that an offence prosecuted has been committed, shall be under civic duty to inform the state prosecutor or the Police.

§ 2 State or local government institutions which in connection with their activities have been informed of an offence prosecuted , shall be obligated to immediately inform the state prosecutor or the Police thereof. In addition they are obligated to take steps not amenable to delay, until the arrival of the officials of an agency authorised to prosecute such offences, or until that agency issues a suitable ruling in order to prevent the effacing of traces and evidence of the offence.

§ 3 The Police shall immediately refer a notice of an offence for which conducting an investigation is compulsory, or their own information indicating that such an offence has been committed, to the state prosecutor, together with any materials collected.

Article 305. § 1. Having received notice of an offence, the agency authorised to conduct the preparatory proceedings shall be obligated to issue immediately, an order on instituting or the refusal to institute an investigation or inquiry.

§ 2 An order on the institution, refusal to institute or on discontinuance of an investigation shall be issued by the state prosecutor.

§ 3 An order on the institution of an inquiry shall be issued by the Police who then immediately forward a copy of the order to the state prosecutor. An order on refusal to institute or on discontinuance shall be issued by the state prosecutor or the Police; the order issued by the Police shall be approved by the state prosecutor.

§ 4. The person, the State, local government or community institution which submitted a notice of an offence, and the injured disclosed shall be notified of the institution, refusal to institute or on discontinuance of investigation or inquiry. The suspect shall also be notified of the discontinuance -- along with a notification of their rights.

Article 306. § 1. The injured person and the institution specified in Article 305 § 4 shall have the right to bring interlocutory appeals against an order refusing to institute an investigation or inquiry, and the parties shall have such right with respect to the order on discontinuance. Those having right to bring an interlocutory appeal shall have the right to inspect the files of the case.

§ 2. The interlocutory appeal shall be brought to a state prosecutor superior to the state prosecutor who has issued or approved the order. If the superior prosecutor does not grant the appeal it shall be brought to the court.

§ 3. A person or institution which submitted a notice of offence and who has not been notified within 6 weeks about the institution or refusal to institute the investigation or inquiry shall have a right to bring an interlocutory appeal to the superior state prosecutor or one authorised to supervise the agency to which the notice has been submitted.

Article 307. § 1. If necessary, it may be demanded that the data contained in the notice of the offence committed shall be completed within a specified time-limit, or a verification of the facts in the matter may be ordered. In that case the order instituting the investigation or inquiry, or refusing the institution should be issued within 30 days of the day on which the notice was received.

§ 2 In the verifying proceedings no evidence from an expert opinion or actions requiring records are undertaken, except for taking an oral notice of the offence or a motion for prosecution and the action specified in § 3.

§ 3 The data contained in the notice of offence may also be completed by examining the notifying person in the capacity of a witness.

§ 4 When actions referred to in § 3 are needed, the Police notifies the state prosecutor about undertaking the same.

§ 5 Provision of § 2 shall apply accordingly, in the event that a prosecution agency undertakes the verification of their own information leading them to suppose that an offence has been committed.

Article 308.1. Within the limits necessary to secure evidence of the offence against loss, distortion or destruction, the Police in cases not amenable to delay, may always carry out the necessary inquiries. This can be done even before the issuance of the order on the institution of the investigation or inquiry and they can in particular inspect, if necessary, with the participation of experts, conduct searches and effect the other action set forth in Article 74 § 2 subsection (1) with respect to the suspect, and undertake all other

necessary actions, including taking blood and excretory samples for tests. Upon completing such activities in cases in which investigation is mandatory, the person conducting the inquiry shall refer the case to the state prosecutor without delay.

§ 2 In cases not amenable to delay, and particularly if a delay might result in the effacing traces or evidence of an offence, a person suspected of committing the offence may be examined as a suspect prior to the issuance of an order on the presenting charges, if there are grounds for the issuance of such an order. The examination shall begin by informing the suspect of the contents of charge.

§ 3 In cases specified in § 2 the state prosecutor, shall not later than 5 days from the day of the examination, issue an order on the presentation of charges, or by refusing its issuance, shall discontinue the proceedings with respect to the person examined.

§ 4 The actions referred to in § § 1 and 2 may only be conducted within 5 days of the first action.

§ 5 In the cases specified in § 1 and 2 the duration of the investigation or inquiry is calculated from the day of the first action.

Chapter 35

Conduct of investigation and inquiry

Article 309. § 1. An investigation shall be conducted in cases:

1) of crimes

2) of misdemeanours specified in Articles 152 through 154, Article 154 § 1, Article 164 § 1, Article 173 § 1, Article 174 § 1, Article 189 § 2, Article 207 § 3, Article 233 § 1 and 4, Articles 246, 247, 249, 250, 254 § 2, Article 258 § 3, and in Article 265 § 2 of the Penal Code.

3) of other misdemeanours if the jurisdiction is vested in the Voivodship Court,

4) if the suspect is an official of the Police, Office of State Protection, Border Guards or financial inquiry agencies, or

5) of misdemeanours not listed in subsections 2 through 4 if the state prosecutor so decides by reason of the significance or complexity of the case.

§ 2 An investigation should be completed within three months.

§ 3 In justified cases the period of the investigation may be extended by a state prosecutor superior for a further specified time-limit but not exceeding one year. In

particularly justifiable cases the Attorney General may extend the period of investigation for a further prescribed period.

Article 310. § 1. In cases where investigation is not mandatory, an inquiry is conducted.

§ 2 An inquiry should be completed within one month. The state prosecutor who supervises the inquiry may extend this period for up to 3 months.

§ 3 If the inquiry is not concluded by the end of the three-month period the files of the case shall be referred to the state prosecutor supervising the inquiry who may either extend its duration for a prescribed period, not exceeding 3 more months, or take over the inquiry for investigation.

Article 311. § 1. The investigation shall be conducted by the state prosecutor.

§ 2. The Police shall conduct the investigation unless it is being conducted by the state prosecutor.

§ 3. The state prosecutor may delegate to the Police:

1) to carry out the investigation or inquiry that he conducts, in whole or to some limited extent, or

2) to discharge the particular investigative actions.

This provision does not apply to the case specified in Article 309 § 1 subsection 4.

§ 4. The delegating of duties set forth in § 3 may not include actions which require an order to be issued, nor any actions connected with presenting charges, amendment of an order on presenting charges or concluding the investigation or inquiry; Article 308 § § 2 and 3 may, however, apply.

§ 5. The agency of the Police which conducts the mandated actions of the investigation or inquiry, may conduct other actions which arise in connection with conducting the mandated actions, save for actions specified in § 4.

Article 312. The same procedural rights as the Police shall also be the province of:

1) the units of the Border Guards, Office of State Protection and agencies of financial control in their respective fields of competence.

2) other agencies set forth in special regulations.

Article 313. § 1. If the data exists at the time of the institution of an investigation or inquiry or is collected during their course, and contains grounds sufficient for suspicion

that an act has been committed by a specified person, an order on presenting charges shall be issued and announced without delay to the suspect, who shall then be examined.

§ 2 An order on presenting charges shall specify the identity of the suspect, detailed data on the act imputed to him and the legal classification thereof.

§ 3 The suspect may request, before he is given notice of the date on which he can review the files of the preparatory proceedings, that he should be given an oral presentation of the grounds for charges, and that these reasons should be prepared in writing. The suspect should be instructed of his right to make such a request and the statement of reasons shall be served upon the suspect and a counsel retained by him within fourteen days.

§ 4 The statement of reasons for such an order should in particular, indicate what facts and evidence were adopted as the grounds for the charges.

Article 314. If during preparatory proceedings it transpires that the accused should be additionally charged with an act not included in a previous order on the presentation of charges, or an act essentially different in nature or form from the act theretofore imputed to him, or that the imputed act should be classified under a more severe provision, a new appropriate order shall be issued and promptly communicated to the suspect, who shall then be examined. The provisions of Article 313 § § 3 and 4 shall apply accordingly.

Article 315. § 1. The suspect and his defence counsel as well as the injured person and his attorney may submit motions to cause certain actions to be performed within the framework of investigation or inquiry.

§ 2. The party which submitted the motion, his counsels and attorneys may not be refused admission to participate in the action if they so demand. The provision of the second sentence of Article 318 shall apply.

Article 316. § 1. If the investigative or inquiry actions cannot be subsequently repeated at the trial, the suspect, the injured person and their legal representatives, as well as the defence counsel and the attorney of the injured person, if so appointed, should be admitted to participate in the action, unless there is a danger of loss or distortion of evidence in case of delay.

§ 2 The appearance of a suspect deprived of liberty shall not be procured, if a delay were to lead to a danger of loss or distortion of evidence.

§ 3 If there is a danger that the suspect cannot be heard at the hearing, a party or the state prosecutor or other agency conducting proceedings, may submit a motion demanding that the suspect be heard by the court.

Article 317. § 1. The parties, and a defence counsel and an attorney if such have been appointed in the case, shall be admitted on request to participate in other investigative or inquiry actions.

§ 2. In a particularly justifiable case, the state prosecutor may, by means of an order, deny such a request if the interests of the investigation or inquiry so require, or refuse to procure the appearance of a suspect deprived of liberty if it would involve serious difficulties.

Article 318. If evidence based on an opinion issued by experts, a scientific institute, or a specialised establishment is admitted, the suspect and his defence counsel, and the injured and his attorney shall be served with the order on the admission of this evidence and permitted to participate in the examination of experts and to acquaint themselves with the opinion, if one has been prepared in writing. The appearance of a suspect deprived of liberty shall not be procured, if this were to involve serious difficulties.

Article 319. The inquiry may be limited to finding whether there are sufficient grounds to bring an indictment or to conclude proceedings otherwise. However, the actions set forth in Articles 313, 314 and Article 321 should be conducted, the suspect and the injured should be examined, and actions which cannot be repeated should be conducted and recorded. The recording of other actions might be abandoned, with official notes prepared instead.

§ 2. A party may motion that records should be made of any of evidentiary actions.

Article 320. If it is relevant in connection with a respective motion to the court, the state prosecutor may, on his own initiative, or with the consent of parties, refer the case to a trustworthy institution or person in order to conduct a mediation procedure between the suspect and the injured.

§ 2 Having conducted the mediation proceedings, a trustworthy institution or person shall prepare a report on its course and results, which the state prosecutor shall take into account when deciding on submission to the court of the respective motion referred to in § 1.

§ 3 The Minister of Justice shall set forth, by ordinance, conditions to be met by institutions and persons authorized to conduct mediation, the scope and terms of giving them access to the case files, as well as the principles and procedures for preparing reports on the course and results of the mediation proceedings.

Chapter 36

Conclusion of the investigation or inquiry

Article 321. § 1. If there are grounds to conclude the investigation or inquiry, the person conducting the proceedings notifies the suspect and the defence counsel of the date of

final examination of the materials of the proceedings, advising them of their right to examine files at an earlier suitable date, set forth by the agency conducting the trial.

§ 2 The date for the suspect to inspect the materials of the proceedings should be set allowing at least 7 days between the day of the service of the notice to the suspect and his defence counsel and the date of inspection.

§ 3 The defence counsel shall be permitted to participate in the inspection of the files by the suspect. In the cases specified in Article 79, the participation of the defence counsel shall be mandatory.

§ 4 Failure of the suspect to appear or -- except for cases specified in Article 79 -- his defence counsel, shall not stop further proceedings.

§ 5 Parties may, within three days of the suspect acquainting himself with the materials of the case, submit motions to supplement the proceedings.

§ 6 If there is no need to supplement the investigation or inquiry, an order shall be issued on concluding the same; this shall be announced or its contents communicated to the parties, their attorneys and defence counsels.

Article 322. § 1. If the proceedings have failed to disclose grounds sufficient to justify the preparation of an indictment, and the conditions specified in Article 324 do not occur, the preparatory proceedings shall be discontinued, without the necessity of inspecting the materials of the proceedings and their conclusion.

§ 2 An order discontinuing the proceedings shall contain, apart from the data specified in Article 94, a detailed description of the act and its legal classification and an indication of the causes of discontinuance.

§ 3 If the proceedings are discontinued after the issuance of an order on presentation of charges or examination of a person as a suspect, the order of discontinuance should also include the name and surname of the suspect and, when necessary, other data regarding such person.

Article 323. § 1. If the proceedings are discontinued the state prosecutor shall issue an order concerning material evidence, as required by Articles 230 through 233.

§ 2 The order described in § 1 shall be subject to interlocutory appeal by the suspect, by the injured person and by any other person from whom such objects have been taken or who has submitted a claim with respect to them.

§ 3 After the order on discontinuance becomes valid and final the state prosecutor, in the event of the occurrence of the grounds specified in Article 99 § 1 or Article 100 of the Penal Code, shall move to the court, requesting the imposition, as a precautionary measure, of forfeiture, as specified in Article 39 subsection 4 of the Penal Code.

Article 324. If it is found that the suspect committed an act in the state of non-

accountability, and there are grounds to apply the precautionary measures, the state prosecutor having concluded the investigation or inquiry, may move to the court for the discontinuance of proceedings and application of precautionary measures. Provision of Article 321 shall apply accordingly.

Article 325. An order on the suspending of a proceeding which has not been issued by the state prosecutor, should be ratified by him in writing.

Chapter 37

The supervision of the state prosecutor of preparatory proceedings

Article 326. § 1. The state prosecutor shall supervise the preparatory proceedings, to the extent that he is not personally conducting the same, and shall also supervise the verification proceedings conducted pursuant to Article 307.

§ 2. The state prosecutor shall be obligated to ensure that the entire proceedings which he supervises are conducted correctly and efficiently.

§ 3. In particular, the state prosecutor may, by virtue of his supervisory function:

1) inform himself of the intentions of the person conducting the preparatory proceedings, indicate the directions of the proceedings, and issue rulings in this matter,

2) request that materials collected in the course of preparatory proceedings be presented to him,

3) participate in actions carried out by the person conducting the proceedings, carry them out in person, or personally take over and proceed with the case,

4) issue orders, rulings or instructions, and amend and reverse orders and rulings issued by the person conducting the preparatory proceedings.

§ 4. In the event that an agency other than the state prosecutor does not follow an order, ruling or instruction issued by the state prosecutor supervising the proceedings, on the motion of the latter, a superior of such an official shall institute official proceedings whose results shall be communicated to the state prosecutor.

Article 327. § 1. A discontinued preparatory proceedings may at any time be reinstated pursuant to an order issued by the state prosecutor, unless such proceedings would thus be conducted against a person who was examined as a suspect in the previous proceedings. This provision shall apply accordingly to cases where instituting an investigation or inquiry was refused.

§ 2 A validly discontinued preparatory proceedings may be re-opened against a person previously examined as a suspect, pursuant to an order issued by the state prosecutor senior to the state prosecutor who has issued or ratified the order on discontinuance, but only in the event that a discovery has been made of circumstances of vital significance, that were unknown to the previous proceedings. Limits applicable to a preliminary detention period which are provided in law shall be then applied to the aggregated time for applying this measure.

§ 3 Before issuing an order reinstating or re-opening the preparatory proceedings, the state prosecutor may either personally undertake, or entrust to the Police the taking of evidentiary action necessary in connection with verifying the circumstances serving as the basis for the issuance of such an order.

§ 4 After bringing an indictment the court shall discontinue if it finds that the preparatory proceedings have been re-opened despite a lack of grounds for so doing.

Article 328. § 1. The Attorney-General may reverse an order issued validly, discontinuing preparatory proceedings with respect to a person examined as a suspect, if he finds that the discontinuance of such proceedings was groundless. This provision shall not apply the cases where the court upheld the order on discontinuance.

§ 2. After six months have elapsed from the date on which the order on discontinuance has become valid and final, the Attorney-General may reverse or amend such an order or the statement of reasons therefor only in favour of the suspect.

Chapter 38

Court actions in preparatory proceedings

Article 329. § 1. Actions during the preparatory proceedings provided for in law shall be conducted in session by the court, having jurisdiction to examine the case in the first instance, unless otherwise provided by law.

§ 2. The court conducts the action in a panel consisting of a single judge, and also when it considers the interlocutory appeals regarding actions in preparatory proceedings unless otherwise provided by law.

Article 330. § 1. Revoking an order on discontinuance of preparatory proceedings or on refusal to institute it, the court shall indicate the reasons thereof, and, when necessary, also the circumstances which should be clarified or actions which should be conducted. These indications shall be binding on the state prosecutor.

§ 2. If the state prosecutor still does not find grounds to bring an indictment, he again issues an order on the discontinuance of proceedings or a refusal to institute it. This order is subject to interlocutory appeal only to a superior state prosecutor. In the event of upholding the order appealed against, the injured party which invoked the rights provided

he should be so instructed of this right.

§ 3. In the event that the injured party has brought an indictment, the president of the court transmits a copy of it to the state prosecutor summoning him, to deliver the files of the preparatory proceedings within 14 days.

Chapter 39

The indictment

Article 331. § 1. Within 14 days of the conclusion of the investigation or inquiry, or receiving an indictment prepared in summary proceedings, the state prosecutor shall file an indictment to the court or shall issue an order on the discontinuance or suspension of the preparatory proceedings, or on a supplementary investigation or inquiry.

§ 2. If the accused has been in preliminary detention, the time-limit for the actions listed in § 1 shall be 7 days.

Article 332. § 1. The indictment should contain:

1) the name and surname of the accused and other personal data together with information as to whether a precautionary measure has been applied,

2) a detailed description of the act imputed to the accused with an indication of the time, place, manner and circumstances relating to the commission thereof as well as its consequences, and particularly of the value of the resulting damage,

3) an indication that the act has been committed under the conditions specified in Article 64 of the Penal Code,

4) an indication of the criminal statute under which the imputed acts is classifiable,

5) an indication of the court having jurisdiction over the case and the mode of proceedings to be followed, and

6) a statement of reasons.

§ 2. The statement of reason should include all the facts and evidence upon which the accusation is founded, and, if necessary, should indicate the legal grounds for the charge and describe the circumstances relied on by the accused in his defence.

Article 333. § 1. The indictment shall also contain:

1) a list of the persons whom the prosecutor requests to be summoned,

2) a list of such other evidence which the prosecutor will seek to obtain at the first-instance hearing, and

§ 2 In the list of evidence to be sought the state prosecutor may request that a summons be waived, and that instead testimonies given by witnesses residing abroad be read at the trial; this shall also apply to witnesses summoned solely to confirm facts not contested by the accused in his explanation, if these facts are not of such significance as to make a direct examination of these witnesses indispensable at the trial. This provision shall not pertain to the persons listed in Article 182.

§ 3 A list of the injured persons hitherto disclosed, with their addresses, as well as addresses of persons referred to in § 1 subsection 1, shall be attached to the indictment, for the court's information.

§ 4 The state prosecutor may also attach to the indictment a motion to obligate an entity specified in Article 52 of the Penal Code, to return to the State Treasury material profits gained, and a notice to that entity about the date of hearing; the motion should contain reasons.

Article 334. § 1. The files of the preparatory proceedings and other appendices to the case should be transmitted to the court together with the indictment with one copy thereof for each of the accused.

§ 2. The public prosecutor shall notify the accused and the injured person, if disclosed, as well as the person or institution that submitted the notice of an offence, that the indictment has been transmitted to the court. When informing the injured person of this fact, the state prosecutor shall notify him of its rights to pursue pecuniary claims, and, when necessary, also of his right to enter a statement assuming the role of a subsidiary prosecutor.

Article 335. § 1. The state prosecutor may, with the consent of the accused, attach to the indictment a motion to convict the accused for a contravention imputed to him, subject to a penalty not exceeding 5 years deprivation of liberty, without conducting a trial and impose a penalty with an extraordinary mitigation, or decide on a penal measure specified in Article 39 subsections 1 through 3 and 5 through 8 of the Penal Code, or waive the imposition of a penalty or adopt a conditional stay of execution of the penalty -- if circumstances surrounding the commission of the misdemeanour do not raise doubts, and the attitude of the accused indicates that the objectives of the proceedings will be achieved despite of lack of a trial.

§ 2. If conditions for filing the motion referred to in § 1 occur, and in light of the evidence collected the explanation of the accused does not raise doubts, conducting any other evidentiary actions in preparatory proceedings may be abandoned.

Article 336. § 1. If the premise is met which justify a conditional discontinuance of proceedings, the state prosecutor may prepare and file with the court a motion to this effect, instead of an indictment.

§ 2 Provisions of Article 332 subsections 1, 2, 4 and 5 shall apply accordingly. The reasons for the motion may be limited to indicating evidence which confirms the guilt of the accused beyond any doubt, as well as specifying the circumstances supporting the conditional discontinuance.

§ 3 The state prosecutor may indicate suggested probation period, obligations to imposed on the accused and motion regarding supervision.

§ 4 Provision of Article 334 shall apply accordingly.

§ 5 The relevant provisions regarding an indictment contained in Chapter 40 shall apply to the motion of conditional discontinuance of proceedings.

Part VIII

PROCEEDINGS BEFORE THE COURT OF THE FIRST INSTANCE

Chapter 40

Preliminary verification of charging

Article 337. § 1. If the indictment does not meet the formal requirements set forth in Articles 119, 332 and 333, and if the requirements set forth in Article 334 are not met, the president of the court shall remand the same to the state prosecutor in order that the deficiencies may be corrected within a seven-day period.

§ 2 The state prosecutor shall have the right to bring an interlocutory appeal against the order referred to in § 1 before the court having jurisdiction over the case

§ 3 The public prosecutor who has not brought an interlocutory appeal shall be under obligation to file a corrected or supplemented bill of indictment within the time-limit set forth in § 1.

Article 338. § 1. If the indictment complies with formal requirements, the president of the court orders a copy of the indictment to be served on the accused, summoning him to file evidentiary motions within a seven-day period.

§ 2. The accused shall have the right, within 7 days from the service of the indictment on him, to file a written response to the indictment, of which right he should be instructed.

§ 3. If there is a danger of revealing a state secret, the indictment shall be served on the accused without the reasons. The reasons shall, however, be made available subject to conditions set forth by the president of the court or the court.

Article 339. § 1. The president of the court shall commit the case to session if:

1) the state prosecutor has submitted a motion for a decision to apply precautionary measures,

2) there is a need to consider a conditional discontinuance of the proceedings, or

3) the state prosecutor filed the motion referred to in Article 335.

§ 2. If the indictment has been brought by an subsidiary prosecutor, the president of the court shall commit the case to the session, in order to consider whether there is a need to issue a decision referred to in § 3 subsection 2, and also in Article 56 § 1.

§ 3. The president of the court shall commit the case to session also when there is a need to apply another decision outside the scope of his own authority and, in particular:

1) if the proceedings are to be discontinued pursuant to Article 17 § 1 subsections 2 through 11,

2) if the proceedings are to be discontinued by reason of a manifest absence of any factual basis for charge,

3) if an order is to be issued to the effect that the court lacks jurisdiction over the case, or altering the mode of proceedings indicated in the indictment,

4) if the case is to be remanded to the state prosecutor in order to correct deficiencies of vital essential significance in the preparatory proceedings,

5) if an order is to be issued on a conditional suspension of the proceedings,

6) if an order is to be issued on a preliminary detention or other coercive measure, or

7) if a penal order is to be issued.

§ 4. The president of the court shall also commit the case to session when there is a need to consider a possibility to transfer the case to mediation proceedings. The provision of Article 320 shall apply accordingly.

§ 5. Unless otherwise provided by law, the participation of the state prosecutor in sessions specified in § 1, 3 and 4 shall be mandatory. Other parties, defence counsels and attorneys may participate if they appear, although notifying them is not mandatory unless otherwise provided by law.

Article 340. § 1. As regards the discontinuance of the proceedings, Article 322 and Article 323 § § 1 and 2 shall apply accordingly.

§ 2 In the event that there are grounds specified in Article 99 of the Penal Code, the court while discontinuing proceedings or hearing a motion from the state prosecutor as specified in Article 323 § 3, shall decide on the forfeiture referred to in Article 39 subsection 4 of the Penal Code.

§ 3 A person having a claim to property or objects whose forfeiture has been decided as a precautionary measure, may pursue his claim only under civil proceedings.

Article 341. § 1. The participation of the accused in the session regarding conditional discontinuance shall be mandatory if the president of the court or the court so decides.

§ 2 If the accused objects to the conditional discontinuance, as well as when the court finds that the conditional discontinuance would be unjustified, commits the case to session. A motion from the state prosecutor for conditional discontinuance shall supersede the indictment. Within 7 days the state prosecutor shall conduct the actions specified in Article 333 § 1 through 3.

§ 3 If the court finds it purposeful because of the possibility of reaching an agreement between the accused and the injured on the matter of redressing damage or compensation, the court may adjourn the session and designate a suitable time-limit for the parties. On a motion from the accused and the injured the court shall announce a suitable break or adjourn the session.

§ 4 Upon deciding on a conditional discontinuance, the court shall take into account the results of the agreement between the accused and the injured on the matters specified in § 3.

Article 342. § 1. An order of conditional discontinuance should specifically describe the act committed by the accused, indicate the provision of the criminal statute under which this act falls, and establish the probation period.

§ 2 In the order the court shall also determine the obligations impose on the accused, and the method and the time-limit effecting thereof, and also if the court finds it purposeful, the probation by a probation officer, a trustworthy person, institution or a community organisation.

§ 3 The order should include a decision, if necessary, on the matter of material evidence. The court shall accordingly apply Article 230 § § 2 and 3 and Articles 231 through 233, taking into account the requirement to preserve evidence in the event that the proceedings should be re-opened.

§ 4 The order on conditional discontinuance shall be subject to an interlocutory appeal by the state prosecutor, the injured and the accused.

§ 5. The orders specified in § 3 shall be subject to an interlocutory appeal by persons specified in Article 323 § 2.

Article 343. § 1. In the event of granting the motion referred to in Article 335, the evidentiary proceedings are not conducted. The provision of Article 394 shall, however, apply accordingly.

§ 2 The accused and the injured may participate in the session. The participation in the session shall be mandatory if the president of the court or the court so decides.

§ 3 If Article 46 of the Penal Code does not apply, the court may make the granting of the motion conditional upon redressing the damage in part or in total, or obligating the accused to follow an appropriate life style. The provision of § 341 § 3 shall apply accordingly.

§ 4 Upon granting the motion, the court shall convict the accused by a sentence.

§ 5 If the court finds no grounds for granting the motion, it shall direct the case to be heard at a trial according to general rules.

Article 344. If the accused is under preliminary detention the court shall decide on maintaining, amending or revoking this measure. When necessary the court may also decide upon other preventive measures.

Article 345. § 1. The court shall remand the case to the state prosecutor if the files of the case indicate the essential deficiencies of the proceedings, especially the need to search for evidence, and where conducting necessary actions by the court would entail substantial hardship.

§ 2 In transmitting the case to the state prosecutor, the court shall indicate to what ends the completion should be directed and, when necessary, indicate appropriate actions which should be undertaken.

§ 3 The order referred to in § 1 shall be subject to interlocutory appeal by the parties.

Article 346. Upon completing the preparatory proceedings, the state prosecutor shall file a new bill of indictment or express his support for the previous one, or return the files to the court with a motion for the conditional discontinuance of proceedings, or discontinue the proceedings.

Article 347. In further proceedings, the court shall not be bound either by the factual or by the legal evaluations which have served as a basis for the orders and rulings issued at the session.

Chapter 41

Preparation of the first-instance hearing

Article 348. The hearing should be designated and conducted without undue delay.

Article 349. The president of the court may commit the case to a hearing if he finds that, because of the complexity of the case or for other important reasons, this would contribute to more efficient proceedings and in particular the proper preparation and organisation of the first-instance hearing.

Article 350. § 1. The president of the court shall issue a ruling in writing on the designation of the first-instance hearing which indicates:

1) the judge or a panel of judges to hear the case,

2) the designation of the date, hour and venue of the first-instance hearing,

3) the parties and other persons who shall be summoned to the main trial or informed of its date, and

4) any other action necessary to prepare for the trial.

§ 2. If the accused is deprived of liberty, a ruling shall be issued in each case to have him brought to the trial.

Article 351. § 1. A judge or judges called on to hear the case shall be designated in line with the sequence of the cases submitted, from a roll of judges of the given court or department, known to the parties. Deviation from this rule is only allowed in the event of a judge's illness or or other important obstacle, which should be noted in the order designating the date of hearing.

§ 2 When an indictment includes a charge for a crime carrying a penalty of 25 years of deprivation of liberty or a life imprisonment, designation of the panel to hear the case shall, on a motion from the defence counsel or state prosecutor, be carried out by drawing lots at which they shall have a right to be present. The state prosecutor may bring the motion not later than within 7 after the submission of the indictment, and a defence counsel, within 7 days from when the indictment was served on him.

§ 3 The Minister of Justice shall set forth, by ordinance, detailed principles for designating the panel to hear cases by drawing lots..

Article 352. The president of the court, upon accepting the motions of the parties for consideration, or shall decide on the admission and the submission of the evidence to the hearing. Provisions of Article 368 shall apply accordingly.

Article 353. § 1. At least seven days should elapse between the service of notice and the day on which the first-instance hearing is to be held.

§ 2. If this time-limit is not observed with respect to the accused or his defence counsel, then on their motion, filed before the commencement of judicial proceedings, the hearing shall be adjourned.

Article 354. In the case of the state prosecutor's motion on the discontinuance of the proceedings, due to the non-accountability of the perpetrator and on the application of precautionary measures, the provisions of this chapter shall apply accordingly, with the following amendments:

1) the provisions covering the subsidiary prosecutor shall not apply,

2) the motion shall be commited to hearing, unless in the light of the preparatory proceedings there are no doubts about the suspect having committed the prohibited act and his non-accountability at the time of the act, and the president of the court, on a motion from the defence counsel, finds it purposeful to hear the case in a session with the defence counsel and the suspect present. The suspect does not participate in the session if the opinions of experts indicate that it would be inadvisable, unless the court finds his participation necessary. The injured party shall have the right to participate in the session.

3) in the event of discontinuance of proceedings Article 322 § § 2 and 3 shall apply. **Chapter 42**

Public nature of the first-instance hearing

Article 355. The hearing shall be held in open court. Limitations thereof shall be specified by law.

Article 356. § 1. The hearing may be attended, in addition to persons participating in the proceedings, only by those who have attained majority and are unarmed.

§ 2 With the permission of the presiding judge, a trial held in open court may be also attended by minors and persons legally obligated to carry arms.

§ 3 Persons in a condition incompatible with the court's dignity shall not be admitted to the trial.

Article 357. The court may permit the representatives of radio, television, film production and the press to make video and sound recordings from the course of the trial by means of equipment, if this is reasonably in favour of the public interest, and provided that the conducting of these activities does not obstruct the hearing, and that it is not contrary to any important interest of a participant of the proceedings.

§ 2. The court may make the permit specified in § 1 conditional on compliance with the requirements set forth by it.

Article 358. Unless there is any concern for proper conduct of the proceedings, the court, on a motion from a party, shall allow such a party to record the course of hearing using sound recording equipment.

Article 359. A hearing shall be closed to public when it regards:

1) a motion from the state prosecutor for discontinuance of the proceedings due to the non-accountability of the perpetrator and for applying a precautionary measure,

2) a case of defamation and calumny; on a motion from the injured, however, the hearing is held in open court.

Article 360. § 1. The court shall exclude the public from all or part of the trial, where the public nature of the hearing may:

1) be conducive to disturbance of public order,

2) offend decency,

3) disclose circumstances which in consideration of significant State interests should remain secret,

4) infringe important private interests.

§ 2 The court may exclude the public from all or part of the hearing also when so required by a person which brought a motion to prosecute.

§ 3 The court may exclude the public from all or part of the hearing, if at least one of the accused is a minor.

Article 361. § 1. If the public is excluded, the hearing may be attended, in addition to the person participating in the proceedings, by two persons designated each by the public prosecutor, the auxiliary prosecutor, private prosecutor and by the accused each. If there is more than one prosecutor and/or more than one accused, each of them may require one person to by present in the courtroom where the trial is held.

§ 2 The provision of § 1 shall not be applied, if there is reason to believe that a State secret may be disclosed.

§ 3 If the trial is to be held in closed session, the presiding judge may allow specified persons to be present at the trial.

Article 362. The presiding judge shall inform the persons attending the hearing of their obligation to keep secret any information learned during a hearing in closed session, and warn them of the consequences of their failure to do so.

Article 363. If a motion is filed to have a hearing held in closed session, and if the motion has been filed by the party or when the court finds it necessary, the hearing on the motion shall be conducted in closed session.

Article 364. § 1. The judgement shall be announced in open court.

§ 2. If all or part of the trial has been held in closed session, the announcement of the statement of reason for the judgement may be also made in closed session.

Chapter 43

The general order of the first-instance hearing

Article 365. The hearing shall be conducted orally.

Article 366. § 1. The presiding judge shall direct the trial and ensure that it follows the correct course; special care shall be taken to ensure that all circumstances of vital significance to the case shall be duly explained and elucidated, and including, whenever possible, the circumstances favouring the commission of the offence.

§ 2. The presiding judge should endeavour to resolve the case at the initial first-instance hearing.

Article 367. § 1. The presiding judge shall permit the parties to express themselves on any matter which is to be resolved.

§ 2. If one of the parties has expressed himself on a matter, every other party shall also be entitled to do the same. The closing argument shall be the right of defence counsel and of the accused.

Article 368. The presiding judge shall have the ultimate authority to resolve favourably the request of a party for taking evidence, unless it has been contested by another party; in other cases the court shall issue an order.

Article 369. Evidence in support of the charge should, if possible, be taken before evidence in support of the defence.

Article 370. § 1. After a person examined has expressed himself freely, in accordance with Article 171 § 1, other persons may ask questions in the following order as called by the presiding judge: the state prosecutor, subsidiary prosecutor, attorney of the subsidiary prosecutor, private prosecutor, civil plaintiff, attorney of the civil plaintiff, expert, defence counsel, the accused and members of the panel of judges.

§ 2 A party on whose motion the witness was admitted puts its questions before the remaining parties.

§ 3 The members of the panel of judges may, when necessary, ask additional questions at any time.

§ 4 The presiding judge shall dismiss any questions referred to in Article 171 § 5, or if he finds them improper for other reasons.

Article 371. § 1. Witnesses who have not yet been examined, shall be absent while other witnesses testify.

§ 2. The presiding judge shall take the necessary steps to prevent communication between persons already examined and those awaiting examination.

Article 372. The presiding judge shall issue all rulings required to maintain order and quiet in the courtroom.

Article 373. Rulings issued by the presiding judge at the first-instance hearing may be referred to the panel in the given case.

Article 374. § 1. The presence of the accused at the first-instance hearing shall be mandatory, unless otherwise provided by law.

§ 2. The presiding judge may issue a ruling in order to render it impossible for the accused to leave the courthouse before the conclusion of the hearing.

Article 375. § 1. In the event that an accused, despite being warned by the presiding judge, conducts himself in a manner which disturbs the order of the hearing, or is incompatible with the dignity of the court, the presiding judge may temporarily remove the accused from the courtroom.

§ 2. After permitting the accused to return, the presiding judge shall promptly inform him of the progress of the hearing during his absence, and allow him to give explanations concerning evidence taken during that time.

Article 376. § 1. If the accused who has already given explanations, leaves the courtroom without the permission of the presiding judge, the court may complete the hearing in his absence, and the judgement thus rendered shall not be regarded as issued by default; the court shall order the accused to be brought to the courtroom under duress, if it finds his presence indispensable.

§ 2. This provision shall apply accordingly when the accused who has already given his explanations, and having been notified of the date of the adjourned or interrupted hearing, has not come to that hearing or justified his non-appearance.

§ 3. If a co-accused who provided justification has not appeared at the adjourned or interrupted hearing, the court may continue the hearing to the extent that it does not directly the absentee, and provided that this does not limit his right of defence.

Article 377. § 1. If the accused through his own fault works himself into the state where he is unfit to participate in a hearing or session where his presence is deemed mandatory, the court may continue the hearing even if he has not yet given his explanation.

§ 2 Before issuing the order referred to in § 1, the court shall acquaint itself with a certificate from the physician who established such a state of unfitness, or shall examine him as an expert.

§ 3 If the accused, notified of the date of hearing, states that he will not participate in the hearing or prevents himself being brought to the hearing, the court may continue the hearing without his presence, unless it finds the presence of the accused indispensable; the provision of Article 376 § 2 second sentence shall apply.

§ 4 If the accused deprived of liberty has not yet given his explanation before the court, the court shall direct his examination, applying Article 396 § 2 accordingly. In other cases the court may apply Article 396 § 2 or find the reading of his previous explanations sufficient.

§ 5 If the hearing has been interrupted or adjourned with setting its new date, the court shall notify the accused of the date, and if the accused does not appear, the provision of Article 375 § 2 shall apply accordingly.

§ 6 The judgement thus rendered shall not be regarded to be issued by default.

Article 378. In the event that, after the hearing has commenced in a case in which the accused must have a defence counsel, either he or the accused revokes the respective sides of the arrangement under the power of attorney, the president of the court, when the defence counsel was appointed by the court, appoints a new one, and if the counsel was once retained by the accused, the court shall give the accused a suitable time-limit to retain a new counsel, and if that time passes without effect, then the president of the court shall appoint a defence counsel. When necessary, the hearing shall be interrupted or adjourned.

§ 2. The former defence counsel should discharge his duties until the time when a new defence counsel takes over the case, unless the reason for revoking has been a disagreement about a line of defence.

Article 379. § 1. When the panel of the court enters the courtroom or leaves it, all persons present shall stand.

§ 2. Any person addressed by the court or addressing it shall also be obligated to stand unless he is exempted from this obligation by the presiding judge.

Article 380. The provision regarding the accused shall also apply accordingly to a

person whom the state prosecutor charges with having committed a prohibited act in the state of non-accountability and motions for a discontinuance of proceedings and the application of precautionary measures thereto.

Chapter 44

The commencement of the first-instance hearing

Article 381. The first-instance hearing shall commence with the calling of the case; the presiding judge shall thereupon verify that all persons summoned have appeared and that there are no impediments to hearing the case.

Article 382. If the event that the accused fails to appear without a good cause when his presence is mandatory, the presiding judge shall rule that he should immediately be brought to the trial, and/or interrupt the trial for this purpose, or the court shall adjourn the trial.

Article 383. If the civil plaintiff fails to appear before the judicial examination commences, the court shall leave the civil complaint unheard, unless the plaintiff has requested that it be heard in his absence.

Article 384. § 1. Upon ascertaining that all person summoned have appeared, the presiding judge shall rule that the witnesses be withdrawn from the courtroom. The experts shall remain, unless otherwise ordered by the presiding judge.

§ 2 The injured person may remain in the courtroom, even if he is to be examined in the capacity of a witness. In such a case the court shall examine him first.

§ 3 If the court finds it purposeful, it may obligate the injured to be present throughout the hearing or parts thereof.

Chapter 45

The judicial examination

Article 385. § 1. The judicial examination shall commence with the reading of the indictment by the state prosecutor.

§ 2 In the case where the indictment covers very extensive account of the reasons, it may be sufficient to present the essential grounds for the charge.

§ 3 If a response to the indictment has been filed, the presiding judge shall inform about its content.

Article 386. § 1. After the indictment has been read, the presiding judge shall instruct the accused as to his right to give or refuse explanations or answers to questions and then ask the accused whether he pleads guilty of the act imputed to him, and whether he wishes to make any explanations and of the nature thereof.

§ 2. After examining the accused the presiding judge shall instruct him of his right to address questions to the persons subject to examination and to give explanations concerning each item of evidence.

Article 387. § 1. Until the conclusion of the first examination at the first-instance hearing, the accused who is charged with a misdemeanour subject to a penalty of deprivation of liberty not exceeding 8 years, may submit a motion for a decision convicting him and sentencing him to a specified penalty or penal measure without evidentiary proceedings; if the accused has no defence counsel of his choice, the court may, on his motion, appoint a counsel.

§ 2 The court may grant the motion of the accused to issue a decision convicting him only when the circumstances surrounding the offence have not given rise to doubt, the state prosecutor and the injured party concur, and the objectives of the proceedings are to be achieved, in spite of the hearing not being conducted in full.

§ 3 The court may make the granting of the motion conditional on introducing into it an amendment indicated by the court. The provision of Article 341 § 3 shall apply accordingly.

§ 4 When granting the motion the court may regard as revealed the evidence specified in the indictment, or documents submitted by a party.

§ 5 If the motion has been brought before the hearing, the court shall examine it at the hearing.

Article 388. Upon obtaining the consent of the parties present, the court may conduct the taking of evidence only in part, if the explanations of an accused who has pleaded guilty have not given rise to doubt.

Article 389. § 1. If the accused refuses to give explanations, or gives explanations inconsistent with those previously made, or states that he cannot recall certain particulars of his explanations, the court may order to be read aloud at the trial, the record of this explanations previously given in his capacity as the accused in that case or another, in the course of either the preparatory proceedings or before the court.

§ 2. Upon reading the record, the presiding judge shall summon an accused present at the trial to express himself on the contents of the record and to explain the inconsistencies within it.

Article 390. § 1. The accused has the right to be present at every action of the evidentiary proceedings.

§ 2. In exceptional circumstances, if there is reason to fear that the presence of the accused may have an inhibiting effect on the explanation given by his co-accused or the evidence of a witness or expert, the presiding judge may rule that the accused should withdraw from the courtroom for so long as such other person is being examined. The provision of Article 375 § 2 shall apply accordingly.

Article 391. § 1. If a witness refuses without good reason to testify, clearly alters his testimony with respect to that previously given or states that the cannot recall certain particulars, or resides abroad, or the summons could not be served on him, or he has failed to appear because of some insurmountable obstacle, or the president of the court has refrained from summoning him pursuant to Article 333 § 2, and also when a witness has died, the court may order the record of his previous testimony given in the course of preparatory proceedings or before the court in that case or another, to be read aloud.

§ 2 Under circumstances described in § 1, and also in the case specified in Article 182 § 3, the records of explanations previously given by the witness, then examined in the capacity of an accused, may also be read aloud at the trial.

§ 3 Article 389 § 2 shall be applied accordingly.

Article 392. § 1. At the first-instance hearing the court may read aloud any type of record on the examination of witnesses or the accused, made before the court, when the direct taking of evidence is impeded, and all of the parties present consent thereto.

Article 393. § 1. The record on inspections, searches and retaining objects, as well as the opinions of experts, scientific institutes, establishments or institutions, criminal records of persons, outcomes of inquiry in the community, and any official documents, submitted in the course of preparatory or judicial proceedings may be read aloud at the trial. Official notes regarding actions for which records are required may not, however, be read at the trial; this prohibition also applies to cases where the preparation of records was abandoned pursuant to the provisions of Article 319.

§ 2 Information relevant to the commission of the offence may also be read aloud, but it shall constitute the evidence only with respect to who submitted the information, when and of what offence.

§ 3 Any private documents prepared outside the criminal proceedings and not directly for its purpose may also be read aloud, particularly statements, publications, letters and notes.

§ 4 Testimonies from a witness examined under the conditions laid down in Article 184 may also be read aloud at the trial. The hearing is then conducted in a closed session; the provision of Article 361 § 1 shall not apply.

Article 394. § 1. Personal data pertaining to the accused and the outcome of inquiry in the community may be admitted without actual reading. If the accused or a defence counsel so request, they should be read aloud.

§ 2. Other documents subject to perusal at the trial may be admitted without actual reading in whole or in part if the parties express their consent. The presiding judge shall inform the participants about the contents of these documents.

Article 395. Material evidence shall be brought to the courtroom, if their nature does not prevent it, and be displayed to the parties, and if necessary to witnesses and experts as well.

Article 396. § 1. In the event that serious difficulties would be involved in the viewing of material evidence or conducting an inspection by the entire panel, or if the parties so concerned should express their consent, the court shall designate a judge from the panel to perform this action, or appoint another court for this purpose.

§ 2 The court may direct that a witness be examined by a judge designated from the panel or by another court appointed for this purpose in the district of which the witness is then staying, in the event that the witness has failed to appear by reason of some insurmountable obstacle.

§ 3 The parties, defence counsel and attorneys shall have the right to participate in the actions indicated in § 1 and 2. An accused deprived of liberty should be brought to court only if the court finds it necessary.

§ 4 A designated judge or an appointed court may also take other evidence if the need thereof has been discovered during the action referred to in § 1 or 2.

Article 397. § 1. The court may refer the case back to the prosecutor in order to complete the preparatory proceedings only when the essential deficiencies thereof have become apparent at the trial, and their removal, were it to be done by the court, would prevent the court from issuing the correct judgement within a reasonable time.

§ 2. Article 398 §§ 2 and 3 and Article 346 shall be applied accordingly.

Article 398. § 1. If by reason of circumstances newly disclosed at the trial, the prosecutor has charged the accused with committing an act in addition to those contained in the indictment, the court may, if the accused consents, hear the new charges at the same trial, unless if it becomes necessary to institute preparatory proceedings with respect to the newly disclosed act.

§ 2. In the event that the trial is adjourned the prosecutor shall file a new or additional bill of indictment.

Article 399. § 1. If it transpires at the trial that, without exceeding the limits of the charge, it will be possible to classify the act under another legal provision, the court shall so warn the parties present at the trial.

§ 2. Upon a motion from the accused, the court may interrupt the trial to enable him to prepare his defence.

Article 400. If, after beginning of the trial it transpires that the accused has committed a contravention, the court shall examine the case pursuant to general rules, without referring the case to an appropriate board having jurisdiction over contraventions.

Article 401. § 1. The presiding judge may order an interruption of the main trial to have a piece of evidence brought to court, or to take a rest, or for any other substantial reason.

§ 2. Each such interruption in the conduct of the trial shall not be for more than thirty-one days.

Article 402. § 1. If the presiding judge, at the time he orders an interruption, also designate the date and place for the resumption of the trial, the persons present at the interrupted trial shall be obligated to appear at the new trial so designated without special summons. Article 285 shall be applied accordingly.

§ 2 An interrupted trial shall be conducted with continuity after the interruption; if, however, the panel of the court has been altered or if the court finds it necessary it shall be commenced.

§ 3 If the time-limit for the interruption has been exceeded, the trial shall be considered as adjourned.

Article 403. A decision during an interruption of the trial shall be issued by the panel hearing the case; and if it is impossible to reconstruct the panel, by a panel of the same type of composition.

Article 404. § 1. The court may adjourn the trial only if an interruption would not be of sufficient duration.

§ 2 An adjourned trial shall be commenced on the newly designated day. When the parties do not object, the court may, as an exception, continue the adjourned trial, unless the panel has been altered.

§ 3 In the case of re-opening a suspended proceedings, the trial shall be commenced, unless suspension has lasted for less than thirty-five days and the panel has not been changed.

Article 405. After concluding the judicial examination of evidence admitted in the case, the presiding judge shall ask the parties whether they move for completion of the taking

of evidence; if they reply in the negative, the presiding judge shall announce the judicial proceedings to be concluded.

Chapter 46

Closing arguments

Article 406. § 1. After completion of the taking of evidence, the presiding judge shall call upon the parties, their representatives, and, if necessary, on the social representatives, who shall speak before the defence counsel and the accused, to present their oral arguments. The parties shall speak in the following order: public prosecutor, subsidiary prosecutor, private prosecutor, civil plaintiff, defence counsel, and the accused. The representatives of the parties for the trial shall speak before the parties.

§ 2. If the public prosecutor or the civil plaintiff, are to be heard for a second time, the defence counsel and the accused should also be allowed to speak again.

Article 407. The accused not having command of the Polish language should have at least summaries of the arguments translated to him before he is allowed to present his closing argument.

Chapter 47

THE RENDERING OF THE JUDGEMENT

Article 408. After hearing the arguments the court shall retire for deliberation without delay.

Article 409. The court may re-open a judicial examination, particularly in the case specified in Article 399, or allow the parties to present additional arguments, until such time as it has rendered judgement.

Article 410. The court shall base its judgement solely on facts and evidence disclosed at the main trial.

Article 411. § 1. In a complex case, or for other substantial reasons the court may adjourn the rendering of a judgement for a period not exceeding seven days.

§ 2 If the above time-limit is exceeded, the trial shall be conducted de novo.

§ 3 An order on an adjournment before the rendering of a judgement shall indicate when and where it will be announced.

Article 412. After the voting is concluded, the court shall record the judgement in writing without delay.

Article 413. § 1. Every judgement shall include:

1) the designation of the court rendering it, as well as the names of the judges, lay assessors, prosecutors and recording clerk,

2) the date and place of the hearing of the case and of rendering the judgement,

3) the name and surname and other personal data pertaining to the identity of the accused,

4) the description and legal classification of the act which has been imputed to the accused by the prosecutor,

5) the resolution of the court, and

6) an indication of the criminal statute applied.

§ 2. The convicting judgement shall also include:

1)a detailed description of the act of which the court has found the accused guilty, and the legal classification of the act,

2)the sentence or penal sanctions to be imposed on the accused and a decision as to whether the time of preliminary detention or arrest, if any, should be credited to the penalty imposed; as well as the decision on preventive measures described in Article 276.

Article 414. § 1. If, after the institution of judicial examination, a fact or material circumstance is disclosed which precludes prosecution or requires a conditional discontinuance of the proceedings, the court shall render a judgement deciding upon such discontinuance or conditional discontinuance. If, however, it transpires that the facts described in Article 17 § 1 subsections 1 and 2 have occurred, the court shall render the judgement of acquittal, unless the perpetrator was in a state of non-accountability at the time he committed the act.

§ 2 In discontinuing the proceedings, the court shall accordingly apply Articles 322 § 2 and 3, 323 § 1 and 2, and Article 340 § 2 and 3.

§ 3 The court shall adopt the preventive measure described in Article 99 § 1 of the Penal Code when the results of the legal proceedings justify this, and the discontinuance of the proceedings occurred because of the non-accountability of the perpetrator at the time of committing the act.

§ 4 Discontinuing the proceedings conditionally, the court shall accordingly apply Article 341.

§ 5 When expecting the possibility of a conditional discontinuance of the proceedings, or the possibility of imposing a penalty with a conditional suspension, the court may re-open

the proceedings in order to apply Article 341 § 3 accordingly; then the court may adjourn the case.

Article 415. § 1. The civil complaint shall be granted or dismissed in whole or in part in the event that the accused is convicted or that the proceedings are conditionally discontinued.

§ 2 Otherwise the court shall leave the civil complaint unheard.

§ 3 The court shall decide to leave a civil complaint unheard by rendering a judgement, if the material evidence taken during the trial is insufficient to resolve the civil complaint, and completion of the taking of evidence would substantially delay the proceedings.

§ 4 When the adjudicated damages do not cover the entire loss or do not adequately compensate for the wrongdoing, the injured person may sue for additional damages in civil proceedings.

§ 5 In the event that the accused is convicted or the proceedings are conditionally discontinued, the court may adjudicate the damages for the injured person, unless otherwise provided by law.

§ 6 In the event that the accused is convicted or the proceedings are conditionally discontinued, in cases specified in law, the court shall decide on a supplementary payment to the injured or for a public purpose, or impose an obligation to redress the damage.

Article 416 § 1. If the accused is convicted, the court, upon the motion from the prosecutor, shall obligate the entity which acquired material benefits in the circumstances described in Article 52 of the Penal Code, to return it in full or in part to the State Treasury. When rendering a judgement of acquittal, or convicting the accused of an offence which has not brought such benefit, or discontinuing the proceedings, the court shall leave the motion of the prosecutor unheard.

§ 2 Before the conclusion of the trial, the court shall hear, in the capacity of a witness, the entity described in Article 52 of the Penal Code. If that entity is not a natural person, the court shall hear the authority empowered to act on behalf of such an entity.

§ 3 The person referred to in § 2 may refuse to give evidence.

§ 3. Articles 72, 75, 87 and 89 shall be applied accordingly.

Article 417. The sentence of deprivation of liberty shall also include any period of preliminary detention, served by the accused in another case in which the proceedings were simultaneously pending, and in which a valid and final judgement of acquittal was rendered or the proceedings were discontinued or there was a renouncement of inflicting the punishment. -- the punishment was rescinded

Article 418. § 1. After signing the judgement, the presiding judge of the panel shall

pronounce it publicly; when the judgement is pronounced, everyone present, except the panel of the court, shall stand.

§ 2 A dissenting opinion filed by a judge shall be announced, including the judge's name, if he so consents.

§ 3 After pronouncing the judgement the presiding judge or a member of the panel shall state orally the most important reason underlying the same.

Article 419. § 1. Failure to appear on the part of parties to the proceedings, their defence counsel or legal representatives shall not prevent the pronouncement of the judgement.

§ 2. With respect to an accused under detention who has no defence counsel and was absent when the judgement concluding the proceedings was pronounced, the judgement is served on him.

Article 420. § 1. In the judgement contains no decision on the preliminary detention period to be included in the time of the sentence to be served, on preventive measures described in Article 276 or on material evidence, the court shall decide on these matters by issuing an order in session. However, the forfeiture of objects may not be decided.

§ 2 If, as a result of lack of information, or incorrect information about serving a term of deprivation of property in another case, the court incorrectly credited the period of preliminary detention to the penalty imposed, the provision of § 1 first sentence shall be applied accordingly.

§ 3 The parties shall have the right to participate in this session. The accused under preliminary detention shall be brought to the session, only if it is thought necessary by the president of the court, or the court itself.

§ 4 The decision referred to in § 1 and 2 shall be subject to interlocutory appeal.

Article 421. A person other than the accused and who brings in a claim to the forfeited property shall have the right to sue for damages in civil proceedings.

Article 422. § 1. A party to the proceedings may move, within a final time-limit of seven days from the day on which the judgement is pronounced, to have the statement of reason for the judgement prepared in writing and served. The fact that such a statement of reason has been prepared by the court , shall not exempt the party from the obligation to file such a motion. The latter shall be filed in writing.

§ 2. With respect to an accused under detention who has no defence counsel and was absent when the judgement was pronounced, the time-limit set forth in § 1 shall run from the day the judgement is served on him.

§ 3. The president of the court shall refuse to accept a motion filed by a person not entitled to do so or if it is filed after the time-limit. The ruling of the president of the court shall be subject to interlocutory appeal.

Article 423. § 1. The statement of reason for the judgement should be prepared within seven days from the day on which the motion requesting the same was filed and, in the event that the statement of reason has been prepared ,from the day the judgement was pronounced. In a complex case, when it is impossible to prepare the statement of reason within the prescribed time-limit, the president of the court may extend the time-limit for a specified time.

§ 2. The judgement with the statement of reasons therefor shall be delivered to the party who has filed the motion, as provided for in Article 422. Article 100 § 5 shall be applied.

Article 424. § 1. The statement of reason shall include:

1) an indication of what facts have been found by the court to be proven or unproven, the evidence upon which the court has relied on in this matter, and the reasons why the evidence to the contrary has been dismissed by the court, and

2) the specification of the legal basis of the judgement.

§ 2. The statement of reason for a judgement should, in addition, contain an indication of the circumstances taken into account by the court in the process of imposing the penalty; this provision shall apply in particular to cases in which an extraordinary mitigation of the penalty, or preventive measures have been applied, a civil complaint has been granted, and to other resolutions contained in the judgement.

Part IX

THE APPELLATE PROCEEDINGS

Chapter 48

General provisions

Article 425. § 1. The parties to the proceedings or an entity described in Article 416 shall be entitled to avail themselves of appellate measures from a decision rendered in the first instance.

§ 2. The decision as a whole or any part thereof may be subject to appellate measures. The appeal may also regard only the statement of reason for a judgement.

§ 3 The appealing party may appeal against the resolutions or findings only if they are prejudicial to his rights or benefits. This restriction shall not apply to the public prosecutor.

§ 4 The public prosecutor shall also be entitled to file appellate measures for the benefit of the accused.

Article 426. § 1. Decisions issued by an appellate court in response to an appellate measure shall not be subject to appellate measures.

§ 2 Other decisions issued by an appellate court, and the decision issued by the Supreme Court shall not be subject to appellate measures unless otherwise provided by law.

§ 3 Orders issued in the course of appellate proceedings regarding observation in a health institution, applying a preventive measure or on imposing a penalty for breach of order shall be subject to an interlocutory appeal to another panel of the appellate court of the same level.

Article 427. § 1. The appellant should indicate the resolution or finding appealed against and state his demands.

§ 2, If the appellate measure has been filed by the public prosecutor, defence counsel or the attorney, it should also include the objections raised against the resolution.

§ 3. The appellant may also indicate new facts or evidence.

Article 428. § 1. An appellate measure should be filed in writing to the court which has rendered the decision subject thereto.

§ 2. A party may file a written reply to an appeal.

Article 429. § 1. The president of the court of the first instance shall deny an appellate measure filed after the applicable time-limit has lapsed, or filed by an unauthorised person, or one inadmissible by law.

§ 2. A ruling denying an appellate measure pursuant to § 1 or Article 120 § 2 shall be subject to interlocutory appeal.

Article 430. § 1. The Appellate Court shall leave an appellate measure unheard, if the circumstances described in Article 429 § 1 occur, or if it finds that the appellate measure has been admitted as a result of an improper reinstatement of the time-limit.

§ 2. This ruling shall be subject to interlocutory appeal to another panel of the Appellate Court, of the same level, unless it has been issued by the Supreme Court.

Article 431. § 1. An appellate measure may be withdrawn.

§ 2 The accused may withdraw an appellate measure for his benefit unless it has

been filed by the public prosecutor, or an event described in Article 79 has occurred.

§ 3 An appellate measure filed for the benefit of the accused shall not be withdrawn without his consent.

Article 432. An appellate measure once withdrawn shall be left unheard by the court, unless one of the conditions listed in Articles 101, 439 or 440 occurs.

Article 433. § 1. The Appellate Court shall hear the case within the limits of the appellate measure, and to a greater extent only if so prescribed by law.

§ 2. The Appellate Court is under obligation to consider all motions and objections indicated in the appeal unless otherwise provided by law.

Article 434. § 1. The Appellate Court may render a decision adverse to the accused only if an appellate measure has been filed against him, and only within the limits of such an appellate measure, unless otherwise provided by law. If the appellate measure has been filed by the public prosecutor or the attorney, the Appellate Court may render a decision adverse to the accused only when violations raised in the appellate measure or those subject to consideration have been found to occur.

§ 2. An appellate measure against the accused may nevertheless also result in a decision for his benefit.

Article 435. The Appellate Court shall reverse or amend the decision for the benefit of co-accused persons, even if they have not filed an appellate measure, if it has reversed or amended such a decision for the benefit of a co-accused on whose behalf the appellate measure has been filed, provided there are considerations rendering such a reversal or amendment for the benefit of those co-accused necessary.

Article 436. The court may limit the examination of an appellate measure to certain violations only, either raised by the party, or subject to consideration , if such an examination is sufficient for the decision, whereas examination of the remaining violations would be premature or irrelevant to the further conduct of the proceedings.

Article 437. § 1. After examining the appellate measure the court shall decide whether the decision subject to review shall be sustained, amended or reversed. The same shall apply to hearing an appellate measure filed against the statement of reasons for a judgement.

§ 2. If the assembled evidence warrants it, the Appellate Court shall amend the decision subject to review, deciding differently as to is contents, or reverse it and discontinue the proceedings; in other cases it shall reverse the decision and remand the case to the court of the first instance for re-examination. Article 397 shall be applied accordingly.

Article 388. A decision shall be subject to reversal or amendment if it is found that:

1) a violation of the provisions of substantive law has occurred,

2) a violation of the procedural provisions has occurred, if it might have affected the contents of the decision issued,

3) an error has occurred in the determination of the fact situation as a basis for rendering the decision, if this may have affected the contents of this decision, or

4) the penalty imposed is strikingly disproportionate to the offence, or the application or failure to apply the preventive measure, or any other measure, has been unfounded.

Article 439. § 1. Irrespective of the limits established for the appellate measure and of the effect of the violation on the contents of the decision, the Appellate Court at its session shall reverse the decision subject to review if:

1) a judge subject to disqualification pursuant to causes described in Article 40 § 1 subsection 4, 5 and 7 through 9 has participated in the decision,

2) the panel was improperly constituted, or any of its members was not present throughout the trial,

3) a common court of law has rendered a decision in a case falling under the jurisdiction of a special court, or a special court has rendered a decision in a case falling under the jurisdiction of a common court of law,

4) a lower court has rendered a decision in a case falling under the jurisdiction of a higher court,

5) a circumstance precluding the proceedings, as listed in Article 17 § 1 subsections 5, 6, 9, 10 or 11, has occurred,

6) the accused had no defence counsel in cases described in Article 79 § 1 and 2 and Article 80, or the defence counsel did not participate in actions in which his participation was mandatory, or

7) the case has been heard in the absence of an accused whose presence was mandatory.

§ 2 Reversing the judgement solely for reasons described § 1 subsections 5 through 7 may only be done for the benefit of the accused.

§ 3 The parties, defence counsel and attorneys shall be entitled to participate in the session. Article 451 § 1 shall be applied accordingly.

Article 440. A decision is subject to amendment for the benefit of the accused or to reversal irrespective of the limits of the appellate measure if its upholding would be manifestly unjust.

Article 441. § 1. If, in the course of the examination of appellate measures, a juridical question is disclosed requiring a substantial interpretation of the law, the Appellate Court may adjourn hearing the case and refer the question to the Supreme Court.

§ 2 The Supreme Court may refer the resolution of such a juridical question to an enlarged panel of that court.

§ 3 The resolution of the Supreme Court shall be binding as to the question at issue.

§ 4 Defence counsel and attorneys shall be entitled to participate is such a session.

§ 5 The Supreme Court may take over a case for examination.

Article 442. § 1. A court to which a case has been remanded for re-examination, shall decide as to the limits within which the remanding has been done. Reversing a judgement only in the part regarding the decision on a penalty or other measure does not prevent the acquittal of the accused or the discontinuance of proceedings.

§ 2 If a case is remanded for re-examination, the court which has decided in the first instance, in conducting proceedings with respect to evidence which was irrelevant to the reversal of the judgement, may restrict itself to taking notice thereof.

§ 3 The legal opinions and directions of the Appellate Court with respect to the further course of proceedings shall be binding upon the court to which the case has been remanded for re-examination.

Article 443. In the event that the case is remanded for re-examination, the court in such further proceedings may sentence the accused to a penalty more severe than that decided in the judgement reversed, only if the appeal thereof was an appeal prejudicial to the accused. This shall not apply to decisions on the measures described in Articles 93 and 94 of the Penal Code.

Chapter 49

APPEAL

Article 444. Parties shall be entitled to appeal against a judgement rendered by a court of the first instance.

Article 445. § 1. The time-limits for filling an appeal shall be fourteen days; with respect to each person entitled to appeal such time-limits will run from the date of service on the same of the judgement, together with the reasons thereof.

§ 2. An appeal filed before the lapse of the time-limit for the filling of the motion for preparing a statement of reasons shall produce the consequences specified in Article 422,

and shall be subject to examination. Such an appeal may be completed within the time-limit specified in § 1.

Article 446. § 1. An appeal from a judgement rendered by a Voivodship Court, but not originating with the state prosecutor or a person listed in Article 88 § 2 and 3, should be prepared and signed by a lawyer.

§ 2. An appropriate number of copies for the opposing party shall be appended, to an appeal prepared by a state prosecutor or a lawyer or an attorney; an additional copy shall be added to an appeal to be filed before the Appellate Court.

Article 447. § 1. An appeal of the determination of guilt shall be considered to be directed against the imposition of a penalty as a whole.

§ 2 An appeal of the determination of the principal penalty shall be considered to be directed against to the imposition of penalty or penal measures as a whole.

§ 3 An appeal may raise objections which have not, or could not, constitute the object of an interlocutory appeal.

Article 448. § 1. Notice of the fact that the appeal has been accepted shall be given to the prosecutor as well as to defence counsel and attorneys, as well as to the parties themselves; whereupon the records shall be submitted to the appellate court without delay.

§ 2. In the event that the appeal is brought by the state prosecutor or by a defence counsel or an attorney, the notification should contain a copy of the appeal brought by the opposing party unless the trial was held in closed court for reason of a State secret.

Article 449. The appellate court shall examine the case at an appellate trial and, in cases provided by law, in session.

Article 450. § 1. The participation of the state prosecutor, in sessions, and of the defence counsel, in cases specified in Articles 79 and 80, shall be mandatory.

§ 2 The participation of other parties and their attorneys in sessions, and of defence counsel in other cases than described in § 1 shall be mandatory if the president of the court or the court so decides.

§ 3 The failure of the duly notified parties, defence counsel or their attorneys to appear, shall not stay the hearing, unless their participation is mandatory.

Article 451. § 1. The appellate court may rule an accused under detention be brought to the appellate trial.

§ 2. If an appeal has been filed to as an appeal prejudicial to the accused regarding the determination of guilt, or if the appeal is filed to impose or increase the penalty of deprivation of liberty, the appellate court shall rule that the accused under detention be brought to the appellate trial, unless the court considers the presence of the defence counsel sufficient. When the court has ruled not to bring to trial the accused who has no defence counsel, the defence counsel shall be designated.

Article 452. § 1. An appellate court shall not be allowed to conduct evidentiary proceedings pertaining to the intrinsic nature of the case.

§ 2. In exceptional cases the appellate court, if it finds the completion of a judicial examination necessary, may nevertheless take evidence directly at the appellate trial, if this will expedite the judicial proceedings, and there is no necessity to conduct the whole of it, or a major part thereof, anew. Before the appellate trial, the court may also issue an order on the admission of evidence.

Article 453. § 1. Judicial examination in an appellate court shall begin with an oral report; the reporting judge shall present the progress and the results of previous proceedings, and particularly the contents of the judgement subject to review, the objections and motions forming the appeal, and finally the matters which must be resolved. If necessary, certain parts of the record may be read aloud.

§ 2 The parties may submit explanations, statements and motions either orally or in writing; those filed in writing shall be read aloud, pursuant to Article 394.

§ 3 The presiding judge shall call on the parties to present their arguments; the parties shall speak in the order established by him; with the appellant speaking first.. The accused or his defence counsel cannot be denied the right to speak after the presentation of arguments by the other parties.

Article 454. § 1. The appellate court shall not be allowed to convict the accused who has been acquitted in the first instance proceedings, or with regard to whom the proceedings in the first instance has been discontinued or conditionally discontinued.

§ 2 The appellate court may sentence the accused to a more severe penalty of deprivation of liberty, only when the court does not change the determination of facts adopted as the grounds for the appealed judgement.

§ 3 The appellate court shall not be allowed to increase the penalty of deprivation of liberty by sentencing the accused to 25 years of imprisonment or by sentencing him for life imprisonment.

Article 455. Without amending the determination of facts, the appellate court shall correct an incorrect legal classification irrespective of the scope of the appeal and objections raised therein. The amending of the legal classification in the way appeal

prejudicial to the accused may only be made when the appellate measure has been filed as an appeal prejudicial to the accused.

Article 456. The appellate court shall render a judgement deciding whether the judgement rendered by the court of the first instance shall be sustained, reversed or amended.

Article 457. § 1. In all cases, the statement of reason for the appellate judgement shall be prepared within fourteen days.

§ 2 The statement of reason shall indicate the basis upon which the judgement rendered by the court has been founded, and the grounds on which the objections raised and motions of the appeal have been recognised by the court as well-founded or unfounded.

Article 458. The provisions with respect to proceedings before a court of the first instance shall be applied to proceedings before an appellate court accordingly, unless otherwise indicated by the provisions of the present Chapter.

Chapter 50

INTERLOCUTORY APPEAL

Article 459. § 1. Interlocutory appeals may be brought against the orders of a court which preclude the rendering of a judgement, unless otherwise provided by law.

§ 2. Interlocutory appeals may be brought also against orders with respect to precautionary measures, and from other orders in cases prescribed by law.

§ 3 The right to file an interlocutory appeal shall be vested in the parties and also in a person directly concerned by the order, unless otherwise provided by law.

Article 460. Interlocutory appeals should be filed within seven days from the date of the announcement of the order or, if statutory service of the order is required by statutory provisions, within seven days from the date on which the service occurred. This also covers the interlocutory appeals against decisions pertaining to costs and charges included in a judgement. However, when an appellant submits a motion for preparation of the reasons for the judgement in writing and for the service thereof, the interlocutory appeal may be brought within the time-limit prescribed for filing an appeal.

Article 461. § 1. An appropriate number of copies of the challenged order for the persons directly concerned thereby shall be appended, to an interlocutory appeal prepared by a state prosecutor or a defence counsel or an attorney against an order concluding the proceedings. The copies shall be served promptly.

§ 2. When the interlocutory appeal has not been prepared by any of the persons listed in § 1, notice of such an appeal shall be served on all concerned by the challenged order.

Article 462. § 1. Unless provided otherwise by law, interlocutory appeals shall not automatically stay the execution of an order which is the subject thereof; however, the court which has issued such an order, or the court designated to examine the interlocutory appeal may stay the execution of an such order.

§ 2. The denial of stay shall not require a statement of reasons.

Article 463. § 1. A court from whose order an interlocutory appeal has been filed may grant such an interlocutory appeal, provided that it renders such a decision with the same panel which had issued the order challenged; in other cases it shall promptly refer the interlocutory appeal with the record or necessary copies of the record of the case, to the court having jurisdiction over the interlocutory appeal.

§ 2. Interlocutory appeals from an order on preliminary detention or on security on property should be referred for examination within 48 hours.

Article 464. § 1. Parties, defence counsel and attorneys shall be entitled to participate in the session of the appellate court hearing the interlocutory appeal, from an order concluding proceedings in the case. They are entitled to participate also when they have been entitled to participate in the session of the court of the first instance.

§ 2 In other cases the appellate court may allow the parties, or a defence counsel or an attorney to participate in the session.

§ 3 Article 451 § 1 shall be applied accordingly.

Article 465. § 1. The provisions on interlocutory appeals from orders of the court shall be applied accordingly to interlocutory appeals from orders by the state prosecutor and by the person conducting the inquiry.

§ 2 An interlocutory appeal from an order issued by the state prosecutor shall be examined by his superior and, in cases provided by law, by the court.

§ 3 An interlocutory appeal from an order issued the person conducting preparatory proceedings other than a state prosecutor, shall be examined by the state prosecutor supervising these proceedings.

Article 466. § 1. The provisions of the present Chapter shall be applied accordingly to interlocutory appeals from rulings.

§ 2. Interlocutory appeal from rulings of the president of the court shall be examined by the appellate court.

Article 467. § 1. The provisions of the present Chapter shall be applied accordingly to interlocutory appeals, in cases provided by law, regarding actions or failure to act.

§ 2. When granting an appeal, the appellate agency shall state the unlawfulness of an action or a failure to act, and orders suitable actions, in particular to remedy the effects of the violation and to prevent similar violations from occurring in future, as well as undertakes other measures provided by law.

Part X

SPECIAL PROCEEDINGS

Chapter 51

Summary proceedings

Article 468. Provisions on ordinary proceedings shall be applied in summary proceedings, unless otherwise provided by the present Chapter.

Article 469. § 1. The cases involving the following offences are heard under summary proceedings:

1) offences subject to the imposition of the penalty of deprivation of liberty not exceeding three years,

2) offences specified in Articles 159, 189 § 1, Article 204 § 3, Article 207 § 1 and Article 262 § 2 of the Penal Code, and

3) offences specified in Article 278 § 1, Article 279 § 1, Article 284 § 2, Article 286 §§ 1 and 2, Article 288 § 1, Article 289 § 1, Article 290 § 1, Article 291 § 1 of the Penal Code, if the value of the object of the offence, or the damage caused or intended does not exceed twenty times the level of the lowest monthly salary.

§ 2. Of the cases listed in § 1 subsection 1 , the following cases shall not be heard in summary proceedings; cases with respect to offences specified in Article 126 §§ 1 and 2, Article 140 § 3, Article 156 § 2, Article 161 §§ 1 and 2, Article 165 § 2, Articles 168, 206, Article 228 § 2, Article 229 § 2, Article 230, Article 231 §§ 1 and 3, Article 233 § 1, Article 240 § 1, Article 252 § 3, Article 265 § 3, Article 271 § 2, Article 302 and Article 304 of the Penal Code.

Article 470. Summary proceedings shall not be applied:

1) to an accused under detention in any case, unless arrest or temporary detention was applied to a perpetrator caught in the act or immediately after committing an offence described in Article 157 §§ 2 and 3, Article 191 § 1, Article 216 §§ 1 and 2, Article 217 § 1, Article 257 and Article 288 § 1 of the Penal Code. Article 259 § 3 shall not be applied.

2) if the case concerns an act committed under conditions specified in Article 79 of the Penal Code.

Article 471. The Minister of Justice, in consultation with the appropriate Ministers shall issue an ordinance designating the agencies which, in addition to the Police, shall have the right to conduct inquires, and the agencies which shall have the right to file and support the charges before a court of the first instance in cases subject to examination in summary proceedings, as well as the scope of cases entrusted to such agencies.

Article 472. § 1. The agency conducting an inquiry shall immediately send a copy of the decision to institute the inquiry to the state prosecutor.

§ 2. The order on the refusal to institute an inquiry and on the discontinuance or suspension thereof shall be issued by the person conducting the inquiry and shall be approved by the state prosecutor.

Article 473. § 1. A summary proceedings shall not require an order on presenting charges nor the issuing of an order on the conclusion of the inquiry, unless the suspect has been arrested or is under preliminary detention.

§ 2 The examination of the suspected person shall start by notifying him of the contents of the charges included in the report on the examination. The person shall be considered suspect from the commencement of the examination.

§ 3 The suspected person shall be given opportunity to prepare his defence, particularly to retain the defence counsel or to have one designated.

§ 4 Article 307 § 4 shall not be applied.

Article 474. § 1. Upon a request from the suspect or a defence counsel, the agency conducting the inquiry shall acquaint the suspect with the materials of a concluded inquiry. The suspect should be instructed about this right during the first examination. The failure to appear, without good reason, of the suspect who filed a request to be acquainted with the materials of the inquiry on the date scheduled for this action, shall not impede the course of the proceedings.

§ 2 The inquiry should be concluded within one month. In the event that the inquiry has not been concluded, the state prosecutor may extend this period to two months, any further proceedings shall be conducted according to the general rules.

§ 3 The person conducting the inquiry shall prepare the indictment, unless this is done by the state prosecutor himself; the indictment need not include a statement of reasons.

§ 3. An indictment prepared by the Police shall be ratified and filed with the court by the state prosecutor. The above provision shall not apply to other law-enforcement agencies.

Article 475. If the indictment meets formal requirements, and the case was directed to be heard at a main trial, the accused may be served with a copy of the indictment together with a summons to the trial.

Article 476. The court shall hear the case in a panel of one. The president of a regional court also may rule that the case be heard by one judge only, if this is justified by the circumstances of the case. The President of a Voivodship Court may rule that the case be heard by one judge only, if this has been done in the first instance.

§ 2. When the court hears the case in a panel of one, the judge shall have the rights and duties of the presiding judge.

Article 477. The failure of the prosecutor to appear shall not impede the course of the trial or of the session.

Article 478. If, in a case arising from an indictable offence, the public prosecutor does not participate in the hearing, the indictment shall be read by the recording clerk.

Article 479. § 1. If an accused upon whom the summons has been served, fails to appear at the main trial, the court may conduct the proceedings in the absence of the accused and when his defence counsel also fails to appear, the court may render a judgement by default.

§ 2. If the accused fails to appear at the trial, his previous explanations shall be read aloud. Article 396 § 2 through 4 shall be applied accordingly.

Article 480. The main trial cannot be held in the absence of the accused, if he has shown good reason for his failure to appear and has moved to have the trial adjourned.

Article 481. The only preventive measure which may be decided by a judgement by default shall be forfeiture as specified in Article 39 subsection 4 of the Penal Code.

Article 482. A judgement by default shall be served upon the accused. Within a seven-day time-limit the accused may file an objection to a judgement by default, in which he should provide a statement of reason for his failure to appear at the trial. The accused may also attach to the objection a motion for the reasons for the judgement in case the objection is not accepted or granted.

Article 483. If in the course of the main trial it transpires that a case examined is not subject to summary proceedings, the trial shall be adjourned and in the further course thereof the court, shall with the consent of the accused, examine the case by way of ordinary proceedings with the same panel.

Article 484. § 1. The summary proceedings shall continue when the trial is interrupted for a period not exceeding 21 days.

§ 2. When the case cannot be examined within the period described in § 1, the court shall examine the case in further ordinary proceedings with the same panel.

Chapter 52

Proceedings in cases brought on a private charge

Article 485. In cases brought on a private charge the provisions on summary proceedings shall be applied in conformity with the provisions of the present Chapter. Article 470 shall not be applied.

Article 486. § 1. Cases on a private charge shall be heard by the regional court in a one-judge panel. The president of the court may rule that the case be heard by a panel of one judge and two lay judges, if he thinks it advisable under the circumstances.

§ 2. Cases arising out of offences specified in Article 212 of the Penal Code shall be heard by the court in a panel of one judge and two lay assessors.

Article 487. The indictment may be limited to the designation of the person of the accused, of the act imputed to him, and to the indication of the items of evidence on which the charge has been founded.

Article 488. § 1. The Police on the request of the injured person shall accept his oral or written charge and, if necessary, secure the evidence, whereupon it shall transmit the charge to the appropriate court.

§ 2. At the directives of the court, the Police shall perform the actions specified by the court, whereupon it shall return the results of these actions to the court. Article 308 shall be applied accordingly.

Article 489. § 1. The main trial shall be preceded by a conciliatory session.

§ 2. Upon a motion from the parties or with their consent, the president of the court may, rather than designating a conciliatory session, designate a suitable date for conducting mediation proceedings. Article 320 shall be applied accordingly.

Article 490. § 1. A conciliatory session shall begin by calling upon the parties to reach a reconciliation.

§ 2. The report on a conciliatory session should particularly describe the attitudes adopted by the respective parties to the call for reconciliation, as well as the results of the session; if a reconciliation is reached, the report shall also be signed by the parties.

Article 491. § 1. The failure of the private prosecutor and his attorney to appear at a conciliatory session without good cause shall be treated as a withdrawal of the charge, whereupon the person conducting the session shall discontinue the proceedings.

§ 2. In the event that the accused fails to appear without good cause, the person conducting the conciliatory session shall direct the case to be heard at the main trial; insofar as possible, he shall also designate the day for it.

Article 492. § 1. In case of a reconciliation of the parties the person conducting the proceedings shall discontinue same.

§ 2. If the reconciliation has been reached as a result of mediation, Article 490 § 2 shall be applied accordingly.

Article 493. In the course of the conciliatory session or as a result of mediation, a reconciliation is permissible which would extend to other cases brought on a private charge, which are contemporaneously pending between the same parties.

Article 494. § 1. In addition to a reconciliation the parties may reach an agreement the object of which may also relate to claims connected with the charge.

§ 2. An agreement reached at a conciliatory session shall only be enforceable after the court has appended an execution clause thereto.

Article 495. § 1. In the event that a reconciliation is not reached the case shall be directed to be heard at a main trial, the day for which shall, insofar as it is possible, be designated at once, unless it is necessary to direct the case to a session of the court in order to have it resolved otherwise.

§ 2 The parties present at the conciliatory session should submit their motions for the taking of evidence at such a session.

§ 3 The court may rule that the case be heard by a panel including lay judges, if the court considers it advisable under the circumstances.

Article 496. § 1. Proceedings in cases brought on a private charge shall be discontinued with the consent of the accused, if the private prosecutor withdraws his charge before the proceedings are validly concluded.

§ 2 The consent of the accused shall not be required if the private prosecutor withdraws his charge before the commencement of the judicial proceedings at the first main trial.

§ 3 Failure of the private prosecutor to appear at the main trial without good cause shall be deemed as a withdrawal of the charge.

Article 497. § 1. The accused may, before the commencement of the judicial proceedings at the main trial, file against the private prosecutor who is an injured party, a reciprocal charge for an act subject to prosecution on a private charge, being related to the act imputed to the accused. The court shall then examine both cases together.

§ 2 Withdrawal of the charge by one of the private prosecutors shall result in the discontinuance of the proceedings only in the part pertaining to the charge brought by this prosecutor.

§ 3 Both private prosecutors shall enjoy the rights of the accused. The primacy in asking questions and presenting arguments shall rest with the private prosecutor who first filed the charge. The court shall indicate in the judgement that the proceedings have been conducted as a result of reciprocal charges.

Article 498. § 1. No reciprocal charge shall be admitted if the state prosecutor has already instituted the proceedings or has joined in the proceedings.

§ 2 If, after the reciprocal charge has been brought, the state prosecutor joins in one of the reciprocal charges, the court shall challenge the other charge for separate proceedings. Article 60 § 2 shall be applied.

§ 3 If the state prosecutor has taken over both reciprocal charges the proceedings shall be further conducted and the accused shall have the rights of subsidiary prosecutors to the extent relevant to the case.

Article 499. Articles 492 through 494 shall also be applied accordingly at the trial.

Chapter 53

Order/writ proceedings

Article 500. § 1. In cases subject to examination under summary proceedings, the court, taking into account the material gathered in the preliminary proceedings, may consider that conducting a trial is not necessary and, in cases in which imposing a penalty of deprivation of liberty or a fine is permitted, the court may issue a penal order.

§ 2 In the order/writ proceedings the provisions relating to summary proceedings shall be applied, unless otherwise indicated by the provisions of the present Chapter.

§ 3 The court may issue a penal order when in light of the evidence gathered, the circumstances of the act and the guilt of the accused do not raise any doubts.

§ 4 The penal order shall be issued by the court sitting in a panel of one. The accused, his defence counsel, the injured person and his attorney shall be entitled to participate in the session.

Article 501. The penal order may not be issued:

1)with regard to the person deprived of liberty in this or another case,

2)in a case brought upon a private charge, or

3)under the circumstances described in Article 79 § 1.

Article 502. § 1. With a penal order, a penalty of the restriction of liberty or a fine up to a level of one hundred times the prescribed daily rates may be imposed.

§ 2 In addition to the penalty described in § 1, forfeiture of items and supplementary payment to the injured or for a public purpose may be imposed in the cases provided in law.

§ 3 The court may limit itself to imposing only the penal sanction described in § 2, when there have been prerequisites permitting the imposing such a sanction.

Article 503. § 1. When issuing a penal order, the court shall adjudicate a full claim brought in a civil suit, or a pecuniary compensation pursuant to Article 415 § 1.

§ 2. If the evidentiary material gathered in the preliminary proceedings is not sufficient to resolve the civil suit, the court shall leave the civil suit unheard.

Article 504. The penal order shall include:

1) the designation of the court and the judge who issued it,

2) the date of issuing the order,

3) the name and surname and other personal data pertaining to the identity of the accused,

4) the detailed description and legal classification of the act which has been imputed to the accused by the court, with an indication of the criminal statute applied,

5) sentencing and other necessary resolutions of the court,

6) the statement of reasons.

Article 505. § 1. A copy of the penal order is served on the public prosecutor, and the accused and his defence counsel are served the copies together with a copy of the indictment. In any case, a copy of the penal order is served on the state prosecutor. The penal order should also include information on legal provisions regarding the right, deadline and manner of filing objections and on the effects of not doing so.

§ 2. When the penal order cannot be served on the accused within three months, the court may deem the order ineffective; the case is then subject to examination according to general rules.

Article 506. § 1. The accused and the public prosecutor shall have the right to file objections with the court which issued the order. The time-limit for filing an objection shall be seven days from the date of service.

§ 2 The president of the court shall reject an objection when it has been filed after the time-limit, or by an unauthorised person.

§ 3 In the event that an objection has been raised the penal order ceases to be valid; the case shall then be subject to examination according to general rules.

§ 4 If the objections have been raised only against resolutions on a civil claim, the penal order shall cease to be valid only in this part, and the court, in a session, will leave the civil suit unheard.

§ 5 The objection may be withdrawn before the commencement of the judicial examination in the main trial.

Article 507. The penal order to which no objections have been filed, or an objection has been withdrawn, shall be executed in the same way as a valid and final convicting judgement.

Chapter 54

Proceedings with respect to cases dealing with contraventions

Article 508. § 1. In proceedings with respect to cases dealing with contraventions, the court shall examine the cases dealing with contraventions if the board having jurisdiction over contravention or the president of such a board refers the case before a hearing, finding that the following penalties should be imposed:

1)penalty of arrest,

2)interdiction on driving vehicles for a period exceeding one year.

§ 2 If the court finds before a hearing that the case was referred without good reason it will return the case to the board having jurisdiction over contravention or to the president of the board from which it has received the case. The decision of the court shall be binding.

§ 3 The court shall also examine the appeal measures against decision of the board.

§ 4 The court shall also resolve the disputes about jurisdiction between boards and decide on transferring a case to another board under circumstances provided for in law.

§ 5 The court having jurisdiction for the purpose of § 1 through 4 is the regional court which decides in a one-judge panel.

Article 509. § 1. In a case transferred pursuant to Article 508 § 1 the provisions regarding summary proceedings shall be applied, except Articles 469 through 474.

§ 2 A motion for the imposition of a penalty shall replace the indictment.

§ 3 An agency acting in the capacity of a prosecutor in proceedings in cases before the board having jurisdiction over contraventions, if it had filed a motion for imposition of a penalty, may participate in court proceedings, unless the state prosecutor takes part therein.

§ 4 An injured person, may, until such time as the judicial proceedings have commenced, join in the proceedings in the capacity of a subsidiary prosecutor. Articles 53 through 58 shall be applied accordingly.

§ 5 The counsel of defence and power of attorney granted for the proceedings before the board having jurisdiction over contraventions to the persons referred to in Articles 82 and 88 shall retain their validity.

§ 6 A civil complaint and adjudication of damages shall not be admissible. The court may however obligate the accused to redress the damage or to restore the previous situation or adjudicate supplementary payment to the injured or for a public purpose if so provided in the law on contraventions.

Article 510. In the proceedings which resulted from filing an an appellate measure against a decision of a board having jurisdiction over contraventions, the provisions on appellate proceedings shall be applied, unless the present Chapter provides otherwise.

Article 511. The refusal to refer a case to the court shall be subject to interlocutory appeal. If the president of the board having jurisdiction over contraventions does not grant the appeal he refers it to the court; the court shall examine such an interlocutory appeal according to general rules.

Article 512. § 1. The appeals against decisions of the board having jurisdiction over contraventions shall be subject to relevant provisions on appeals.

§ 2. The parties which participated in the proceedings before the board having jurisdiction over contraventions, shall retain their rights in the appellate proceedings, and the injured person then has the rights of a subsidiary prosecutor. If a state prosecutor acts in the case, another public prosecutor shall not take part in the proceedings.

§ 3 The failure of the parties to the proceedings to appear shall not impede the course of the proceedings. Article 79 § 3 shall be applied accordingly.

§ 4 In the case in which an appeal has been filed against the decision of the board having jurisdiction over contraventions, the president of the court shall rule as to which witnesses or experts are to be summoned to the trial, and which need not be summoned, on finding that their direct examination at the trial will not be necessary, particularly if they are to establish material circumstances not denied by the accused. However, on the motion of a party, these persons should be summoned.

§ 5 The appeal shall result in reviewing the whole decision with respect to the concerned person.

§ 6 If the court decides to impose the penalty of deprivation of liberty or a penal measure listed in Article 508 § 1, the accused may file an appeal from such a sentence in accordance with general rules.

Article 513. § 5. The case which has been heard by a board having jurisdiction over contraventions in expedited proceedings, referred to the court as a result of an appeal, shall be heard at the latest within one month of the day on which it was filed with the court.

Article 514. The court shall render a judgement deciding whether the decision by the board having jurisdiction over contraventions shall be sustained, reversed or amended.

Article 515. § 1. A valid and final decision of the board having jurisdiction over contraventions and a valid and final decision on discontinuation of the proceedings, as well as a valid penal order may be reversed, if it is found that Article 112 of the Code of procedure in cases of contraventions has been violated.

§ 2 The motion for the application of § 1 may be filed by persons who had the rights of parties in the proceedings in a case of contravention, by the president of the regional or voivodship court in whose district the decision was rendered, and by the state prosecutor and the Commissioner for Citizens' Rights Protection. The motion filed by the parties shall be prepared and signed by a barrister. Rendering a decision, order or a penal order invalid may also be done.

§ 3 The reversal of a valid and final decision shall be decided in a session by the voivodship court sitting in a panel of three judges. The motioning party and the person concerned by the motion may participate in the session.

§ 4 The motion referred to in § 2 shall be heard within two months of the day on which it was filed.

§ 5 If needed, the court shall order an examination of the circumstances pursuant to the provisions of Article 97. The persons referred to in § 2 may participate in these actions.

§ 6 The reversing of a decision in a way prejudicial to the accused shall not be allowed after a lapse of six months from the day on which the decision has become valid and final, or after the lapse of a time-limit referred to in Article 45 § 1 of the Transgressions' Code.

§ 7 Article 441 shall be applied accordingly.

Article 516. § 1. The court, in deciding that a valid and final decision shall be reversed, shall acquit the accused or discontinue the proceedings or remand the case to the court of a board in accordance with their respective jurisdiction.

§ 2 The court shall render a judgement on the reversal of a decision. The refusal to reverse a valid and final decision is rendered by the court in the form of an order.

§ 3 This judgement of the court shall not be subject to appellate measures.

Article 517. The provision of this Chapter shall be applied to the decision by other agencies deciding in cases of contraventions unless otherwise provided by law..

Part XI

EXTRAORDINARY APPEALS

Chapter 55

Cassation

Article 518. Unless otherwise provided by the present Chapter, the provisions of Chapter IX shall be applied accordingly to the cassation proceedings.

Article 519. § 1. A cassation may be taken from a valid and final decision of an appellate court concluding the court proceedings. The provision of the second sentence of Article 425 § 2 shall not be applied.

§ 2 The party which did not appeal against the decision of the court of the first instance, may not file a cassation appeal against the decision of the appellate court if the judgement of the court of the first instance has been upheld or amended in favour of such a party.

§ 3 The restriction referred to in § 2 shall not apply to the violations referred to in Article 439.

Article 520. Parties shall have the right to bring a cassation appeal.

Article 521. The Minister of Justice - the Attorney General and also the Commissioner for Citizens' Rights Protection may bring a cassation appeal from any valid and final judgement concluding the court proceedings.

Article 522. An cassation appeal concerning the same accused and the same decision may be brought only once by a person so entitled.

Article 523. A cassation may be filed solely on the grounds of the violations listed in Article 439 or an other flagrant breach of law, if it might have a significant effect on the contents of judgement; the cassation may not be filed only because of the the incommensurability of punishment.

Article 524. § 1. The time-limit for filing cassation by the parties shall be 30 days from the date on which the judgement with reasons was served. The motion requesting the service of the judgement with reasons should be filed with the court which rendered the judgement within the final time-limit of 7 days from the date it is announced. Article 445 § 2 shall be applied accordingly.

§ 2 The time-limit set forth in § 1 shall not be applied to the cassation brought by the Minister of Justice - the Attorney General and the Commissioner for Citizens' Rights Protection (the Ombudsman).

§ 3 No cassation to the prejudice of the accused may be accepted after 6 months from the date on which the judgement became valid and final.

Article 525. § 1. A party shall bring a cassation to the Supreme Court via the appellate court.

§ 2. In the case described in Article 521, the cassation is brought directly to the Supreme Court.

Article 526. § 1. The cassation should specify the nature of the alleged violation.

§ 2. When the cassation is not filed by the state prosecutor, the Minister of Justice - the Attorney General, or the Commissioner for Citizens' Rights Protection, it should be prepared and signed by a barrister.

Article 527. § 1. A receipt of payment of court fees shall be appended to a cassation appeal; this shall not be applied to the state prosecutor.

§ 2 A person deprived of liberty shall be exempted from a fee upon filing a cassation appeal; in the event that the cassation filed is left unheard or dismissed, this fee shall be adjudicated from such a person.

§ 3 A soldier doing his basic military service, or training for professional military service, shall be exempted from such fees.

§ 4 If the extraordinary appeal is granted, even in part, the fee shall be refunded to the person who paid it.

§ 5 The amount of such a fee shall be established by the Minister of Justice by ordinance.

Article 528. The following refusals shall not be subject to appeal:

1) to exempt from the fee referred to in Article 527 § 1,

2) to appoint a barrister in order to prepare a cassation appeal,

3) to restore a term referred to in Article 524 § 1.

§ 2. Article 447 § 3 shall be applied accordingly.

Article 529. The bringing a cassation appeal for the benefit of the accused shall not be impeded, even though the sentence has been served, the entry of sentences has been expunged from the criminal record, clemency granted, or there has occurred an event which has barred prosecution or justified the suspension of the proceedings.

Article 530. § 1. In the case described in Article 525 § 1, the president of the court, accepting the cassation appeal, shall serve copies thereof on the remaining parties and shall promptly transfer the files of the case to the cassation court, if the court with which the cassation was filed is not authorised to examine the case.

§ 2 The president of the court with which the cassation has been filed shall refuse if he finds that the circumstances described in Article 120 § 2 or Article 429 § 1 have occurred.

§ 3 The ruling referred to in § 2 shall be subject to an interlocutory appeal to the Supreme Court. Article 526 § 2 shall be applied accordingly. The Supreme Court shall examine the interlocutory appeal in a one-judge panel.

Article 531. § 1. The Supreme Court shall leave an accepted cassation unheard if it does not comply with the provisions of Article 530 § 2, or when accepting a cassation has resulted from the groundless restitution of a time-limit.

§ 2. The Supreme Court may, however, remand the files of the case to the appellate court, after finding that actions aimed at removing formal defects of the cassation filed have not been completed.

Article 532. § 1. If a cassation appeal has been filed, the Supreme Court may stay the execution of the decision appealed, as well as another judgement whose execution depends on the outcome of the cassation appeal.

§ 2. The staying of the execution of the decision may be combined with the imposition of measures described in Articles 266, 271, 272, 275 and 277.

Article 533. If a cassation has been filed to the prejudice of the accused, the Supreme Court may impose a preventive measure, unless the accused was acquitted.

Article 534. When law does not require rendering a judgement, the Supreme Court shall decide in a one-judge panel unless the President of the Supreme Court has ruled that the case should be examined by a panel consisting of three judges.

§ 2. If a cassation appeal relates to a decision issued by the Supreme Court, the case shall be examined by a panel of that court consisting of seven judges, unless the judgement has been rendered by a one-judge panel; in such a case the Supreme Court decides in a panel consisting of three judges.

Article 535. § 1. A cassation appeal taken from a judgement shall be heard by the Supreme Court at a trial; a cassation appeal taken from an order shall be heard in a session where parties shall be entitled to participate. Article 451 § 3 shall not be applied.

§ 2. The Supreme Court, if it finds the extraordinary appeal without substance, shall decide to dismiss the same in a session. The parties shall be entitled to participate in the session. The dismissal of a cassation as lacking substance shall not require the provision of reasons thereof in writing.

Article 536. The Supreme Court shall hear the cassation appeal within the limits of the appeal and the charges brought, and shall consider the cassation appeal outside this scope only in the cases described in Articles 435, 439 and 455.

Article 537. § 1. Having heard the case, the Supreme Court shall dismiss the cassation appeal, or reverse the appealed judgement in whole or in part.

§ 2. The Supreme Court, in reversing a judgement, shall remand the case to the court having jurisdiction over it for re-examination or shall discontinue the proceedings; when the conviction was found to be evidently unjust, the Supreme Court shall acquit the accused.

Article 538. § 1. Upon the reversal of the [sentencing] judgement the carrying out of the penalty shall cease and the penalty already served out shall be included within the term of the new penalty, in the event that the accused is later convicted again.

§ 2. The court may apply a preventive measure.

Article 539. No cassation appeal shall be brought from a judgement rendered by the Supreme Court in a hearing of a cassation appeal.

Chapter 56

Re-opening of proceedings

Article 540. § 1. Court proceedings concluded by a valid and final decision shall be re-opened if:

1) in connection with the proceedings an offence has been committed, and there is good reason to believe that this might have affected the contents of such a decision, and/or

2) after the decision has been issued, new facts or evidence previously unknown to the court come to light, which indicate that:

a) the convicted person has not committed the act, or his act has not constitute an offence or has not carried any penalty,

b) the convicted person has been sentenced for another offence, carrying a more severe penalty than that for the offence committed by him, or material circumstances obligating the extraordinary mitigation of punishment have not been duly considered or that material circumstances contributing to the aggravation of the penalty have been incorrectly relied upon.

c)the court has discontinued or conditionally discontinued the proceedings, after relying on incorrect assumption about the accused having committed the alleged offence.

§ 2 The proceedings shall be re-opened for the benefit of the accused in the event that a provision of law which provided the grounds for conviction or conditional discontinuance of the proceedings has been declared no longer binding or has been amended as a result of a judgement of the Constitutional Tribunal.

§ 3 The proceedings shall be re-opened for the benefit of the accused, when such a need results from a decision of an international authority acting under the provisions of an international agreement which has been ratified by the Republic of Poland.

Article 541. § 1. An act described in Article 540 § 1 subsection (1), must be established by a valid and final convicting judgement, unless such a decision cannot be issued for any of the reasons listed in Article 17 § 1 subsections 3 through 11 or in Article 22.

§ 2. In this case a motion for re-opening the proceedings should indicate the convicting judgement or decision issued in criminal proceedings, stating that the convicting judgement could not be rendered.

Article 542. § 1. Proceedings may be re-opened on a request of a party.

§ 2. If the accused has died, a request for re-opening the proceedings for his benefit may be submitted by a person closest to him.

Article 543. § 1. A re-opening of the proceedings limited only to deciding claims for property damage resulting from the offence, may be made only by a court having jurisdiction to decide civil cases.

§ 2. The court having jurisdiction to decide civil cases shall apply accordingly the provisions of the Code of Civil Procedure to the re-opening of the proceedings, and the continuation thereof after such re-opening.

Article 544. § 1. The question as to whether proceedings should be re-opened, shall be resolved by the Voivodship Court, and the question of re-opening the proceedings concluded by a judgement of the Voivodship Court shall be resolved by the Appellate Court. The court shall decide in a panel of three judges.

§ 2 The question as to whether proceedings concluded by a judgement rendered by the Appellate Court or the Supreme Court should be re-opened, shall be resolved by the Supreme Court in a panel of three judges.

§ 3 The parties, defence counsel and attorneys shall be entitled to participate in such a session.

Article 545. § 1. In the event that the proceedings are re-opened, Article 425 § 2 first sentence, § 3 and 4, Article 429, Article 430 § 1, Articles 431, 432, 435, 442, 455, 529, 530, 532 and Article 538 shall be applied accordingly; in the event that the proceedings are re-opened for the benefit of the accused, Articles 434 and 443 shall be applied accordingly.

§ 2. When the motion for the re-opening of the proceedings is not filed by the state prosecutor, it should be prepared and signed by a barrister. Article 446 § 2 shall be applied accordingly.

Article 546. If the court has ruled that material circumstances should be verified as prescribed in Article 97, the parties shall have the right to participate in the verifying actions.

Article 547. § 1. An interlocutory appeal may be taken from an order dismissing such a motion or leaving it unheard, unless such an order has been issued by the Appellate Court or the Supreme Court.

§ 2 The court, in deciding that the proceedings shall be re-opened, shall reverse the decision appealed, and remand the case to the court of competent jurisdiction for re-examination. This decision shall not be subject to appellate measures.

§ 3 If it reverses the decision appealed, the court may acquit the accused by a judgement, if the newly disclosed facts and evidence show that his conviction was manifestly unjust, or discontinue the proceedings. Judgements acquitting the accused or discontinuing the proceedings shall be subject to appellate measures.

§ 4 The judgements referred to in § 3, rendered by the Supreme Court shall not be subject to appellate measures.

Article 548. If the proceedings have been re-opened pursuant to a motion for the benefit of the accused, and they are conducted after his death, or a reason occurs for suspending the proceedings, the president of the court shall designate defence counsel to defend the rights of the accused, unless the moving party itself has retained defence counsel.

PART XII

PROCEEDINGS AFTER THE JUDGEMENT HAS BECOME VALID AND FINAL

Chapter 57

Reinstatement of proceedings conditionally discontinued by the court

Article 549. The court, on the motion of the public prosecutor or the injured person, or , shall decide whether proceedings conditionally discontinued by the court shall be reinstated.

Article 550. § 1. The matter of the reinstatement of proceedings conditionally discontinued shall be resolved by a decision of the court of the first instance having jurisdiction over the case.

§ 2. The accused and defence counsel shall be entitled to participate in the session.

§ 3 The order dismissing the motion or leaving it unheard shall be subject to interlocutory appeal.

§ 4 The person giving guaranty should be notified of the fact that the conditionally discontinued proceedings have been reinstated.

Article 551. In the event that conditionally discontinued proceedings are reinstated the case shall be conducted before the court having jurisdiction to examine the case pursuant to general rules.

Chapter 58

Compensation for unjustifiable sentencing or detention

Article 552. § 1. An accused who as a result of a re-opening of proceedings or of a cassation appeal or of declaring a judgement null and void has been acquitted or re-sentenced under a more lenient provision, shall be entitled to receive from the State Treasury compensation for the damages incurred by him as well as redress for the injury, resulting from his having served all or part of the sentence unjustifiably imposed.

§ 2 The provisions of § 1 shall also be applicable if, after reversing the sentencing judgement or declaring it null and void, the proceedings have been discontinued by reason of material circumstances not duly considered in prior proceedings.

§ 3 A right to compensation and redress shall also arise if a preventive measure has been applied under the conditions specified in § § 1 and 2.

§ 4 A right to compensation and redress shall also arise in the event that a manifestly unjustifiable preliminary detention or arrest has been imposed.

Article 553. § 1. No claim for compensation or redress shall be admitted with respect to a person who, with an intent to fraudulently deceive the court or a prosecuting agency, submitted a false notice of an offence, or false explanation and thus caused therewith an adverse judgement regarding a sentence, preliminary detention, or the imposition of a preventive measure or arrest.

§ 2 The provision of § 1 shall not be applied to the persons submitting statements under the conditions prescribed in Article 171 §§ 3, 4 and 6, and when the damage or injury has arisen from the contravention of powers or neglect of duties by a state official.

§ 3 In the case of the accused contributing to the rendering of the judgement referred to in § 1, Article 362 of the Civil Code shall be applied accordingly.

Article 554. § 1. A claim for compensation should be submitted to the Voivodship Court in whose territorial jurisdiction the decision in the first instance has been issued; or, under the circumstances foreseen in Article 552 § 4, to the Voivodship Court having jurisdiction by reason of the place in which the release of the accused from preliminary detention or from arrest has occurred.

§ 2. The Voivodship Court shall decide such claims at a trial in a panel of three judges, and claims of compensation should be given priority, with such proceedings being be free of charge.

Article 555. The right to seek compensation for unjustifiable sentencing shall be barred by the lapse of one year, from the day on which the decision providing grounds for compensation and redress, has become valid and final or, in the event that compensation and redress are sought for a manifestly unjustifiable preliminary detention, from the day on which the decision concluding the proceedings in the case has become valid and final, or in the event that compensation and redress is sought for unjustifiable arrest from the date of release therefrom..

Article 556. § 1. After the death of an accused the right to compensation shall be granted to a person who as a result of the execution of the penalty imposed, or of a manifestly unjustifiable preliminary detention, has lost:

1) maintenance which the accused has been obligated by law to furnish, or

2) maintenance theretofore regularly furnished to him by the deceased, if consideration of equity favours the granting of such compensation.

§ 2 A claim for compensation should be brought within the time-limit specified in Article 555 or within one year from the day of the death of the accused.

§ 3 The party claiming compensation or redress may retain an attorney. Articles 78 through 81 shall be applied accordingly.

§ 4 The authorisation granted to the defence counsel shall retain its validity as authorisation to act as an attorney.

Article 557. § 1. In the event that compensation has been made and injury has been redressed, the State Treasury shall have the right of recourse to the persons who, by their unlawful actions, caused unjustifiable sentencing, imposing a preventive measure, manifestly unjustifiable preliminary detention or arrest.

§ 2. The suit regarding the claims referred to in § 1 may be brought in civil proceedings by a state prosecutor or an agency competent to represent the State Treasury. When the state prosecutor has not found grounds for bringing a suit, he shall issue an order to this effect and shall notify the competent agency.

Article 558. In the cases regarding compensation for unjustifiable sentencing, preliminary detention or arrest, the provisions of the Civil Code shall be applied only to the matters not regulated by this Code.

Article 559. The provisions of the present Chapter shall be applicable to aliens on the principle of reciprocity.

Chapter 59

Clemency

Article 560. § 1. A petition for clemency with respect to a sentenced person may be filed by that person, by a person authorised to bring an appellate measure on his behalf, by direct lineal relatives, adoptive parent or adopted child, brother, sister, or spouse of the sentenced person or a person who cohabitates with the sentenced person.

§ 2. The court shall leave unheard a petition for clemency filed by a person not authorised or not admitted by law.

Article 561. § 1. The petition for clemency shall be forwarded to the court which has rendered the judgement in the first instance.

§ 2. The court referred to in § 1 should examine the petition for clemency within 2 months from the date on which the petition was received.

Article 562. § 1. The court shall examine the petition for clemency with the same panel which has issued the decision. The panel should consist, if possible, of the same judges and lay judges who participated in rendering the judgement.

§ 2. In the event that the decision was issued by a one-judge panel, the order shall now be issued by a panel of one judge and two lay judges.

Article 563. In examining the petition for clemency the court shall take into special consideration the conduct of the sentenced person when serving his sentence, the time already served, his state of health and family circumstances after the rendering of the judgement, the degree to which the damages caused by the offence have been repaired and, above all, any special circumstances which may have occurred after the rendering of the judgement.

Article 564. Article 1. If the case in which the petition for clemency has been filed was heard only by the court of the first instance, and the court issued a positive opinion, it shall transmit the files of the case or its essential sections to the Attorney General and append its opinion; if the court finds no grounds to issue a positive opinion, it shall disregard the petition without further action.

§ 2 If the case in which the petition for clemency has been filed was heard by the appellate court, the court of the first instance, shall transmit the files of the case or the essential portions to this appellate court and append its opinion.

§ 3 The appellate court shall disregard the petition without any further action only when it has issued a negative opinion, and the court of the first instance has already issued the same; in other cases the appellate court shall transmit the files to the Attorney General and append the opinions.

§ 4 Opinions issued by the courts shall not be accessible to persons listed in Article 560.

Article 565. § 1. If at least one of the courts has expressed an opinion in favour of granting clemency, the Attorney General shall present the petition for clemency to the President of the Republic of Poland with the files of the case and his own motion.

§ 2. A petition for clemency submitted directly to the President of the Republic of Poland shall be referred to the Attorney General in order to commence proceedings on the same, pursuant to Articles 561 or 567.

Article 566. A renewed petition for clemency filed before the lapse of six months from the day on which the period petition was disregarded without further action, may also be left unheard by the court.

Article 567. § 1. The proceedings for the granting of clemency may be instituted by the Attorney General, who may require that the files of the case with the opinions issued by

the courts be submitted to him, or present such files to the President of the Republic of Poland without consulting such opinions.

§ 2. The Attorney General shall present to the President of the Republic of Poland the files of the case, or institute the proceedings for clemency whenever the President so decides.

Article 568. If it is found that particularly relevant reasons favour the granting of clemency, and above all, if this is supported by the fact that only a short term of the sentence remains to be served, then the court which issued the opinion and the Attorney General, may defer the execution of the penalty or rule that its execution be interrupted until the conclusion of the proceedings for clemency.

Chapter 60

Cumulative judgements

Article 569. § 1. If circumstances permit an aggregate penalty to be imposed on a person validly sentenced by judgements rendered by different courts, the right to issue a cumulative judgement shall be vested in the court which has issued the latest sentencing judgement in the first instance.

§ 2 If in the first instance the decisions were issued by courts of different levels, the cumulative judgement shall be rendered by the senior court.

§ 3 If the judgements rendered by the civilian and the special court coincide, the aggregate penalty shall be decided by the court which has imposed the more severe penalty subject to cumulation.

Article 570. The cumulative judgement shall be rendered by the court or on the motion of the sentenced person or of the state prosecutor.

Article 571. § 1. If necessary, the court shall call upon the penal establishments at which the sentenced person has been kept, requesting them to transmit their opinion on such sentenced person's behaviour while he was serving his sentence, information on his family and financial circumstances, and on the state of his health; and data on the terms served with respect to particular sentences.

§ 2. A motion for a cumulative judgement, filed by the state prosecutor, should contain the data specified in § 1.

Article 572. If there is no basis for passing a cumulative judgement, the court shall issue a decision on the discontinuance of the proceedings in that matter.

Article 573. § 1. A cumulative judgement may be rendered only after the trial.

§ 2 The personal appearance of the sentenced person shall not be mandatory unless the court has ordered otherwise. Article 350 § 2 shall not be applied.

§ 3 Article 84 § 2 shall not be applied.

Article 574. In matters not regulated by the provisions of the present Chapter the provisions on ordinary proceedings before a court of the first instance shall be applied accordingly to proceedings for the rendering of a cumulative judgement. Article 422 § 2 shall be applied accordingly.

Article 575. § 1. If after a cumulative judgement has been rendered, a new judgement of this type is required, the former shall be void upon the issuance of the latter.

§ 2. If one of the judgements upon which the cumulative judgement was based has been reversed or amended, the cumulative judgement shall be void, and if necessary the court shall render a new cumulative judgement.

Article 576. § 1. After the cumulative judgement has become valid and final, the judgements subject to cumulation shall not be executed to the extent included within the cumulative judgement.

§ 2. If the cumulative judgement imposes a penalty milder than the accumulated sentences of deprivation of liberty already served, or equal to it, the presiding judge shall promptly order the release of the sentenced person, unless he is under detention in another case. The cumulative judgement shall be appended to the ruling on execution.

Article 577. In a cumulative judgement the court shall designate, if necessary, the day from which the penalty imposed by the cumulative judgement shall run, and refer to the terms included in, and deducted from, the cumulative penalty.

PART XII

Procedure in criminal cases in international relations

Chapter 61

Immunities of persons on the staff of the diplomatic missions and consular offices of foreign states

Article 578. The jurisdiction of Polish criminal courts shall not extend to:

1) the heads of diplomatic missions of foreign states accredited in the Republic of Poland,

2) persons on the diplomatic staff of such missions,

3) persons on the administrative and technical staff of such missions,

4) members of the families of the persons listed in subsections (1) through (3), if they are members of their households, and

5) other persons granted diplomatic immunity pursuant to statutes, agreements, or universally acknowledged international custom.

Article 579. § 1. The jurisdiction of the Polish criminal courts shall not extend to the following persons, to the extent of their actions in the conduct and performance of official duties:

1) the heads of consular offices and other consular officials of foreign states, and

2) other persons accorded similar status pursuant to agreements or universally acknowledged international custom.

§ 2 The head of a consular office and other consular officials of foreign states can be subject to arrest or preliminary detention only if they are charged with the commission of a crime. In the event of such arrest or preliminary detention the Minister of Foreign Affairs shall be promptly notified.

§ 3 In addition to the case specified in § 2 such persons may be deprived of their liberty only pursuant to a valid and final judgement of a Polish court.

Article 580. § 1. Articles 578 and 579 shall not be applied in the special case in which the sending State explicitly waives the immunity granted to the person referred to in these provisions.

§ 2. As to officials of international organisations who had been granted immunity, the waiver described in § 1, must be effected by the appropriate international organisation.

Article 581. § 1. The persons listed in Article 578 shall not be obligated to testify as witnesses or to appear as experts or interpreters; they may, however, be requested to give their consent to testify or to appear in the capacity of experts or interpreters.

§ 2. In the event that the consent referred to in § 1, is given, the summons served on these persons shall not include the warning on measures of coercion; if they fail to appear when summoned or refuse to testify, these measures shall not be applied to them.

Article 582. § 1. Article 579 shall be applied accordingly to persons listed in Article 581, if the material circumstances which their testimony or opinions are to concern, are connected with the performance by these persons of their official or professional functions, and with other functions, on the principle of reciprocity.

§ 2. The persons listed in Articles 578 and 579 shall not be obligated to surrender correspondence or documents connected with such functions.

Article 583. § 1. The premises of a diplomatic mission may be searched only after a consent has been obtained from the head of such a mission or from a person temporarily acting in his capacity.

§ 2. The consent of a consular office or of a person temporarily acting in his capacity, or of the head of the diplomatic mission shall be necessary to conduct a search of the premises of a consular office.

Article 584. Articles 578 through 583 shall not be applicable to persons listed therein, if such persons are Polish citizens or have their permanent residence in Poland.

Chapter 62

Judicial assistance and service of documents in criminal cases

Article 585. The actions necessary in criminal proceedings may be conducted by way of judicial assistance, particularly the following:

1) service of documents on persons staying abroad or on agencies having their principal offices abroad,

2) taking depositions of persons as accused persons, witnesses, or experts,

3) inspection and searches of dwellings and persons, confiscation of material objects and their delivery abroad,

4) summoning of persons staying abroad to make a personal voluntary appearance before the court or state prosecutor, in order to be examined as a witness or to be submitted to confrontation, and bringing persons under detention, for the same purposes, and

5) giving access to records and documents, and information on the criminal record of the accused.

6) advising on law.

Article 586. § 1. The request to have a document served upon a person who is a Polish citizen and is staying abroad, or to have such person examined as an accused, witness or expert, shall be addressed by the court or state prosecutor to a Polish diplomatic mission or consular office.

§ 2. If this action cannot be performed as provided for in § 1, such a request may be addressed to a court, prosecutors' office or other appropriate agency of the foreign state. If this request is for a search, for confiscation and delivery of a material object, the

request should contain a duplicate copy of the order issued by the court or state prosecutor concerning the performance of this action in the given case.

Article 587. The official records of inspections, examinations of persons as accused persons, witnesses or experts, or records of other evidentiary actions prepared upon a request from a Polish court or state prosecutor, by the courts or state prosecutors of foreign countries or by agencies performing under their supervision, may be read aloud at the hearing according to the principles prescribed in Articles 389, 391 and 393. This may be done provided that the manner of performing these actions, does not conflict with the principles of the legal order in the Republic of Poland.

Article 588. § 1. Courts and state prosecutors' offices shall give judicial assistance when requested by letters rogatory issued by the courts and the state prosecutors' offices of foreign states.

§ 2. The court and the state prosecutors' office shall refuse to give judicial assistance and convey their refusal to the appropriate agencies of the foreign state in question, if the requested action is in conflict with the legal order of the Republic of Poland or constitutes an infringement of its sovereignty.

§ 3. The court and the state prosecutor may refuse to give judicial assistance if:

1) the performance of the requested action lies beyond the scope of activity of the court or state prosecutor under Polish law,

2) the foreign state in which the letters rogatory have originated, does not guarantee reciprocity in such matters, or

3) the request is concerned with an act which is not an offence under Polish law.

§ 4. Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or state prosecutor. However, if these agencies require special proceedings or some special form of assistance, their wishes should be honoured, unless this is in conflict with the principles of the legal order of the Polish People's Republic.

§ 5. The fees for the judicial assistance shall be established pursuant to Articles 616 through 619.

Article 589. § 1. A witness or expert who is not a Polish citizen and who, when summoned from abroad, appears voluntarily before the court, cannot be prosecuted or arrested, or put under preliminary detention either by reason of an offence relevant to the criminal proceedings, or of any other offence committed before he crossed the Polish border. The penalty imposed for such offence may not be executed with respect to him.

§ 2 Such a witness or expert shall forfeit the protection provided by § 1, if he fails to leave the territory of the Republic, although being able to do so within seven days from the day on which the court announces to him that his presence is no longer necessary.

§ 3 Witnesses or experts summoned from abroad shall be entitled to have the costs of their fare and stay reimbursed to them, and shall be compensated for lost wages; in addition, an expert shall be entitled to a fee for the opinion he has issued.

§ 4 The summons served on a witness or expert permanently residing abroad shall include a notice of the contents of § 1 through 3, and it shall not contain a warning on measures of coercion in the event of a failure to appear.

Chapter 63

Taking over or transferring the criminal prosecution

Article 590. § 1. In a case of an offence committed abroad by:

1) a Polish citizen,

2) a person having his permanent residence within the territory of the Republic of Poland,

3) a person who is serving or will serve a penalty of deprivation of liberty in the Republic of Poland,

4) a person against whom criminal proceedings have been instituted in Poland

the Minister of Justice shall, in the interest of the administration of justice, direct a request to a relevant agency of a foreign country for taking over the criminal prosecution or may accept such a request from an appropriate agency of a foreign country.

§ 2 Taking over the criminal prosecution shall be regarded as instituting criminal proceedings under Polish law.

§ 3 If taking over the criminal prosecution involves taking custody of a person under a preliminary detention, Article 598 shall be applied.

§ 4 Article 587 shall be applied accordingly to the evidentiary material obtained abroad, even if the actions have not been undertaken upon a request from a Polish court or state prosecutor.

§ 5 The Minister of Justice shall notify the appropriate agency of the foreign country on the manner of the valid conclusion of the criminal proceedings.

Article 591. § 1. In the case of an offence committed by an alien within the territory of the Republic of Poland, the Minister of Justice shall, in the interest of the administration of justice, direct to a relevant agency of a foreign country:

1) of whom the prosecuted person is a national,

2) in which the prosecuted person has his permanent residence,

3) in which the prosecuted person is serving or will serve a penalty of deprivation of liberty,

4) in which criminal proceedings have been instituted against the prosecuted person

request to take over the criminal prosecution, or may accept such a request from an appropriate agency of a foreign country.

§ 2 If the injured person is a Polish citizen, submitting the request for taking over the prosecution may be only be done with his consent.

§ 3 Before resolving the request, the prosecuted person shall have the right to be heard by an appropriate agency and he should be informed thereof.

§ 4 When the request for taking over the prosecution is granted, the Minister of Justice shall promptly order the transfer of the prosecuted person, if he is under preliminary detention, together with the files of the case, to the appropriate agency of a foreign country.

§ 5 The Minister of Justice shall request the appropriate agency of a foreign country for information on the manner of a valid conclusion of the criminal proceedings.

§ 6 The transfer of the criminal proceedings shall be regarded as the discontinuation of the criminal proceedings under Polish law; it shall not prevent new criminal proceedings in the event that prosecution abroad has been abandoned without foundation.

Article 592. If the criminal proceedings regarding the same act of the same person have been instituted in the Republic of Poland and in a foreign country, the Minister of Justice conducts consultations with an appropriate agency of a foreign country and, when the interest of the administration of justice so require, shall request taking over or transferring the criminal prosecution. Article 590 §§ 2 through 5 and Article 591 § 2 through 6 shall be applied accordingly.

Chapter 64

Petition for the extradition or transportation of prosecuted or sentenced persons staying abroad, and for the delivery of material objects

Article 593. § 1. The petitions for extradition by a foreign State of a person against whom criminal proceedings have been instituted, for extradition in order to conduct judicial proceedings or enforce the imposition of the penalty of deprivation of liberty, for transportation of a prosecuted or sentenced person through the territory of a foreign State, or for or for transmitting from the territory of a foreign State the material evidence or objects acquired by the perpetrator through his offence, shall be filed through the Attorney General by the courts and state prosecutors.

Article 594. § 1. A duplicate copy of the order on preliminary detention and the statement of reasons thereof, explaining the fact situation and the legal grounds for the prosecution, shall be appended to the petition.

§ 2 If the accused is sentenced to deprivation of liberty by a valid and final judgement, a copy of this judgement shall be appended to the petition in place of the copy of the order referred to in § 1.

§ 3 Article 280 § 1 subsection (2) shall be applied accordingly.

Article 595. In exigent circumstances, the court or the state prosecutor may apply directly to the appropriate agency of the foreign State, requesting that the person whose extradition is to be sought, be put under preliminary detention or arrested whereupon a petition should be promptly filed pursuant to Articles 593 and 594.

Article 596. If a foreign State imposes the condition that criminal proceedings may extend only to the offences for which the extradition has been granted, then the proceedings against the extradited person cannot extend to any other offence committed before the date of extradition.

Article 597. If upon extradition the condition is imposed concerning the person extradited that formerly imposed penalties will be executed only to the extent of the offences for which the extradition has been granted, the court which has validly decided the case, shall issue in session a judgement, if necessary, amending the prior decision so that the penalty shall be executed only as to the offences for which the extradition was granted.

Article 598. § 1. With respect to the extradited person, the time-limits prescribed in Article 263 will run from the time of his being taken in custody by the appropriate agencies on the territory of the Republic of Poland.

§ 2. Article 265 shall also be applicable when the arrest has occurred in a foreign country.

Article 599. If a person extradited by another State fails, without good cause, to leave the territory of the Republic of Poland within a month from the day on which the proceedings are validly concluded, or, in the event that he has been sentenced, within two months from the day on which he completes the serving of his sentence, or if he returns after leaving the territory of the Republic of Poland, the restrictions provided in Article 596 § 2 and Article 597 shall not apply.

Article 600. After a valid and final decision has been issued in a case against a person extradited from a foreign State, the court shall send a copy of the judgement to the Minister of Justice, and the latter will convey the same to the appropriate agency of that foreign State. Article 157 § 2 shall be applied accordingly.

Article 601. Material objects transmitted by a foreign State, acquired as a result of an offence shall be returned if such condition was imposed on their transmission; this provision shall also apply to material evidence.

Chapter 65

Requests of foreign states for the extradition or transportation of prosecuted or sentenced persons staying abroad, and for the delivery of material objects

Article 602. If an authority of a foreign State request the extradition of a prosecuted person in order to conduct criminal proceedings against him, or to execute a penalty or a preventive measure previously imposed, the state prosecutor shall examine this person and, if necessary, secure the material evidence in this country, whereupon he shall file the case with a Voivodship Court having territorial jurisdiction over the case.

Article 603. § 1. The Voivodship Court shall issue in session an opinion on the motion of the foreign State. Before such an opinion is issued, the prosecuted person should be given the opportunity to submit explanations, orally or in writing. If extradition is sought in order to institute criminal proceedings, upon the well-founded request of such a person, evidence-taking proceedings should be conducted with respect to the evidence accessible in this country.

§ 2 The defence counsel shall have the right to participate in the session.

§ 3 If the court has issued an order on the inadmissibility of extradition, the extradition may not take place.

§ 4 The order of the court regarding the extradition shall be subject to interlocutory appeal.

§ 5 The court shall refer the valid and final order together with the files of the case to the Minister of Justice who, having decided on the motion, shall notify the appropriate authority of the foreign state.

Article 604. § 1. The extradition is inadmissible if:

1) the person to whom such a motion refers, is a Polish citizen or has been granted the right of asylum in the Republic of Poland,

2) the act does not have the features of a prohibited act, or if law stipulates that the act does constitute an offence, or that a perpetrator of the act does not commit an offence or is not subject to penalty,

3) the period of limitation has lapsed,

4) the criminal proceedings have been validly concluded concerning the same act committed by the same person,

5) the extradition would contravene Polish law

§ 2. In particular, extradition may be refused, if:

1) the person to whom such a motion refers has permanent residence in Poland,

2) the criminal offence was committed on the territory of the Republic of Poland, or on board a Polish vessel or aircraft,

3) a criminal proceedings is pending concerning the same act committed by the same person,

4) the offence is subject to prosecution on a private charge,

5) pursuant to the law of the State which has moved for extradition, the offence committed is subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed,

6) the nature of the offence with which the motion for extradition is connected is political, military or fiscal, or

6) the State which has moved for extradition, does not guarantee reciprocity in this matter.

§ 3. In the event indicated in § 1 subsection (4) and § 2 subsection (3), the resolution of the motion for extradition may be adjourned, until the criminal proceedings pending against the same person in the Republic of Poland are concluded, or until he has served the sentence imposed or has been granted remission of the penalty.

Article 605. § 1. If the motion for extradition concerns an offence the perpetrator of which is subject to extradition, then the court acting or upon a motion from the state

prosecutor, may issue an order on the preliminary detention to be imposed upon the prosecuted person; Article 263 shall be applied accordingly.

§ 2 The court, before a motion for extradition has been filed, may also order the preliminary detention of the prosecuted person for a period not in excess of one month, if so requested by the agency of a foreign State which at the same time shall declare that the person concerned has been validly sentenced by a judgement, or a decision for preliminary detention has been issued.

§ 3 The order of the court regarding the preliminary detention shall be subject to interlocutory appeal.

§ 4 The Minister of Justice and a diplomatic mission or a consular office or prosecuting agency of the foreign State shall be notified promptly, of the day on which the preliminary detention commences.

§ 5 If the information contained in a motion for extradition is insufficient, and the court or the state prosecutor has required its completion, and the foreign State fails to send the necessary documents or information to the requesting agency, within one month from the day on which the request for the completion of the motion for extradition is served on it, the decision on preliminary detention shall be dissolved.

§ 6 In the event that extradition is refused, or the motion for extradition or preliminary detention is withdrawn, or if the agency of a foreign State, though duly notified of when and where the requested person is to be surrendered, fails to take custody of him within seven days from the day established for extradition, then the person who was placed under preliminary detention should be promptly released unless he is deprived of his liberty in another case.

Article 606. § 1. Permission for the transportation of a prosecuted person through the territory of the Republic of Poland shall be granted by the Minister of Justice. Articles 594, 604 and 605 shall be applied accordingly.

§ 2. If the transportation is by air and no landing is expected it shall be sufficient to notify the Minister of Justice of the transportation of the prosecuted person over the territory of the Republic of Poland.

Article 607. § 1. Jurisdiction to resolve motions filed by a foreign State, seeking delivery of objects constituting material evidence or obtained by the offence, shall be vested in the state prosecutor or the court, depending on at whose disposal these objects have been deposited.

§ 2. The order on the delivery of objects should list the material objects subject to surrender to the foreign State, and indicate what objects shall be returned after the criminal proceedings conducted by the agencies of that foreign State have been concluded.

Taking custody of or transferring the sentenced persons in order to execute the sentence

Article 608. § 1. If a Polish citizen has been validly sentenced by a court of a foreign State to a penalty of deprivation of liberty subject to execution, the Minister of Justice may direct a request to an appropriate authority of that foreign State for custody of the sentenced person in order that the penalty be executed in the Republic of Poland.

§ 2 Taking custody of the sentenced person in order to execute a penalty may occur when the act for which he has been sentenced constitutes an offence under Polish law or would constitute an offence when committed within the territory of the Republic of Poland.

§ 3 The taking custody shall not occur when the accused has not consented to it.

§ 4 The Minister of Justice before making the request shall motion the Voivodship Court in Warsaw to issue an order regarding the admissibility of the taking custody.

§ 5 The court shall issue the order in session in which the defence counsel shall have the right to participate.

§ 6 The order of the court shall be subject to interlocutory appeal.

§ 7 A valid and final order stating the inadmissibility of the taking over custody shall be binding.

§ 8 The provisions of § 1 through 7 shall be applied accordingly in the case of the Minister of Justice receiving* a request from an appropriate authority of the state for custody of a Polish citizen sentenced abroad.

Article 609. § 1. The Voivodship Court in Warsaw, after the taking custody of the sentenced person, shall determine the legal qualification of the act under Polish law and the penalty or the educational or corrective measure subject to execution.

§ 2 The court in determining the penalty subject to execution shall take as the basis the sentence passed by the court of a foreign country, the penalty to which the act is subject under Polish law and the period of the penalty served abroad, interpreting any differences to the benefit of the sentenced person.

§ 3 The court shall decide in a session in which the defence counsel shall have the right to participate. Article 352 shall be applied accordingly.

§ 4 The order of the court shall be subject to interlocutory appeal.

§ 5 The sentenced person shall be placed in a detention facility until the date on which the decision becomes valid and final.

Article 610. § 1. If a foreign citizen has been validly sentenced by a Polish court to a penalty of deprivation of liberty subject to execution, the Minister of Justice may direct a request to an appropriate agency of that foreign State of which the sentenced person is a citizen, to take him over in order to execute the penalty. Article 608 §§ 2 and 3 shall be applied accordingly.

§ 2 The Minister of Justice before making the request shall motion the voivodship court having jurisdiction, to issue an order regarding the admissibility of the transferring of the sentenced person.

§ 3 The accused and his defence counsel shall have the right to participate in the session. Article 608 §§ 6 and 7 shall be applied accordingly.

§ 4 The provisions of § 1 through 3 shall be applied accordingly in the case of the Minister of Justice, receiving a request from an appropriate agency of the State of which the sentenced person is a citizen.

Article 611. § 1. If the validly sentenced person leaves the territory of the State where he has been sentenced and arrives in the territory of the State of which he is a citizen before serving the penalty of deprivation of liberty, the provisions of this Chapter shall be applied accordingly.

§ 2. Article 608 § 3 shall not be applied.

Chapter 67

Closing provisions

Article 612. § 1. Whenever an alien is subjected to preliminary detention, the consular office of that foreign State having territorial jurisdiction or, if there is no such office, the diplomatic mission of such state should be promptly notified.

§ 2. If an alien has been placed under preliminary detention, such a detainee should be given the opportunity to contact, in the form available, the relevant consular office or diplomatic mission.

Article 613. § 1. With the exception of the case specified in Article 595, the courts and the state prosecutors shall communicate with the agencies of foreign states having their offices abroad, and with the persons referred to in Articles 578 and 579, in every case, including the service of procedural documents, through the Minister of Justice, who, when necessary, shall do so through the Ministry of Foreign Affairs.

§ 2. The courts and the state prosecutors, in cases prescribed by the Minister of Justice, may communicate directly with the consular offices of a foreign State in Poland.

Article 614. The costs which have been incurred in connection with the actions described in this Chapter shall be paid by the foreign State which filed the motion for conducting the action. The agencies of the Polish State may waive the request to reimburse the costs incurred, if the foreign State guarantees reciprocity.

Article 615. § 1. The provisions of this Part shall not be applicable if an international agreement to which the Republic of Poland is a party, resolves the matter otherwise.

§ 2 The provisions of this Part need not be applied to a foreign State with which there is no agreement in the matter, and which does not guarantee reciprocity.

§ 3 The provision of this Part shall be applied accordingly to the relationships with international tribunals and their agencies, acting pursuant to international agreements to which the Republic of Poland is a party.

PART XIII

COSTS OF COURT PROCEEDINGS

Chapter 68

General provisions

Article 616. § 1. The costs of court proceedings shall include:

1) court costs,

2) justifiable expenses of the parties, including the costs of retaining one defence counsel or attorney for the case.

§ 2. The court costs shall include:

1) fees,

2) the expenses incurred by the State Treasury from the moment when the proceedings were instituted.

Article 617. The Minister of Justice shall issue an ordinance designating the amount of the costs and the principles and method of calculating the same.

Article 618. The expenses incurred by the State Treasury shall include, in particular, the cost of:

1) the service of the summons and other documents,

2) the transportation of judges and other persons necessitated by the procedural action,

3) the conveying and transportation of the accused, witnesses and experts,

4) inspections and examinations undertaken in the course of the proceedings, and the transmission, storage, and sale of the confiscated material objects,

5) announcements in periodicals, radio and television,

6) the execution of the decision, including the decision to secure impending penalties affecting property if such penalties have been decided, save for the costs of maintaining the sentenced persons in penal establishments, and the cost of staying in medical institutions during psychiatric observation.

7) the fees of the witnesses and interpreters,

8) the costs of mediation proceedings,

9)the fees of experts or institutions designated to provide opinions,

10) the fees prescribed for obtaining information from the register of convicted persons;

11) the cost of legal advice provided by lawyers designated and not paid for by the parties.

§ 2 Unless the amounts and method of calculating the costs described in § 1 are regulated by separate provisions, the Minister of Justice in consultation with the Minister of Finance shall issue an ordinance designating the amount of the costs specified in Article 554 and the method of calculating the same.

§ 3 In absence of the provisions referred in § 2, any particular cost is determined by the amounts authorised by the court, the state prosecutor or other agency conducting the proceedings.

Article 619. § 1. Unless otherwise provided by law, any costs incurred in the course of criminal proceedings shall provisionally be paid by the State Treasury.

§ 2. The costs of the mediation proceedings shall be paid by the State Treasury.

Article 620. The costs of defence counsel and of the attorney shall be responsibility of the party retaining the same.

Article 621. § 1. The private prosecutor shall append to the indictment, or to the statement by which he joins in the charge or by which he expresses his support of the charge which has been withdrawn by the state prosecutor, a receipt evidencing payment to the court of a lump-sum fee equivalent to the liquidated costs of the proceedings. This lump-sum fee does not include the costs indicated in Article 618 § 1 subsections 5 and 11.

§ 2. The Minister of Justice shall determine, by an ordinance, the amount of the lump-sum fees equivalent to the liquidated costs of proceedings.

Article 622. In cases brought on a private charge, in the event of: reconciliation between the parties before the commencement of the trial, the conditional discontinuance of the proceedings, discontinuance of the proceedings because of the non-accountability of the perpetrator or because the social consequences of the act were regarded as minimal, or finding that the act has features of an offence subject to prosecution , or changing the procedure of prosecution through the state prosecutor entering the proceedings instituted by a private prosecutor and concluding these proceedings as prescribed for an offence prosecuted under a public indictment.

the president of the court shall rule that the whole of the liquidated payment made by the private prosecutor be refunded, or half thereof in the case of a reconciliation between the parties after the commencement of the trial.

Chapter 69

Exemption from court costs

Article 623. The court shall exempt from the costs payable at the filing of a procedural document, either in whole or in part, a person who has duly shown that by reason of his family or financial circumstances and of his income, prepaying these costs would be too onerous.

Article 624. § 1. The court may exempt the accused or the prosecutor, either in whole or in part, from the obligation to reimburse the State Treasury, the court costs if there are good grounds to believe that their payment would be too onerous in view of the family and financial circumstances and the income of the person obligated to pay the same, and if consideration of equity favours such exemption.

§ 2. The provision of § 1 shall be applied accordingly to a private prosecutor if the case has been examined without fulfilling the requirements described in Article 621 § 1.

Article 625. In the event that a soldier doing his basic military service or in training to become a professional soldier, has been sentenced, or the proceedings have been conditionally discontinued, the costs of the proceedings due to the State Treasury shall not be charged.

Chapter 70

Awarding the costs of court proceedings

Article 626. § 1. In the decision concluding the proceedings the court shall always indicate to whom, in which proportions and to what extent the court costs shall be charged..

§ 2 If the decision referred to in § 1 has not resolved the issue of costs, and if there is a necessity to additionally determine their amount, or to resolve the costs of execution proceedings, the decision on these matters shall be taken accordingly by the court of the first instance or the appellate court.

§ 3 An interlocutory appeal may be filed against the decision on the court costs, unless an appeal has been submitted. If an appeal and an interlocutory appeal have been filed, the interlocutory appeal shall be examined by the appellate court together with the appeal.

Article 627. In a case brought by public prosecution, a convicted person shall be charged by the court, for the benefit of the State Treasury with the court costs, and for the benefit of the private prosecutor with the costs of the proceedings prepaid by the latter.

Article 628. In a case brought on a private charge, the court shall charge the convicted person for the benefit of:

1) the private prosecutor, with the costs of the proceedings prepaid by the latter.

2) the State Treasury with the costs determined on the basis of Article 618, from which the prosecutor has been exempted, or in the event that the case has been examined without these costs being prepaid.

Article 629. The provisions of Articles 627 and 628 shall be applied accordingly in the event that the proceedings are conditionally discontinued.

Article 630. In cases brought by public prosecution, if the accused has not been convicted of each of the offences imputed to him, the costs involved in the charge in the part to which the acquittal extends, shall be charged to the State Treasury.

Article 631. In cases brought by a private charge, where the court has refrained from imposing a penalty on the accused because the injuries were reciprocal, or the private prosecutor has behaved in a provocative manner, and considering the number and type of charges on which the accused has been acquitted, the court may charge the accused with only a proportion of the cost of the court proceedings incurred by the private prosecutor.

Article 632. Unless otherwise provided by law, if the accused has been acquitted or the proceedings have been discontinued, the costs of the court proceedings shall be charged as follows:

1) in cases brought on a private charge, to the private prosecutor, and in the event of a reconciliation between the parties, to both the prosecutor and the accused, to the extent they have paid these costs, unless otherwise provided by the parties in a mutual agreement,

2) in cases brought by public prosecution, to the State Treasury, except the lawyers' fees for taking part in the case as a defence counsel or a retained attorney. In justifiable cases, however, the court may award reimbursement of a fee of one defence counsel in whole or in part.

Article 633. The costs of the proceedings attributable to more than one accused or to more than one private prosecutor or to more than one subsidiary prosecutor, and to the accused and the prosecutors shall be divided among them by the court, according to the principles of equity, with special reference to the expenses incurred by their respective cases.

Article 634. Unless otherwise provided by law, the provisions on the costs of the proceedings before the court of the first instance shall be applied accordingly, to the costs of the appellate proceedings against decisions concluding the proceedings in the case.

Article 635. Irrespective of who filed the appellate measure, in the event that a sentencing judgement or a decision on a conditional discontinuance of the proceedings has been reversed to the prejudice of the accused, the costs of the appellate proceedings shall be determined according to the general rules.

Article 636. § 1. In cases brought by public prosecution, where an appellate measure is filed solely by the accused or the private prosecutor, the cost of the appellate proceedings shall be charged, according to general rules to the person who has filed the appellate measure. In the event that it has been filed solely by a public prosecutor, the costs of the appellate proceedings shall be charged to the State Treasury.

§ 2 In the event that appellate measures filed by at least two entitled entities have been dismissed, Article 633 shall be applied accordingly.

§ 3 The provisions of §§ 2 and 3 shall be applied accordingly to cases brought by private prosecution.

Article 637. § 1. The provisions of Articles 635 and 636 shall be applied accordingly in the event that the appellate measure is left unheard, as a result of its being withdrawn by a party, or because of the reasons prescribed in Article 430.

§ 2. In the event that the motion for prosecuting has been withdrawn, the costs of the court proceedings may be charged to the person who has withdrawn the motion.

Article 638. The costs incurred by the court ,in connection with hearing the cassation appeal filed by the entities prescribed in Article 521, shall be charged by the State Treasury.

Article 639. The provisions on the costs of court proceedings shall be applied accordingly to the cases of instituting trial. In the event that the motion has been dismissed or left unheard, the obligation to cover the costs rests with the person who filed the motion.

Article 640. The provisions regarding cases brought by private prosecution shall be applied accordingly in cases brought by public prosecution, in which the indictment has been brought by the subsidiary prosecutor.

Article 641. The right to collect the court costs shall be barred after the expiration of three years from the day when they were due.

Chapter 71

Costs of the proceedings connected with a civil complaint and the award of damages

Article 642. Unless otherwise provided in this Chapter, the matter of court costs resulting from a civil complaint shall be regulated accordingly by the provisions applicable to civil proceedings. A civil plaintiff shall be temporarily exempted from the obligation to remit the payment due for the civil complaint and for the appeal. The accused shall pay such costs only if his appeal concerns solely the civil complaint.

Article 643. In the event that the civil complaint is granted, in whole or in part, the court on behalf of the civil plaintiff shall charge the accused with the court costs due to him and, if the civil plaintiff has been exempted from the payment of costs, the court shall charge the accused with these costs due to the State Treasury. In the event that the plaintiff uses an attorney designated , the court shall charge the amount due directly to the attorney.

Article 644. § 1. The civil plaintiff shall be charged with the court costs for a dismissed complaint or for a withdrawn appeal.

§ 2. In the event that the proceedings have been suspended or the civil complaint has been left unheard, the costs of court proceedings occasioned by the civil plaintiff in the criminal proceedings, shall be included within the costs of the civil proceedings in the same case.

Article 645. In the event that the convicted person has been charged with a sum of money by way of compensation, the court shall charge him, on behalf on the State Treasury, with the corresponding courts costs, pursuant to the provisions governing civil proceedings, if the civil complaint is granted; Article 623 shall be applied accordingly.

Part XIV

Criminal proceedings in cases subject to the judicial decisions of courts-martial

Chapter 72

General provisions

Article 646. In cases subject to the judicial decisions of courts-martial, the provisions concerning proceedings brought on a private charge and writ proceedings shall not be applied. The provisions on summary proceedings shall be applied only to cases of contraventions. In other cases the provisions of the preceding Parts shall be applied, unless otherwise directed by the provisions of the present Part.

Article 647 § 1. The judicial decisions of courts-martial shall extend to cases involving::

1) soldier in active service - in cases arising out of:

a) offences described in Chapters XXXIX through XLIV of the Penal Code,

b) offences committed against a military authority or against another soldier,

c) offences committed during or in connection with the discharging of official duties, within the military premises or designated area of stationing, involving harm to the military or infringement of duties resulting from the obligation of compulsory military service, except for the offences committed to the detriment of persons other than soldiers.

2) civilian employees of the armed forces - in cases arising out of the offences defined in Articles 356 through 363 of the Penal Code in connection with Article 317 § 2 of the Penal Code.

3) soldiers of the armed forces of foreign states present in the territory of the Republic of Poland and civilian members of their personnel - in cases arising out of offences committed in connection with their official duties, unless an international agreement to which the Republic of Poland is a party stipulates otherwise.;

§ 2. The cases listed in § 1 will not cease to be subject to the judicial decisions of courts-martial even though the soldier has been discharged from military service or the employment of the civilian employee has ended.

Note: Article 647 will come into force on 1 January 2003.

Article 648. The judicial decisions of courts-martial shall also extend to cases concerning:

1) instigating and aiding offences defined in Chapters XXXIX through XLIV of the Penal Code,

2) offences described in Articles 239, 291 through 293 and 294 of the Penal Code with regard to Article 291 § 1 of the Penal Code - if the act is related to the offence defined in Chapters XXXIX through XLIV of the Penal Code,

3) other offences, if so stipulated by special provisions.

Article 649. § 1. If the perpetrator of any offence subject to the judicial decisions of court-martial has also committed an offence subject to the judicial decisions of a common court of law, and these offences are so related to each other that justice will be better served if they are heard together, they shall be jointly heard by the court-martial.

§ 2. The provisions of § 1 shall be applied to preparatory proceedings accordingly.

Article 650. § 1. If in a case against two or more accused persons the court-martial should not have jurisdiction to hear the whole of such case, either by reason of the nature of one of the acts, or of the person of one of the accused, and the ends of justice so require, the court-martial may hear the case jointly or refer it to a common court of law for this purpose.

§ 2 In the course of preparatory proceedings, the state military prosecutor shall be granted corresponding rights.

§ 3 The case cannot be referred if it concerns an offence listed in Article 647 § 1 subsection (1)(a) or subsection (2) or in Article 648 subsection (1).

Note: Article 650 § 3 will come into force on 1 January 2003.

§ 4 The referral of a case pursuant §§ 1 and 2 shall be subject to interlocutory appeal. The ruling of the state prosecutor shall be considered by the court-martial having jurisdiction over the case.

Article 651. § 1. In cases arising out of offences listed in Article 647 § 1 subsection (1) and (2) the decision shall be issued by a court-martial having jurisdiction over the military unit in which the soldier was serving or by which the civilian was employed.

§ 2 The jurisdiction of the court-martial with respect to the assignment of the accused to a given military unit, shall be determined as of the moment of the institution of criminal proceedings against the accused.

§ 3 In cases arising out of offences listed in Article 647 § 1 subsection (3), Article 31 shall be applied accordingly to the determination of the jurisdiction over the case.

Article 652. In cases subject to the jurisdiction of courts-martial, judicial decisions should be issued by the following courts, accordingly to their extent of jurisdiction.

1) the garrison court-martial,

2) the circuit court-martial,

3) the Supreme Court - the Military Chamber.

Article 653. § 1. The garrison court-martial shall decide in the first instance all cases referred by law to the jurisdiction of this court.

§ 2 In cases prescribed by law, the garrison court-martial shall also hear, within the extent of its jurisdiction, appellate measures against judgements and rulings issued in the preparatory proceedings.

§ 3 The garrison court-martial also has the procedural rights and duties which, in proceedings before the common courts of law, are granted to the regional court.

Article 654. § 1. The circuit court-martial shall issue judicial decisions in the first instance in cases arising out of the offences:

1) committed by officers holding the rank of Major, or higher,

2) subject to the jurisdiction of the voivodship court in the proceedings before the common courts of law and those defined in Article 339 § 3 and Article 345 §§ 3 and 4 of the Penal Code,

3) committed by soldiers and civilian employees referred to in Article 647 § 1 subsection (3),

4) other offences, pursuant to special provisions.

§ 2 In the preparatory proceedings, the matter of preliminary detention regarding the soldiers referred to in § 1 subsection (1) and the soldiers of foreign armed forces and their civilian employees referred to in § 1 subsection (3) shall be decided by the circuit court-martial in a one-judge panel.

§ 3 The circuit court-martial shall also hear the appellate measures against judgements and rulings issued in the first instance in the garrison court-martial and, in the cases prescribed in law and within the extent prescribed in § 1 subsection (3), also against the judicial decisions and rulings issued in the preparatory proceedings.

§ 4 The circuit court-martial shall also hear cases prescribed to a higher court then the garrison court-martial, and other matters prescribed by law.

§ 5. The circuit court-martial also has procedural rights and duties which, in proceedings before the common courts of law, are granted to the voivodship court.

Article 655. The Supreme Court - the Military Chamber shall hear

1) appellate measures against decisions and rulings issued in the first instance in the circuit court-martial,

2) cassation appeals,

3) the cases prescribed in this Code for a higher court then the circuit court-martial,

4) other cases referred to the Supreme Court by law.

§ 2. The provisions of Article 39 and Article 439 § 1 subsection (3) shall be applied accordingly to the judicial decisions of the Military Chamber and the Criminal law Chamber of the Supreme Court. In the case described in Article 439 § 1 (3) the Supreme Court shall decide in this chamber to whose judgement the appellate measure pertains.

Article 656. § 1. In a case concerning two or more accused soldiers subject to the jurisdiction of courts-martial of equal level, the decision shall be issued by the court-martial having jurisdiction over the perpetrator of the offence subject to the most severe penalty. If it is impossible to establish the jurisdiction of a court-martial in the above manner, the case shall be heard by the court in whose jurisdiction the proceedings were first instituted.

§ 2. If, however, the case belongs to the jurisdiction of courts-martial of different levels, it shall be heard by the court of higher level.

Article 657. § 1. The procedural rights of the Attorney General shall also be granted to the Chief Military State Prosecutor, unless otherwise provided by law, and the rights of the Voivodship State Prosecutor accordingly to the state prosecutor in the military circuit.

§ 2 Whenever the present Code refers to a public prosecutor or state prosecutor, this should be understood as referring to the military state prosecutor.

§ 3 Article 45 § 2 shall not be applied.

Article 658. § 1. The military state prosecutor shall refuse to institute the proceedings pertaining to the offence prosecuted on a motion from the commander of a military unit, when the perpetrator has been submitted to the measures provided for in the military disciplinary regulations.

§ 2. This shall not regarded a case when the motion to prosecute is submitted by the higher commander having waived the disciplinary penalty, or when the military state prosecutor uses the rights granted in Article 660.

§ 3. The provision of Article 12 § 3 shall not be applied to the motion of the commander of a military unit or the motion of the higher commander.

Article 659. § 1. In the cases arising from offences prosecuted on a motion from the commander of a military unit, the rights of the injured or the institution defined in Article 306, and in the case described in Article 330 § 2 - also those prescribed in Article 55 § 1, shall be vested with this commander.

Article 660. § 1. A military state prosecutor may institute criminal proceedings for an offence prosecuted on a motion of the commander of a military unit, even if the commander of the unit has not moved for the same, if he finds that this is necessary to maintain military discipline.

§ 2 The commander of a military unit and, in the case described in Article 347 § 1 of the Penal Code, also the injured person, shall have the right to file an interlocutory appeal against the order of the military state prosecutor, with the court having jurisdiction to hear the case.

§ 3 The provision of § 2 shall not be applied if it has transpired only in the course of proceedings, that the act has the features of an offence subject to prosecution.

Article 661. § 1. An offence prosecuted on a private charge shall become, from the moment the injured person submits the charge, an offence prosecuted.

§ 2 A military state prosecutor may also institute proceedings concerning an offence prosecuted on a private charge, if in his opinion, the public interest so requires.

§ 3 The injured person shall have the right to file an interlocutory appeal against the order of the military state prosecutor, with the court having jurisdiction to hear the case.

§ 4 On the motion of the injured person, filed prior to the valid conclusion of proceedings instituted pursuant to § 1 above, the proceedings in the case shall be discontinued, unless this is against the public interest. In addition, in the event that the motion is filed after the commencement of the judicial examination in the court of first instance, the consent of the accused shall be required.

Article 662. § 1. Apart from the data prescribed in Article 213 §§ 1 and 2, additional data on the service record, awards and commendations and/or disciplinary history shall be assembled on the accused soldier.

§ 2. The rights and duties of a professional court probation officer shall be vested accordingly with the military custodian.

The Minister of National Defence in consultation with the Minister of Justice shall determine by ordinance, the method of appointing and the scope of activities of military custodians.

Chapter 73

Measures of coercion and preparatory proceedings

Article 663. In cases subject to the judicial decisions of courts-martial, the procedural rights and duties of the Police shall be also extended to the Military Gendarmerie (Military Police).

Article 664. The military superior and the agencies of the garrison commander shall also, under the conditions described in Article 244, be granted the right to arrest a suspected person subject to the jurisdiction of courts-martial.

Article 665. § 1. The commander of a military unit should be promptly informed of the arrest of a soldier serving in this unit or a civilian employed in it, also in the event when the arrested person does not demand this.

§ 2. If the arrest of a soldier or a civilian employee, under the conditions described in Article 244 § 1, has occurred in connection with a justifiable suspicion of committing offence prosecuted on a motion of their commander of a military unit, the arrested person should be promptly released also on instruction of the authorized commander, unless a higher commander or a military state prosecutor object.

Article 666. § 1. The preliminary detention of a soldier accused of committing an offence defined in Article 338 § 1, Articles 339, 341 § 1, Article 343 § 2, Articles 345, 352 and 358 § 2 of the Penal Code may also occur, as an exception, when there is a good reason to fear that the accused will again commit one of these offences.

§ 2. The provision of § 1 shall be applied accordingly to the remaining preventive measures.

Article 667. The preparatory proceedings shall also serve the purpose of collecting the data referred to in Article 662 § 1.

Article 668. § 1. An investigation shall be conducted in cases arising out of crimes, and in other cases if the importance or complexity of the case so merits.

§ 2. Pursuant to Article 344 § 2, the military state prosecutor shall instruct the accused person on the right to file a motion described in Article 669 § 2.

Chapter 74

Proceedings before the court

Article 669. § 1. A soldier of a rank inferior to the accused soldier in active service shall not be allowed as a lay judge. This restriction shall not be applied if the lay judge has a rank of Brigadier-General (generał brygady) or Rear Admiral (kontradmirał).

§ 2 In a case arising out of an offence other than that defined in Chapters XXXIX through XLIV of the Penal Code, on a motion of the accused submitted within 7 days of service of the notice of the military state prosecutor, on transmitting an indictment to a court-martial with the instruction referred in Article 668 § 2, the president of the court, in the case other than that described in Article 28 § 2, shall designate lay judges from a common court of law, instead of lay judges-soldiers, to the panel deciding in the case..

§ 3 The Minister of Justice, in consultation with the Minister of National Defence, shall determine, by ordinance, the method of proceeding in matters connected with the participation of the lay judges of common courts of law in court-martial panels, referred to in § 2.

Article 670. An investigating officer of the military state prosecutor's office may, upon the authorisation of the military state prosecutor, participate in the trial or session.

Article 671. § 1. The participation of the defence counsel in the main trial shall be mandatory before all courts-martial, or in any case against a soldier doing his basic service or training for professional military service.

§ 2 The participation of the defence counsel in the main trial against the accused other than specified in § 1 shall be mandatory before the circuit court-martial, in the event that the case described in Article 654 § subsection 2 has occurred.

§ 3 Except for the cases described in Article 79 § 1, the participation of the defence counsel in the appellate hearing before the circuit court-martial shall be mandatory, if the president of the court or the court itself find it necessary.

§ 4 In the cases described in §§ 1 through 3, Article 81 shall be applied accordingly.

Article 672. The court-martial of the first instance shall prepare the statement of reasons for the judgement.

Article 673. A decision on the matter of re-opening the proceedings or on nullity by virtue of law shall be issued by a circuit court-martial in a panel of three military judges, and in cases concluded with a valid and final judgement of the circuit court-martial or the Supreme Court, by the Military Chamber of the Supreme Court.

Chapter 75

Proceedings with respect to cases dealing with contraventions

Article 674. § 1. The judicial decisions of courts-martial shall extend to cases of contraventions committed by:

1) soldiers in active service,

2) soldiers of the armed forces of foreign states and civilian members of their personnel who are referred to in Article 647 § 1 subsection 3, committed in connection with their official duties,

§ 2 The cases arising out of contraventions referred to in § 1 will not cease to be subject to judicial decisions of courts-martial even though the soldier has been discharged from active military service.

§ 3 In the event that the soldier has been discharged from active military service, the court-martial may, not later than before the commencement of the proceedings at the main trial at the latest, refer the case of contravention to be heard by the board having jurisdiction over contraventions, if the contravention has been committed in circumstances other than described in Article 647 § 1 subsections (b) or (c).

Note: Article 674 § 3 will come into force on 1 January 2003.

§ 4 Before filing the motion for imposition of a penalty, the right referred to in § 3 shall be vested with the military state prosecutor.

§ 5 The motion to refer the case described in §§ 3 and 4 shall be subject to interlocutory appeal. The interlocutory appeal against the order of the state prosecutor shall be heard by the court-martial.

Article 675. The provisions of Article 674 §§ 1 and 2 shall not exclude the proceedings by police fine/penalty against a soldier in active military service, pursuant to principles and procedures prescribed in the Code of procedure in cases of contraventions, but in the event that the police fine/penalty has been rejected or the fine not paid in due time, the court-martial shall have the jurisdiction to hear the case. Article 674 §§ 3 through 5 shall be applied.

Article 676. § 1. The military state prosecutor shall be notified of a soldier in active military service committing a contravention referred to in Article 674. This shall also occur in the case described in Article 675, but only in the event that the police payment order has been rejected or the fine not paid in due time.

§ 2. Unless otherwise provided by the provisions of this Chapter, the proceedings on contraventions shall follow the provisions of this Code, which are applicable to criminal cases subject to the judicial decisions of courts-martial, to be applied accordingly.

Article 677. § 1. The court-martial may refuse to institute the case or to discontinue the instituted proceedings and refer the case to the relevant commander together with a motion for the imposition of a penalty prescribed in military disciplinary regulations, if the court finds this to be a sufficient response to the contravention.

§ 2. Before filing the motion for the imposition of a penalty, the right referred to in § 1 shall be vested with the military state prosecutor. The interlocutory appeal against the order of the state prosecutor shall be heard by the court-martial.

Article 678. In cases dealing with contraventions, the provisions regarding summary proceedings shall be applied, except Articles 469 through 471 and Article 483.

Article 679. The cases dealing with contraventions shall be heard by the garrison court-martial, having jurisdiction over the place where the contravention has been committed and also with regard to an act committed by a soldier described in Article 654 § 1 subsection (1).

Article 680. The grounds for instituting the proceedings before the court shall be a motion to impose a penalty prepared or approved by the military state prosecutor.

§ 2. A motion for the imposition of a penalty shall replace the indictment.

Article 681. § 1. The court of the first instance shall decide in a one-judge panel, irrespective of the type of procedure applied to the proceedings.

§ 2. The court may impose the obligation to redress the damage. The civil complaint and adjudicating damages shall not be admitted.

Article 682. The provisions of Articles 678 through 681 shall not be applied in the case described in Article 400, nor in the case of a coincidence of an offence and a contravention included in the same proceedings; the case shall henceforth be heard according to general rules.